SOFTWARE AGREEMENT

This Agreement, made and entered into **July 1, 2022 - June 30, 2023** (Effective Date), by and between **Eduware, Inc.** , having offices at **550 North Country Road, St. James, NY 11780** ("Vendor"), and the East Irondequoit Central School District, having an office at 600 Pardee Road, Rochester, New York 14609 ("School District") (collectively "Parties").

In consideration of the mutual promises and covenants contained herein, the Parties agree as follows:
Please choose "Services" or "License"

1. ☑ **Services.** Vendor shall perform the services set forth in this Agreement, as described in Addendum A (the "Services"). Vendor shall provide the Services at the School District location or on a remote basis, as agreed to by the Parties. Vendor warrants that the Services provided hereunder will be performed in a good and workmanlike manner.

☐ **License.** Vendor hereby grants to School District, including to all School District's authorized users, a non-exclusive, non-sublicensable, non-assignable and royalty-free license to access and use the service (the "Services") solely for School District's operations in accordance with the terms of this Agreement.

2. **Data Accessed by Vendor.** Vendor shall identify categories of all data accessed by Vendor or its subcontractors as part of this Agreement as set forth in Addendum B.

3. **Term of Services.** This Agreement begins on the Effective Date and will continue for a period of one (1) year unless terminated pursuant to Section 4 below (the "Term").

4. **Termination**. This Agreement may be terminated as follows:
    (a) By the School District upon thirty (30) days prior written notice to Vendor;

    (b) By the School District immediately in the event of breach by the Vendor; and

    (c) By either Party upon written mutual agreement.

5. **Payment**. The School District shall make a one-time payment of $ **68/license** for the **TestWizard** provided by Vendor in accordance with this Agreement.

6. **Protection of Confidential Data.** Vendor shall provide its Services in a manner which protects Student Data (as defined by 8 NYCRR §121.1(q)) and Teacher or Principal Data (as defined by 8 NYCRR §121.1(r)) (hereinafter "Confidential Data") in accordance with the requirements articulated under Federal, State and local laws and regulations, including but not limited to the foregoing:

    (a) Vendor will adopt technologies, safeguards and practices that align with the NIST Cybersecurity Framework.

    (b) Vendor will comply with the School District Data Security and Privacy Policy, Education Law §2-d, and 8 NYCRR §121.

    (c) Vendor will limit internal access to personally identifiable information to only those employees or subcontractors that need access to provide the contracted services.

    (d) Vendor will not use the personally identifiable information for any purpose not explicitly authorized in this Agreement.

    (e) Vendor will not disclose any personally identifiable information to any other party without the prior written consent of the parent or eligible student, unless otherwise authorized pursuant to applicable law.

    (f) Vendor will maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of personally identifiable information in its custody.

(g) Vendor will use encryption to protect personally identifiable information in its custody while in motion or at rest.

(h) Vendor will not sell personally identifiable information nor use or disclose it for any marketing or commercial purpose or facilitate its use or disclosure by any other party for any marketing or commercial purpose or permit another party to do so.

(i) In the event Vendor engages a subcontractor to perform its contractual obligations, the data protection obligations imposed on the Vendor shall apply to the subcontractor.

7.   **Data Breach**. In the event that Confidential Data is accessed or obtained by an unauthorized individual, Vendor shall provide notification to the School District without unreasonable delay and not more than seven (7) calendar days after the discovery of such breach. Vendor shall follow the following process:

(a) The security breach notification shall be titled "Notice of Data Breach", shall be clear, concise, use language that is plain and easy to understand, and to the extent available, shall include: a brief description of the breach or unauthorized release; the dates of the incident and the date of discovery; a description of the types of Confidential Data affected; an estimate of the number of records affected; a brief description of the Vendors investigation or plan to investigate; and contact information for representatives who can assist the School District with additional questions.

(b) The Vendor shall also prepare a statement for parents and eligible students which provides information under the following categories: "What Happened", "What Information Was Involved", "What We Are Doing", "What You Can Do", and "For More Information".

(c) Where a breach or unauthorized release of Confidential Data is attributed to Vendor, and/or a subcontractor or affiliate of Vendor, Vendor shall pay for or promptly reimburse the School District for the cost of notification to parents and eligible students of the breach.

(d) Vendor shall cooperate with the School District and law enforcement to protect the integrity of investigations into the breach or unauthorized release of Confidential Data.

(e) Vendor further acknowledges and agrees to have a written incident response plan that is consistent with industry standards and Federal and State laws for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of Confidential Data or any portion thereof. Upon request, Vendor shall provide a copy of said written incident response plan to the School District.

8.   **Indemnification**. Vendor shall at all times (both during and after the Term of this Agreement), indemnify, defend and hold harmless the School District, its agents, employees, and students (collectively for purposes of this Section, "the School District"), from and against any and all settlements, losses, damages, costs, counsel fees and all other expenses relating to or arising from (a) Vendor's failure to comply with the terms of this Agreement; and/or (b) the negligent operations, acts or omissions of the Vendor.

9.   **Compliance with Laws.** Vendor, its employees and representatives shall at all times comply with all applicable Federal, State and local laws, rules and regulations.

10.   **Independent Relationship.** It is expressly intended by the Parties hereto, and Vendor hereby specifically warrants, represents and agrees, that Vendor and the School District are independent entities. The Parties intend that this Agreement is strictly between two independent entities and does not create an employer/employee relationship for any purpose. Vendor shall perform the duties contemplated by this Agreement as an independent entity, to whom no benefits shall accrue except for those benefits expressly set forth in this Agreement.

11. **Assignment.** This Agreement is binding upon the Parties and their respective successors and assigns, but Vendor's obligations under this Agreement are not assignable without the prior written consent of the School District. Any assignment without the School District's consent shall be null and void.

12. **Governing Law.** This Agreement and any Services provided hereunder shall be governed by the laws of the State of New York both as to interpretation and performance, without regard to its choice of law requirements.

13. **Waiver.** No delay or omission of the School District to exercise any right hereunder shall be construed as a waiver of any such right and the School District reserves the right to exercise any such right from time to time, as often as may be deemed expedient.

14. **Addendums.** The following Addendums are attached hereto and incorporated herein:

- Addendum A: Description of Specifications and Services
- Addendum B: Schedule of Data
- Addendum C: School District's Parents' Bill of Rights
- Addendum D: Parents' Bill of Rights – Supplemental Information
- Addendum Addendum E: Vendor's Data Security and Privacy Plan

15. **Severability.** Should any part of this Agreement for any reason be declared by any court of competent jurisdiction to be invalid, such decision shall not affect the validity of any remaining portion, which remaining portion shall continue in full force and effect as if this Agreement had been executed with the invalid portion hereof eliminated, it being the intention of the Parties that they would have executed the remaining portion of this Agreement without including any such part, parts or portions which may for any reason be hereafter declared invalid.

16. **Entire Agreement**. This Agreement and its Addendums constitute the entire Agreement between the Parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. It shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the Parties.

IN WITNESS WHEREOF, the Parties have signed this Agreement intending to be legally bound.

Vendor:

Shane Windt Digitally signed by Shane Windt
Date: 2022.04.13 10:54:51
-04'00'
_____

Name: Shane Windt
_____

Title: Sales Operations Manager
_____

Date: April 13, 2022
_____

East Irondequoit Central School District:

Christine Osadciw Digitally signed by Christine Osadciw
Date: 2022.04.14 15:19:47 -04'00'
_____

Name: Christine Osadciw
_____

Title: Executive Director of Technology
_____

Date: _____

<u>Addendum A</u>

DESCRIPTION OF SPECIFICATIONS AND SERVICES

Description of Services

*TestWizard is a cloud based Internet service for assigning electronic exams
to students allowing teachers to review their answers and grades accordingly.*

Product Specifications

Online assessment tool for student instruction.

Technical Specifications

Cloud based accounts allow TestWizard to be accessed from any web-enabled.

Addendum B

SCHEDULE OF DATA

Category of Data	Elements	Check if used by your system
Application Technology Meta Data	IP Addresses, Use of cookies etc.	☒
	Other application technology meta data (specify):	☐
Application Use Statistics	Meta data on user interaction with application	☐
Assessment	Standardized test scores	☐
	Observation data	☐
	Other assessment data (specify):	☐
Attendance	Student school(daily)attendance data	☐
	Student class attendance data	☐
Communications	Online communications that are captured (emails, blog entries)	☐
Conduct	Conduct or behavioral data	☐
Demographics	Date of Birth	☐
	Place of Birth	☐
	Gender	☐
	Ethnicity or race	☐
	Language information (native, preferred or primary language spoken by student)	☐
	Other demographic information (specify):	☐
Enrollment	Student school enrollment	☒
	Student grade level	☐
	Homeroom	☐
	Guidance counselor	☐
	Specific curriculum programs	☐
	Year of graduation	☐
	Other enrollment information (specify):	☐
Parent/ Guardian Contact Information	Address	☐
	Email	☐
	Phone	☐
Parent/ Guardian ID	Parent ID number (created to link parents to students)	☐
Parent/ Guardian Name	First and/or Last	☐
Schedule	Student scheduled courses	☐
	Teacher names	☐
Special Indicator	English language learner information	☐
	Low income status	☐

Category of Data	Elements	Check if used by your system
	Medical alerts	☐
	Student disability information	☐
	Specialized education services (IEP or 504)	☐
	Living situations (homeless / fostercare)	☐
	Other indicator information(specify):	☐
Student Contact Information	Address	☐
	Email	☒
	Phone	☐
Student Identifiers	Local (School district) ID number	☐
	State ID number	☐
	Vendor/App assigned student ID number	☒
	Student app username	☒
	Student app passwords	☒
Student Name	First and/or Last	☒
Student In-App Performance	Program/application performance (typing program-student types 60 wpm, reading program-student reads below grade level)	☒
Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	☐
Student Survey Responses	Student responses to surveys or questionnaires	☐
Student work	Student generated content, writing, pictures etc.	☐
	Other student work data (specify):	☐
Transcript	Student course grades	☒
	Student course data	☐
	Student course grades/performance scores	☐
	Other transcript data (specify):	☐
Transportation	Student bus assignment	☐
	Student pick up and/or drop off location	☐
	Student bus card ID number	☐
	Other transportation data (specify):	☐
Other	Please list each additional data element used, stored or collected by your application	☐

Addendum C

SCHOOL DISTRICT'S PARENTS' BILL OF RIGHTS

Pursuant to Education Law section 2-d, school districts/BOCES are now required to publish, on their websites, a parents' bill of rights for data privacy and security and to include such information with every contract a school district enters into with a third party contractor where the third party contractor receives student data or teacher or principal data. The following is our District's/BOCES' bill of rights for data privacy and security:

1. A student's personally identifiable information (PII) cannot be sold or released by the East Irondequoit Central School District for any commercial or marketing purposes.

2. Parents have the right to inspect and review the complete contents of their child's education record including any student data stored or maintained by the District/BOCES. This right of inspection is consistent with the requirements of the Family Educational Rights and Privacy Act (FERPA).

3. State and federal laws protect the confidentiality of PII, and safeguards associated with industry standards and best practices, including, but not limited to, encryption, firewalls, and password protection, must be in place when data is stored or transferred.

4. A complete list of all student data elements collected by the State is available for public review at http://www.p12.nysed.gov/irs/sirs/documentation/NYSEDstudentData.xlsx, or you may obtain a copy of this list by writing to the Office of Information & Reporting Services, New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, NY 12234.

5. Parents have the right to file complaints with the District/BOCES about possible privacy breaches of student data by the District's/BOCES' third party contractors or their employees, officers, or assignees, or with NYSED. Complaints regarding student data breaches should be directed to Data Protection Officer, East Irondequoit Central School District, 600 Pardee Road, Rochester, New York, 14609, Phone: (585) 339-1200, email: dpo@eastiron.monroe.edu. Complaints to NYSED should be directed in writing to Privacy Complaint, Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, New York 12234. Complaints may also be submitted using the form available at the following website http://www.nysed.gov/data-privacy-security/report-improper-disclosure.

For purposes of further ensuring confidentiality and security of student data — as well as the security of personally-identifiable teacher or principal data — the Parents' Bill of Rights (above) and the following supplemental information must be included in each contract that a school district or BOCES enters into with a third-party contractor with access to this information:

1. the exclusive purposes for which the student data, or teacher or principal data, will be used;

2. how the third party contractor will ensure that the subcontractors, persons or entities that the third party contractor will share the student data or teacher or principal data with, if any, will abide by data protection and security requirements;

3. when the agreement with the third-party contractor expires and what happens to the student data or teacher or principal data upon expiration of the agreement;

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

5. where the student data or teacher or principal 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.

This Bill of Rights may be revised from time to time in accordance with further guidance received from the Chief Privacy Officer, the Commissioner of Education and NYSED.

Addendum D

PARENTS' BILL OF RIGHTS – SUPPLEMENTAL INFORMATION ADDENDUM

1. **EXCLUSIVE PURPOSES FOR DATA USE**: The exclusive purposes for which "student data" or "teacher or principal data" (as those terms are defined in Education Law Section 2-d and collectively referred to as the "Confidential Data") will be used by _____**Eduware, Inc.**_____(the "Contractor") are limited to the purposes authorized in the contract between the Contractor and East Irondequoit Central School District (the "School District") dated **July 1, 2022 - June 30, 2023** (the "Contract").

2. **SUBCONTRACTOR OVERSIGHT DETAILS**: The Contractor will ensure that any subcontractors, or other authorized persons or entities to whom the Contractor will disclose the Confidential Data, if any, are contractually required to abide by all applicable data protection and security requirements, including but not limited to, those outlined in applicable State and Federal laws and regulations (e.g., Family Educational Rights and Privacy Act ("FERPA"); Education Law §2-d; 8 NYCRR §121).

3. **CONTRACT PRACTICES**: The Contract commences and expires on the dates set forth in the Contract, unless earlier terminated or renewed pursuant to the terms of the Contract. On or before the date the Contract expires, protected data will be exported to the School District in ___**downloadable PDF**___ format and/or destroyed by the Contractor as directed by the School District.

4. **DATA ACCURACY/CORRECTION PRACTICES**: A parent or eligible student can challenge the accuracy of any "education record", as that term is defined in the FERPA, stored by the School District in a Contractor's product and/or service by following the School District's procedure for requesting the amendment of education records under the FERPA. Teachers and principals may be able to challenge the accuracy of APPR data stored by School District in Contractor's product and/or service by following the appeal procedure in the School District's APPR Plan. Unless otherwise required above or by other applicable law, challenges to the accuracy of the Confidential Data shall not be permitted.

5. **SECURITY PRACTICES**: Confidential Data provided to Contractor by the School District will be stored in _____**on a securely encrypted, password restricted AWS server**_____. The measures that Contractor takes to protect Confidential Data will align with the NIST Cybersecurity Framework, including but not necessarily limited to, disk encryption, file encryption, firewalls, and password protection.

6. **ENCRYPTION PRACTICES**: The Contractor will apply encryption to the Confidential Data while in motion and at rest at least to the extent required by Education Law Section 2-d and other applicable law.

Addendum E

DATA SECURITY AND PRIVACY PLAN

WHEREAS, the East Irondequoit Central School District (hereinafter "School District") and _____Eduware, Inc._____ (hereinafter "Contractor") entered into an agreement dated __4/13/2022___ (hereinafter "Agreement") for _____TestWizard_____ (hereinafter "Services").

WHEREAS, pursuant to the requirements under 8 NYCRR 121, Contractor maintains the data security and privacy plan described herein in connection with the Services provided to the School District.

1.   During the term of the Agreement, Contractor will implement all State, Federal and local data security and privacy requirements, consistent with the School District's Data Security and Privacy Policy in the following way(s):

2.   Contractor has in place the following administrative, operational and technical safeguards and practices to protect personally identifiable information that it will receive under the Agreement:

3.   Contractor shall comply with 8 NYCRR 121 in that it acknowledges that it has reviewed the School District's Parents' Bill of Rights for Data Privacy and Security and will comply with same.

   a. Contractor will use the student data or teacher or principal data only for the exclusive purposes defined in the Agreement.

   b. Contractor will ensure that the subcontractor(s) or other authorized persons or entities to whom Contractor will disclose the student data or teacher and principal data, if any, will abide by all applicable data protection and security requirements as described in the "Supplemental Information" appended to the Agreement.

   c. At the end of the term of the Agreement, Contractor will destroy, transition or return, at the direction of the School District, all student data and all teacher and principal data in accordance with the "Supplemental Information" appended to the Agreement.

d.   Student data and teacher and principal data will be stored in accordance with the "Supplemental Information" appended to the Agreement.

e.   Student data and teacher and principal data in motion and at rest will be protected using an encryption method that meets the standards described in 8 NYCRR 121.

4.   Prior to receiving access to student data and/or teacher and principal data, officer(s) and employee(s) of Contractor and any assignees who will have access to student data or teacher or principal data shall receive training on the Federal and State laws governing confidentiality of such data. Such training shall be provided:
Specify date of each training

Annual training completed on 4/1/2020 and as needed for new hires.

5.   Subcontractors (select one):

☑ Contractor shall not utilize subcontractors.

☐ Contractor shall utilize subcontractors. Contractor shall manage the relationships and contracts with such subcontractors in the following ways in order to ensure personally identifiable information is protected:

6.   Contractor has the following procedures, plans or protocols in place to manage data security and privacy incidents that implicate personally identifiable information:
Procedures, plans or protocols must, at a minimum, specify plans to identify breaches and unauthorized disclosures, and to promptly notify the School District.

7.   Termination of Agreement.

a.   Within __90__ days of termination of the Agreement, Contractor shall delete or destroy all student data or teacher or principal data in its possession;

AND

b. ☑ Within __90__ days of termination of the Agreement, Contractor shall return all data to the School District using _____**CSV**_____;

OR

c. ☐ Transition all data to a successor contractor designated by the School District in writing using _____.

8.   In the event of a conflict between the terms of this Data Security and Privacy Plan and the terms of the Agreement, the terms of this Data Security and Privacy Plan shall control. All of the defined terms in the Agreement shall have the same definitions in the Data Security and Privacy Plan, unless otherwise defined herein. Except as expressly set forth in this Data Security and Privacy Plan, the terms and conditions of the Agreement shall remain unmodified and in full force and effect.

IN WITNESS WHEREOF, the Contractor hereto has executed this Data Security and Privacy Plan as of __**4/13/2022**__.

CONTRACTOR:

Shane Windt

Digitally signed by Shane Windt
Date: 2022.04.13 10:56:41 -04'00'

_____

Name: **Shane Windt**

Title: **Sales Operations Manager**