

DATA ACCESS AND SECURITY AGREEMENT

This agreement (“Agreement”) is made this _____ day of _____, 20____ by and between the New York State Higher Education Services Corporation (“HESC”), with its primary business location at 99 Washington Avenue, Albany, New York 12255 and _____ (“Charter School”), with its primary business location at _____.

HESC and the Charter School, collectively, may hereinafter be referred to as “the parties.”

WHEREAS, completing the Free Application for Federal Student Aid (FAFSA) form is a critical factor in helping students access higher education;

WHEREAS, key studies indicate that FAFSA completion correlates strongly with college enrollment, particularly among low-income students;

WHEREAS, HESC has entered into an agreement with the U.S. Department of Education to receive and share certain prescribed FAFSA filing status data to help improve the number of New York State students who complete the FAFSA;

WHEREAS, HESC has agreed to share certain Tuition Assistance Program (TAP) application filing status data to help improve TAP application completion among eligible students residing in the State; and

WHEREAS, receipt of such FAFSA and TAP filing status data will enable the Charter School to encourage students to complete such financial aid forms.

NOW, THEREFORE, HESC and the Charter School, intending to be bound, DO HEREBY AGREE AS FOLLOWS:

1. Scope of Services:

- A. HESC agrees to provide access to certain student financial aid information to the Charter School as set forth in Exhibit A ("Data Access"), in accordance with the terms and conditions of this Agreement.
- B. In exchange for the Data Access provided by HESC to the Charter School, the Charter School shall use its best efforts to encourage its students to complete the FAFSA form and TAP application.
- C. The parties may, from time to time, request changes in the Scope of Services. Any such changes shall be documented by a written amendment to this Agreement signed by both parties. Such amendment must be consistent with the terms of HESC’s agreement with the U.S. Department of Education and applicable law.

2. Compensation:

Each party agrees to provide the services described in Section 1 (“Scope of Services”) at no cost or at no reimbursement of expenses to the other party.

3. Term of Agreement:

This Agreement shall be deemed effective on the date it is executed by the authorized representative of HESC. The authorized representative of the Charter School must sign this Agreement prior to execution by HESC. This Agreement shall continue in full force and effect until either party terminates the Agreement.

4. Termination:

- A. Either party may terminate this Agreement, or any part of this Agreement, at any time upon 30 days prior written notice to the other party.
- B. Either party may immediately terminate this Agreement or any part of this Agreement if it reasonably determines that the other party has committed misconduct, fraud or malfeasance.
- C. If either party terminates the Agreement, both parties agree to take commercially reasonable efforts to complete and reconcile any outstanding transactions within 60 days of the effective date of such termination.

5. Protection and Non-Disclosure of Confidential Information:

- A. Confidential Information: All information received or accessed by the Charter School, either directly or indirectly, in writing, electronically, orally or by any other means (collectively “Confidential Information”), shall be deemed to be proprietary and confidential to HESC.
- B. Use of Confidential Information: The Charter School warrants and represents that it shall not use Confidential Information for any purpose not specifically identified in this Agreement. Any use of Confidential Information not specifically contemplated in this Agreement shall be considered a material breach of this Agreement.
- C. Maintenance of Confidential Information: The Charter School shall take all reasonable measures to protect the privacy of and avoid unauthorized disclosure, access or use of Confidential Information. In doing so, the Charter School shall use at least the same standard of care in the protection of Confidential Information as it uses to protect its own highly confidential information, but in any event such Confidential Information shall be protected in at least a commercially reasonable manner.
- D. Security Incidents: The Charter School shall immediately report to HESC all known or suspected Security Incidents. A “Security Incident” shall mean any unauthorized action by a known or unknown person which, if successfully completed, should reasonably be considered one of the following: an attack, penetration, denial of service, unauthorized disclosure or use of Confidential Information or other sensitive information, misuse of system access, unauthorized access or intrusion (hacking), virus intrusion, scan of systems or networks, or any other activity that could affect either of the party’s systems or data, or the security, confidentiality or integrity of the data received, stored, processed, or maintained. “Security Incident” shall also include any contact by a law enforcement agency regarding any data. For purposes hereof, “the Charter School” shall include any of its employees, volunteers, agents, contractors or third parties including, without limitation, any vendors used by it that have access (either authorized or unauthorized) to the data. The parties shall comply with the provisions of section 208 of the New York State Technology Law. The Charter School shall be liable for the costs associated with a breach of information under this law if caused by the Charter School’s negligent or willful acts or omissions, or the negligent or willful act(s) or omission(s) of its

employees, officers, volunteers, agents, contractors, or third parties.

E. Accessing and Storing Confidential Information:

- i. HESC shall provide the Charter School with access to certain Confidential Information through participation in HESC's Electronic Financial Aid Network (EFAN);
- ii. The Charter School shall designate in writing a Chief Authorizing Official ("CAO") who shall be responsible for identifying and authorizing access to HESC information systems for the Charter School's authorized personnel responsible for providing the scope of services under this Agreement. Authorized personnel includes employees, volunteers, and authorized agents, such as contractors or other parties to whom the Charter School has outsourced any of its services or functions and who are under the Charter School's direct control and supervision with respect to the use and maintenance of the Confidential Information;
- iii. The CAO and authorized personnel will be assigned a User ID and password whose use shall be in compliance with relevant provisions of the HESC User ID and Password Rules and Requirements and shall be kept confidential;
- iv. The Charter School shall limit access to Confidential Information to only those authorized personnel who need to have access to such information for the purpose of performing their duties under this Agreement. The Charter School warrants and represents that Confidential Information will only be used for purposes consistent with section 483(a)(3)(E) of the Higher Education Act and this Agreement;
- v. The Charter School shall inform the CAO and all authorized personnel of his/her responsibilities with respect to Confidential Information and criminal sanctions for noncompliance under applicable Federal, State, or local laws;
- vi. In the event an authorized individual no longer requires access to HESC information systems pursuant to the terms of this Agreement, the authorized individual or the CAO shall inform HESC of the change in status;
- vii. On an annual basis the CAO shall recertify that current authorized personnel still require access as provided;
- viii. The Charter School shall not reverse engineer or otherwise exploit any software or other tangible objects which embody Confidential Information in performing the services under this Agreement;
- ix. The Charter School shall keep any physical copies (paper or other physical representations) of Confidential Information under lock and key, or otherwise have sufficient physical access control measures to prevent unauthorized access. The Charter School shall not leave Confidential Information unsecured;

- x. The Charter School shall encrypt any Confidential Information stored on electronic media, such as CDs, DVDs, tape, flash drives, etc. Further, such electronic media shall be kept locked, or otherwise have sufficient physical access control measures to prevent unauthorized access. The Charter School shall not leave Confidential Information in any electronic format unsecured;
 - xi. The Charter School shall password protect any laptop or computer that contains Confidential Information. Additionally, any laptop or computer that contains Confidential Information shall have its full hard drive encrypted. The Charter School shall not leave any laptop or computer unattended without enabling a screen-lock or otherwise blocking access to the laptop or computer. The Charter School shall ensure that no password or other information sufficient to access a laptop or computer containing hardware Confidential Information is attached or located near the laptop or computer at any time; and
 - xii. All Confidential Information shared pursuant to this Agreement must be stored securely so that only authorized personnel have access to it. This means that precautions are taken to ensure that access through modems, networks, and the Internet is carefully monitored and limited to authorized personnel; and that data tapes, paper files and other storage media are kept in secure locations and access is limited to authorized personnel.
- F. Dissemination of Information: The Charter School shall not disseminate any Confidential Information to a third party, without the prior written consent of HESC. The Charter School shall not issue publicity news releases or grant press interviews related to this Agreement, except as may be required by law or with the prior written consent of HESC. If the Charter School is presented with a request for documents pursuant to a subpoena, court order, the Freedom of Information Law (Public Officers Law, Article 6), or other mandated disclosure regarding any Confidential Information which may be in the Charter School's possession (including volunteers, agents, contractors, etc.), the Charter School shall immediately give notice to HESC with the understanding that HESC shall have the opportunity to contest such process by any means available to it prior to submission of any documents to a court or other third party. The Charter School shall not be obligated to withhold delivery of documents beyond the time ordered by a court of law or administrative agency, unless the request for production or subpoena is quashed or withdrawn, or the time to produce is otherwise extended. The Charter School shall cause its authorized personnel to undertake the same obligations regarding confidentiality and dissemination of information as agreed to by both parties under this Agreement.
- G. Return or Destruction of Confidential Information: All Confidential Information received or accessed by the Charter School remains the property of HESC and shall be promptly returned, or destroyed, upon written request.
- H. Survival: The provisions of this Section ("Protection and Non-Disclosure of Confidential Information") shall survive the termination of this Agreement.

6. Representations and Warranties of the Parties: Both parties represent and warrant that the following shall be true and correct as of the Effective Date of this Agreement and shall continue to be true and correct during the Term of this Agreement:

Compliance with Laws: The parties are and shall remain in compliance with all applicable federal, State, county, and municipal, statutes, laws, ordinances, and regulations relating to this Agreement, as amended from time to time, including but not limited to the Family Educational Rights and Privacy Act (“FERPA”) and the Protection of Pupil Rights Amendment.

Authorization: Each party has taken all action necessary for the approval and execution of this Agreement, and execution by the persons signing on behalf of both parties is duly authorized and has been made with complete and full authority to commit both parties to all terms and conditions of this Agreement which shall constitute valid, binding obligations of each party.

7. Limitation of Liability:

- a) Subject to the availability of lawful appropriations and consistent with Section 8 of the New York State Court of Claims Act, HESC agrees to indemnify the Charter School against and agrees to protect, save, keep harmless and make whole the Charter School from any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including reasonable legal fees and expenses, imposed on, incurred by or asserted against the Charter School in connection with the terms of this Agreement or arising out of the acts or omissions of HESC, its employees, or its agent(s) in performing HESC’s obligations under this Agreement. Nothing in this paragraph shall, however, indemnify the Charter School for its own acts or omissions.
- b) The Charter School agrees to indemnify HESC against and agrees to protect, save, keep harmless and make whole HESC from any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including reasonable legal fees and expenses, imposed on, incurred by, or asserted against HESC in connection with the terms of this Agreement or arising out of the acts or omissions of the Charter School, its authorized personnel in performing the Charter School’s obligations under this Agreement. Nothing in this paragraph shall, however, indemnify HESC for its own acts or omissions.
- c) Neither party shall be responsible for liability, loss or damage of any kind resulting from any delay or error in the performance of, or its failure to perform, its responsibilities hereunder by reason of circumstances beyond its control, including but not limited to acts of civil or military authorities, national emergencies, labor difficulties, fire, flood or other catastrophes, acts of God, insurrection, war, riots, failure of transportation, communication or power supply, or malfunction provided that such non-performance could not have been prevented by reasonable precautions. In the event that a party is proved negligent, the prevailing party’s recourse shall be restricted solely to actual monetary losses incurred by the prevailing party and in no event shall a party be responsible for any punitive or consequential damages.
- d) The indemnities set forth herein shall survive the termination of this Agreement.

8. Audit: Subject to State and federal laws regarding the disclosure of student information and the confidentiality provisions of this Agreement, all records maintained by the Charter

School (including volunteers, agents, contractors, etc.) as part of this Agreement shall be subject to inspection and audit by HESC, federal and State auditors to monitor compliance with the terms of this Agreement.

9. Notices: All notices required under this Agreement shall be in writing and sent to the addresses and persons set forth below, or to such other addresses and/or persons as may be designated by a party in writing. All notices shall be deemed received when (i) delivered personally, or (ii) sent by email, or (iii) one day after deposit with a commercial express courier specifying next day delivery, with written verification of receipt. Refusal to accept delivery has the same effect as receipt.

IF TO THE CHARTER SCHOOL:

Name: _____
Title: _____
Address: _____
Email Address: _____

Copy to:

Name: _____
Title: _____
Address: _____
Email Address: _____

IF TO HESC:

FAFSA Completion Initiative
Office of Counsel
NYS Higher Education Services Corporation
99 Washington Avenue, Room 1350
Albany, NY 12255
FAFSACompletionInitiative@hesc.ny.gov

10. Standard Clauses for NYS Contracts, Revised June 2023 (Appendix A)
The Charter School agrees to be bound by the requirements of this Agreement (Standard Clauses for NYS Contracts-Appendix A) including any future amendments to Appendix A. Appendix A is always available, in its current version, on the website of the NYS Office of General Services at <http://www.ogs.state.ny.us>.
11. Order of Precedence; Conflict; Inconsistency
This Agreement contains the entire understanding of the parties with respect to the matters contained herein. In the event of any conflict between the terms and conditions set forth in this Agreement, the following order of precedence shall apply:
a) Appendix A – Standard Terms for New York State Contracts;
b) This Agreement; and
c) Exhibit A: Data Access.
12. Severability: If any provision of this Agreement is determined to be void or legally unenforceable, HESC and the Charter School will consider that provision severed from this Agreement. In such case, all remaining provisions of this Agreement shall remain in full force and effect.

13. Modification of Agreement: This Agreement may not be amended, changed or modified, in whole or in part, unless such modification is in writing, signed by duly authorized representatives of both the Charter School and HESC.
14. Waiver and Excuse of Performance: Nothing in this Agreement shall be construed to waive any provision in applicable statute or regulation. In the event any provision of this Agreement is in conflict with an applicable statute or regulation, the terms of the statute or regulation shall govern. The parties agree that if any applicable statutes or regulations are revised or enacted during the term of this Agreement, such statute or regulation will apply to this Agreement.
15. No Waiver: A waiver of enforcement of any provision of this Agreement will not constitute a waiver of any other provision of the Agreement, nor will it preclude a party from subsequently enforcing such provision later. The remedies provided in this Agreement are cumulative and not exclusive of any remedies that may be available in law or equity. No waiver of any provision of this Agreement or excuse of any performance as required by this Agreement shall be valid unless in writing signed by duly authorized representatives of both the Charter School and HESC.
16. Venue; Jurisdiction; Governing Law: Any action to construe or enforce this Agreement must be brought in the New York Court of Claims pursuant to New York Education Law §653(4) and the Charter School agrees to subject itself and the subject matter of this Agreement to the jurisdiction of such court for that purpose. The laws of New York will govern this Agreement without regard for New York's choice of law statute.
17. Entire Agreement: This Agreement constitutes the complete written Agreement between the parties, superseding all written or oral, prior or contemporaneous communications between the parties relating to the subject matter of this Agreement.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

Name of Charter School

**New York State
Higher Education Services Corporation**

By: _____

By: _____

Name: _____

Name: Doris B. Gonzalez

Title: _____

Title: Executive Vice President

Date: _____

Date: _____

Acknowledgment

STATE OF NEW YORK)

COUNTY OF _____) ss:

On this ____ day of _____, 20__ before me came _____, personally known to me or proved to me by satisfactory evidence to be the individual whose name is subscribed in this Agreement, and said individual acknowledged to me that s/he executed this Agreement in her/his capacity as _____ of the Charter School.

Notary Public, State of New York

EXHIBIT A DATA ACCESS

In accordance with the authority provided under HESC's Student Aid Internet Gateway (SAIG) Participation Agreement for State Grant Agencies with the U.S. Department of Education that allows data sharing in order to facilitate the filing of the federal Free Application for Federal Student Aid (FAFSA) form and in accordance with the consent provided by a Tuition Assistance Program (TAP) applicant that authorizes HESC to share TAP application status information with secondary educational institutions (effective as of January 1, 2015), HESC shall share the following data with the Charter School via a Customized Report on HESC's secure web site:

- A. A list of all students who have completed the FAFSA form and TAP Application and whose National Center for Educational Statistics (NCES) code matches the School code associated with the user ID entered; and

- B. For each student listed, the report will include (1) the student's last name; (2) the student's first name and middle initial; (3) the student's date of birth; (4) the student's zip code (not full address); (5) the NCES School Code; (6) if filed, the date the FAFSA form was submitted to the Department; (7) the date the Department processed the FAFSA form, if applicable; (8) a FAFSA Completion Status Code; (9) if filed, the date the TAP Application was submitted to HESC; and (10) a TAP Application Completion Status Code.

The FAFSA Completion Status Codes are as follows:

- a) FAFSA submitted but not processed due to missing signature(s);
- b) FAFSA processed with an EFC calculated; or
- c) FAFSA processed with errors.

The TAP Application Completion Status Codes are as follow:

- i) TAP Application submitted but not processed due to missing signature(s);
- ii) TAP Application processed and eligibility determined; or
- iii) TAP Application processed with errors.