EDUCATION LAW 2-d RIDER

New York State Education Law 2-d was enacted in 2014 to address concerns relative to securing certain personally identifiable information. In order to comply with the requirements of Education Law 2-d, educational agencies and certain third-party contractors who contract with educational agencies must take certain additional steps to secure such data. These steps include enacting and complying with a Parents' "Bill of Rights" relative to protected data, ensuring that each third-party contractor has a detailed data privacy plan in place to ensure the security of such data, and that each third-party contractor sign a copy of the educational agency's Parents' Bill of Rights, thereby signifying that the third-party contractor will comply with such Parents' Bill of Rights. This Agreement is subject to the requirements of Education Law 2-d and is a covered third-party contractor.

In order to comply with the mandates of Education Law 2-d, and notwithstanding any provision of the Agreement between __Broome Tioga BOCES__ ("DISTRICT") and **Microsoft Corporation ("VENDOR")** to the contrary, **VENDOR** agrees as follows as to Flip software and services ("Service"):

VENDOR will treat "Protected Data" (as defined below) as confidential and shall protect the nature of the Protected Data by using the same degree of care, but not less than a reasonable degree of care, as **VENDOR** uses to protect its own confidential data, so as to prevent the unauthorized dissemination or publication of Protected Data to third parties. **VENDOR** shall not disclose Protected Data other than to those of its employees or agents who have a need to know such Protected Data under this Agreement. **VENDOR** shall not use Protected Data for any other purposes than those explicitly provided for in this Agreement. All Protected Data shall remain the property of the disclosing party.

"**Protected Data**" includes any information that is linked or reasonably linkable to a student including, but not limited to student data, student demographics, scheduling, attendance, grades, health and discipline tracking. Protected Data also includes any information protected under Education Law 2-d including, but not limited to:

"Personally identifiable information" from student records of the DISTRICT and/or its Participants as that term is defined in 34 CFR §99.3, which implements the Family Educational Rights and Privacy Act ("FERPA"),

-AND-

Personally identifiable information from the records of the DISTRICT and/or its Participants relating to the annual professional performance reviews of classroom teachers or principals that is confidential and not subject to release under the provisions of Education Law 3012-c.

VENDOR shall comply with New York State Education Law § 2-d and shall contractually require any subcontractor that may receive, collect, store, record or display any Protected Data on its behalf to do the same. As applicable, **VENDOR** agrees to comply with the DISTRICT policy(ies) on data security and privacy provided such policies are attached to this Agreement.

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VENDOR shall promptly reimburse DISTRICT and/or its Participants for the full cost of notifying a parent, eligible student, teacher, or principal of an unauthorized release of Protected Data by **VENDOR** its subcontractors, and/or assignees. In the event this Agreement expires, is not renewed or is terminated, **VENDOR** shall return all of DISTRICT and/or its Participants' data, including any and all Protected Data, in its possession by secure transmission or delete all Protected Data as directed by DISTRICT. Either party may terminate this Agreement with 30 days' notice to the other party.

VENDOR shall be under the direct control and supervision of the DISTRICT via an individual educator who has signed-up for the Service pursuant to the DISTRICT's policies and processes using a DISTRICT issued email address ("DISTRICT Educator"), with respect to **VENDOR**'s use of Protected Data generated through or submitted in connection with the account of a DISTRICT Educator. The DISTRICT agrees that such DISTRICT Educators are authorized agents of the DISTRICT and that DISTRICT will exercise any and all of its rights under this Agreement via a DISTRICT Educator.

Data Security and Privacy Plan

VENDOR and/or any subcontractor, affiliate, or entity that may receive, collect, store, record or display any of DISTRICT and/or its Participant's Protected Data, pursuant to this agreement and for the specific purpose of providing the Flip software and services to representatives of DISTRICT and students, including purposes compatible with providing those services, and shall maintain a Data Security and Privacy Plan that includes the following elements:

1. A provision incorporating the requirements of New York Parents' Bill of Rights for data security and privacy, to the extent that any of the provisions in the Bill of Rights applies to **VENDOR**'s possession and use of Protected Data pursuant to this Agreement.

2. An outline of how all state, federal, and local data security and privacy contract requirements will be implemented over the life of the contract, consistent with the **VENDOR**'s policy on data security and privacy.

3. An outline of the measures taken by **VENDOR** to secure Protected Data and to limit access to such data to authorized staff.

4. An outline of how **VENDOR** will use "best practices" and industry standards with respect to data storage, privacy and protection, including, but not limited to encryption, firewalls, passwords, protection of off-site records, and limitations of access to stored data to authorized staff.

5. An outline of how **VENDOR** will ensure that any subcontractors, persons or entities with which **VENDOR** will share Protected Data, if any, will abide by the requirements of **VENDOR**'s policy on data security and privacy, and the contractual obligations with respect to Protected Data set forth herein.

EXHIBIT A PARENTS BILL OF RIGHTS

Attached hereto as Exhibit "A" is a copy of the New York Parents' Bill of Rights signed by **VENDOR**. <mark><School District please enter your bill of rights here></mark>

Broome-Tioga BOCES
Parents' Bill of Rights for Data Privacy and Security

Broome-Tioga BOCES is committed to protecting the privacy and security of student, teacher and principal data. In accordance with New York Education Law §2-d, BOCES wishes to inform the community of the following:

- A student's personally identifiable information cannot be sold or released for any commercial purposes.
- Parents have the right to inspect and review the complete contents of their child's education record.
- State and federal laws protect the confidentiality of personally identifiable information 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.
- A complete list of all student data elements collected by the state is available for public review at http://www.nysed.gov/data-privacy-security/student-data-inventory, or by writing to the Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, NY 12234.
- Parents have the right to have complaints about possible breaches of student data addressed. Complaints should be directed in writing to the Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, NY, 12234. Complaints may also be directed to the Chief Privacy Officer via email at: privacy@nysed.gov.
- The BOCES will promptly acknowledge receipt of complaints, commence an investigation, and take the necessary precautions to protect personally identifiable information.

Appendix
Supplemental Information Regarding Third-Party Contractors

In the course of complying with its obligations under the law and providing educational services, Broome-Tioga BOCES has entered into agreements with certain third-party contractors. Pursuant to such agreements, third-party contractors may have access to "student data" and/or "teacher or principal data" as those terms are defined by law.

Each contract BOCES enters into with a third-party contractor, where the third-party contractor receives student data or teacher or principal data, will include the following information:

- The exclusive purposes for which the student data or teacher or principal data will be used.
- 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.
- When the agreement expires and what happens to the student data or teacher or principal data upon expiration of the agreement.
- 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.
- Where the student, 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 section to be completed by the Third-Party Contractor and returned to Broome-Tioga BOCES

Section 1: Does the Third-Party Contractor have access to student data and/or teacher or principal data as those terms are defined by law?

        ✓ Yes
            Please complete Sections 2, 3 and 4

        ☐ No
            Please complete Section 3

Section 2: Supplemental Information Details
Third-Party Contractors subject to New York Education Law § 2-d – please complete the table below

SUPPLEMENTAL INFORMATION ELEMENT	SUPPLEMENTAL INFORMATION
Please list the exclusive purpose(s) for which the student data or teacher or principal data will be used by the third-party contractor, as defined in the contract (or list the section(s) in the contract where this information can be found)	Page 7
Please list how the contractor will ensure that any other entities with which it shares the protected data, if any, will comply with the data protection and security provisions of law, regulation and this contract (or list the section(s) in the contract where this information can be found)	Page 7
Please list when the agreement expires and what happens to the protected data when the agreement expires (or list the section(s) in the contract where this information can be found)	Page 7
Please list how a parent, student, or eligible student may challenge the accuracy of the protected data that is collected; if they can challenge the accuracy of the data, describe how (or list the section(s) in the contract where this information can be found)	Page 7
Please list where the protected data will be stored (described in a way that protects data security), and the security protections taken to ensure such data will be protected and data security and privacy risks mitigated (or list the section(s) in the contract where this information can be found)	Page 7
Please list how the data will be protected using encryption (or list the section(s) in the contract where this information can be found)	Page 7

Section 3: Agreement and Signature

By signing below, you agree:
- The information provided in this document by the Third-Party Contractor is accurate
- To comply with the terms of Broome-Tioga BOCES Parents' Bill of Rights for Data Privacy and Security (applicable to Third-Party Contractors subject to New York Education Law § 2-d only)

Company Name _____ Product Name _____

Printed Name _____ Signature _____ Date _____

Section 4: Data Privacy Rider for All Contracts Involving Protected Data Pursuant to New York State Education Law §2-C and §2-D

BOCES and the Third-Party Contractor agree as follows:

1.   Definitions:
   a.   Protected Information means personally identifiable information of students from student education records as defined by FERPA, as well as teacher and Principal data regarding annual professional performance reviews made confidential under New York Education Law §3012-c and §3012-d;
   b.   Personally Identifiable Information (PII) means the same as defined by the regulations implementing FERPA (20 USC §1232-g);

2.   Confidentiality of all Protected Information shall be maintained in accordance with State and Federal Law and the BOCES's Data Security and Privacy Policy;

3.   The Parties agree that the BOCES's Parents' Bill of Rights for Data Security and Privacy are incorporated as part of this agreement, and the Third-Party Contractor shall comply with its terms;

4. The Third-Party Contractor agrees to comply with New York State Education Law §2-d and its implementing regulations;

5. The Third-Party Contractor agrees that any officers or employees of the Third-Party Contractor, and its assignees who have access to Protected Information, have received or will receive training on Federal and State law governing confidentiality of such information prior to receiving access;

6. The Third-Party Contractor 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 other purposes than those explicitly authorized in its contract or written agreement. Unauthorized use specifically includes, but is not limited to, selling or disclosing personally identifiable information for marketing or commercial purposes or permitting, facilitating, or disclosing such information to another Third-Party for marketing or commercial purposes;
   c. except for authorized representatives of the Third-Party Contractor to the extent they are carrying out the contract or written agreement, not disclose any personally identifiable information to any other party;
      i. without the prior written consent of the parent or eligible student; or
      ii. unless required by statute or court order and the party provides notice of the disclosure to the New York State Education Department, Board of Education, or institution that provided the information no later than the time the information is disclosed, unless providing notice of the disclosure is expressly prohibited by statute or court order;
   d. maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality and integrity of personally identifiable information in its custody;
   e. 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;
   f. adopt technology, safeguards and practices that align with the NIST Cybersecurity Framework;
   g. impose all the terms of this rider in writing where the Third-Party Contractor engages a subcontractor or other party to perform any of its contractual obligations which provides access to Protected Information.

Agreement and Signature

By signing below, you agree to the Terms and Conditions in this Rider:

Company Name <u>Microsoft</u>   Product Name <u>Flip</u>
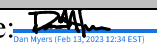
Printed Name <u>Deb McFadden</u>   Signature <u>*Deb McFadden*</u>   Date <u>Feb 17, 2023</u>

EXHIBIT B: SUPPLEMENTAL INFORMATION

Pursuant to Education Law § 2-d and Section 121.3 of the Commissioner's Regulations, the Educational Agency (EA) is required to post information to its website about its contracts with third-party contractors that will receive Personally Identifiable Information (PII).

Name of Contractor and Product	Microsoft, Flip
Description of the purpose(s) for which Contractor will receive/access PII	Flip collects information to perform our Service under the Flip Terms of Use and process this information in accordance with our privacy policy located at: Terms & Privacy	Flip
Type of PII that Contractor will receive/access	Flip receives and access information per our privacy policy located at: Privacy Policy	Flip
Contract Term	These Terms will remain in effect for the use of the Service.
Subcontractor Written Agreement Requirement	Contractor will not utilize subcontractors without a written contract that requires the subcontractors to adhere to, at a minimum, materially similar data protection obligations imposed on the contractor by state and federal laws and regulations, and the Contract. (check applicable option) ☐ Contractor will not utilize subcontractors. ☒ Contractor will utilize subcontractors.
Data Transition and Secure Destruction	Flip performs data destruction and secure destruction per our privacy policy at: Privacy Policy	Flip
Challenges to Data Accuracy	Parents, teachers or principals who seek to challenge the accuracy of PII will do so by contacting the EA.
Secure Storage and Data Security	Please describe where PII will be stored and the protections taken to ensure PII will be protected: (check all that apply) ☒ Using a cloud or infrastructure owned and hosted by a third party. ☒ Using Contractor owned and hosted solution ☐ Other
Encryption	Information can be found at: Privacy & Security Commitments to Schools – Flip Help Center

SIGNATURE PAGE

Microsoft	School District
Signature:	Signature: _Dan Myers (Feb 13, 2023 12:34 EST)_
Name:	Name: Daniel Myers
Title:	Title: Executive Operations Officer
Date:	Date: Feb 13, 2023