

CONFIDENTIALITY
AND
DATA SECURITY AND PRIVACY
STANDARDS AGREEMENT

This Agreement made this 3rd day of September, 2021 by and Benchmark Education Company LLC (“VENDOR”) having its principal place of business at 145 Huguenot St, New Rochelle, NY 10801, and Elwood Union Free School District (the “SCHOOL DISTRICT”), having its principal place of business at 100 Kenneth Avenue, Greenlawn, New York 11740.

WHEREAS, the Vendor will receive “student data” as that term is defined in New York Education Law section 2-d and the regulations promulgated thereunder; and

WHEREAS, both the School District and Vendor are desirous of fulfilling their respective obligations under New York Education Law section 2-d and the regulations promulgated thereunder.

NOW THEREFORE, in consideration of the mutual promises and covenants contained in the Agreement, the parties hereto mutually agree as follows:

1. VENDOR, its employees, and/or agents agree that all information obtained in connection with the services provided for in this Agreement is deemed confidential information. VENDOR, its employees, and/or agents shall not use, publish, discuss, disclose or communicate the contents of such information, directly or indirectly with third parties, except as provided for in this Agreement. VENDOR further agrees that any information received by VENDOR, its employees, and/or agents during the course of the services provided pursuant to this Agreement which concerns the personal, financial, or other affairs of SCHOOL DISTRICT, its employees, agents, clients, and/or students will be treated by VENDOR, its employees, and/or agents in full confidence and will not be revealed to any other persons, firms, or organizations.

2. VENDOR acknowledges that it may receive and/or come into contact with personally identifiable information, as defined by New York Education Law Section 2-d, from records maintained by SCHOOL DISTRICT that directly relate to a student(s) (hereinafter referred to as “education record”). VENDOR understands and acknowledges that it shall have in place sufficient protections and internal controls to ensure that information is safeguarded in accordance with applicable laws and regulations, and understands and agrees that it is responsible for complying with state data security and privacy standards for all personally identifiable information from education records, and it shall:
 - a. limit internal access to education records to those individuals that are determined to have legitimate educational interests;

 - b. not use the education records for any purposes other than those explicitly authorized in this Agreement;

c. maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of education records in its custody; and

d. use encryption technology to protect data while in motion or in its custody from unauthorized disclosure using a technology or methodology specified by the secretary of the United States Department of Health and Human Services in guidance issued under Section 13402(H)(2) of Public Law 111-5 and the National Institute of Standards and Technology Cyber Security Framework Version 1.1.

3. VENDOR further understands and agrees that it is responsible for submitting a data security and privacy plan to SCHOOL DISTRICT prior to the start of the term of this Agreement. Such plan shall outline how all state, federal and local data security and privacy contract requirements will be implemented over the life of the contract consistent with SCHOOL DISTRICT's policy on data security and privacy, as adopted. Further, such plan shall include a signed copy of SCHOOL DISTRICT's Parents' Bill of Rights and the training requirement established by VENDOR for all employees who will receive personally identifiable information from student records (hereinafter referred to as "student data").

4. VENDOR understands that as part of SCHOOL DISTRICT's obligations under New York Education Law Section 2-d, VENDOR is responsible for providing SCHOOL DISTRICT with supplemental information to be included in SCHOOL DISTRICT's Parents' Bill of Rights. Such supplemental information shall be provided to SCHOOL DISTRICT within ten (10) days of execution of this Agreement and shall include:

a. the exclusive purposes for which the student data will be used;

b. how VENDOR will ensure that subcontractors, persons or entities that VENDOR will share the student data with, if any, will abide by data protection and security requirements;

c. that student data will be returned or destroyed upon expiration of the Agreement;

d. if and how a parent, student, or eligible student may challenge the accuracy of the student data that is collected; and

e. where the student data will be stored (described in such a manner as to protect data security), and the security protections taken to ensure such data will be protected, including whether such data will be encrypted.

5. In the event of a breach of the within confidentiality and data security and privacy standards provision and unauthorized release of student data, VENDOR shall immediately notify SCHOOL DISTRICT and advise it as to the nature of the breach and steps VENDOR has taken to minimize said breach. Said notification must be made within seven (7) days of the breach. In the case of required notification to a parent or eligible student, VENDOR shall promptly reimburse SCHOOL DISTRICT for the full cost of such notification.

6. In the event that VENDOR fails to notify SCHOOL DISTRICT of a breach, said failure shall be punishable by a civil penalty of the greater of \$5,000 or up to \$10 per student, teacher and principal whose data was released, provided that the maximum penalty imposed shall not exceed the maximum penalty imposed under General Business Law, section 899-aa(6)(a).

7. Except as set forth in paragraph (f) above, in the event VENDOR violates Education Law 2-d, said violation shall be punishable by a civil penalty of up to \$1,000. A second violation involving the same data shall be punishable by a civil penalty of up to \$5,000. Any subsequent violation involving the same data shall be punishable by a civil penalty of up to \$10,000. Each violation shall be considered a separate violation for purposes of civil penalties and the total penalty shall not exceed the maximum penalty imposed under General Business Law section 899-aa(6)(a).

8. VENDOR shall indemnify and hold SCHOOL DISTRICT harmless from any claims arising from its breach of the within confidentiality and data security and privacy standards provision.

Upon termination of this Agreement, VENDOR shall return or destroy all confidential information obtained in connection with the services provided herein and/or student data. Destruction of the confidential information and/or student data shall be accomplished utilizing an approved method of confidential destruction, including, shredding, burning or certified/witnessed destruction of physical materials and verified erasure of magnetic media using approved methods of electronic file destruction. The parties further agree that the terms and conditions set forth herein shall survive the expiration and/or termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

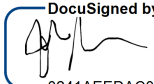
ELWOOD UNION FREE SCHOOL DISTRICT

Date: _____

By: _____

Benchmark Education Company LLC

Date: 10/12/2021

By:  _____
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