

My Math



Educational  
Technology Service  
Genesee Valley  
Wayne-Finger Lakes

## CONTRACT ADDENDUM

### Protection of Student Personally Identifiable Information

#### 1. Applicability of This Addendum

The Wayne-Finger Lakes BOCES/EduTech) and McGraw Hill LLC (“Vendor”) are parties to a contract dated 2/13/2024 (“the underlying contract”) governing the terms under which BOCES accesses, and Vendor provides, digital instructional materials (“Product”). Wayne-Finger Lakes BOCES/EduTech use of the Product results in Vendor receiving student personally identifiable information as defined in New York Education Law Section 2-d and this Addendum. The terms of this Addendum shall amend and modify the underlying contract and shall have precedence over terms set forth in the underlying contract and any online Terms of Use or Service published by Vendor.

#### 2. Definitions

- 2.1. “Protected Information”, as applied to student data, means “personally identifiable information” as defined in 34 CFR Section 99.3 implementing the Family Educational Rights and Privacy Act (FERPA) where that information is received by Vendor from BOCES or is created by the Vendor’s product or service in the course of being used by BOCES.
- 2.2. “Vendor” means McGraw Hill LLC.
- 2.3. “Educational Agency” means a school BOCES, board of cooperative educational services, school, or the New York State Education Department; and for purposes of this Contract specifically includes Wayne-Finger Lakes BOCES/EduTech.
- 2.4. “BOCES” means the Wayne-Finger Lakes BOCES/EduTech.
- 2.5. “Parent” means a parent, legal guardian, or person in parental relation to a Student.
- 2.6. “Student” means any person attending or seeking to enroll in an educational agency.
- 2.7. “Eligible Student” means a student eighteen years or older.
- 2.8. “Assignee” and “Subcontractor” shall each mean any person or entity that receives, stores, or processes Protected Information covered by this Contract from Vendor for the purpose of enabling or assisting Vendor to deliver the product or services covered by this Contract.
- 2.9. “This Contract” means the underlying contract as modified by this Addendum.

#### 3. Vendor Status

Vendor acknowledges that for purposes of New York State Education Law Section 2-d it is a third-party contractor, and that for purposes of any Protected Information that constitutes education records under the Family Educational Rights and Privacy Act (FERPA) it is a school official with a legitimate educational interest in the educational records.

#### 4. Confidentiality of Protected Information

Vendor agrees that the confidentiality of Protected Information that it receives, processes, or stores will be handled in accordance with all state and federal laws that protect the confidentiality of Protected Information, and in accordance with the BOCES Policy on Data Security and Privacy, a copy of which is Attachment B to this Addendum.



## 5. Vendor Employee Training

Vendor agrees that any of its officers or employees, and any officers or employees of any Assignee of Vendor, who have access to Protected Information will receive training on the requirements of federal and state law governing confidentiality of such information prior to receiving access to that information.

## 6. No Use of Protected Information for Commercial or Marketing Purposes

Vendor warrants that Protected Information received by Vendor from BOCES or by any Assignee of Vendor, shall not be sold or used for any commercial or marketing purposes; shall not be used by Vendor or its Assignees for purposes of receiving remuneration, directly or indirectly; shall not be used by Vendor or its Assignees for advertising purposes; shall not be used by Vendor or its Assignees to develop or improve a product or service; and shall not be used by Vendor or its Assignees to market products or services to students.

## 7. Ownership and Location of Protected Information

- 7.1. Ownership of all Protected Information that is disclosed to or held by Vendor shall remain with BOCES. Vendor shall acquire no ownership interest in education records or Protected Information.
- 7.2. BOCES shall have access to the BOCES's Protected Information at all times through the term of this Contract. BOCES shall have the right to import or export Protected Information in piecemeal or in its entirety at their discretion, without interference from Vendor.
- 7.3. Vendor is prohibited from data mining, cross tabulating, and monitoring data usage and access by BOCES or its authorized users, or performing any other data analytics other than those required to provide the Product to BOCES. Vendor is allowed to perform industry standard back-ups of Protected Information. Documentation of back-up must be provided to BOCES upon request.
- 7.4. All Protected Information shall remain in the continental United States (CONUS) or Canada. Any Protected Information stored, or acted upon, must be located solely in data centers in CONUS or Canada. Services which directly or indirectly access Protected Information may only be performed from locations within CONUS or Canada. All helpdesk, online, and support services which access any Protected Information must be performed from within CONUS or Canada.

## 8. Purpose for Sharing Protected Information

The exclusive purpose for which Vendor is being provided access to Protected Information is to provide the product or services that are the subject of this Contract to Wayne-Finger Lakes BOCES/EduTech.

## 9. Downstream Protections

Vendor agrees that, in the event that Vendor subcontracts with or otherwise engages another entity in order to fulfill its obligations under this Contract, including the purchase, lease, or sharing of server space owned by another entity, that entity shall be deemed to be an "Assignee" of Vendor for purposes of Education Law Section 2-d, and Vendor will only share Protected Information with such entities if those entities are contractually bound to observe the same obligations to maintain the privacy and security of Protected Information as are required of Vendor under this Contract and all applicable New York State and federal laws.



#### 10. Protected Information and Contract Termination

- 10.1. The expiration date of this Contract is defined by the underlying contract.
- 10.2. Upon expiration of this Contract without a successor agreement in place, upon written request, Vendor shall assist BOCES in exporting all Protected Information previously received from, or then owned by, BOCES.
- 10.3. Vendor shall thereafter securely delete and overwrite any and all Protected Information remaining in the possession of Vendor or its assignees or subcontractors (including all hard copies, archived copies, electronic versions or electronic imaging of hard copies of shared data) as well as any and all Protected Information maintained on behalf of Vendor in secure data center facilities.
- 10.4. Vendor shall ensure that no copy, summary or extract of the Protected Information or any related work papers are retained on any storage medium whatsoever by Vendor, its subcontractors or assignees, or the aforementioned secure data center facilities.
- 10.5. To the extent that Vendor and/or its subcontractors or assignees may continue to be in possession of any de-identified data (data that has had all direct and indirect identifiers removed) derived from Protected Information, they agree not to attempt to re-identify de-identified data and not to transfer de-identified data to any party.
- 10.6. Upon written request, Vendor and/or its subcontractors or assignees will provide a certification to BOCES from an appropriate officer that the requirements of this paragraph have been satisfied in full.

#### 11. Data Subject Request to Amend Protected Information

- 11.1. In the event that a parent, student, or eligible student wishes to challenge the accuracy of Protected Information that qualifies as student data for purposes of Education Law Section 2-d, that challenge shall be processed through the procedures provided by the BOCES for amendment of education records under the Family Educational Rights and Privacy Act (FERPA).
- 11.2. Vendor will cooperate with BOCES in retrieving and revising Protected Information, but shall not be responsible for responding directly to the data subject.

#### 12. Vendor Data Security and Privacy Plan

- 12.1. Vendor agrees that for the life of this Contract the Vendor will maintain the administrative, technical, and physical safeguards described in the Data Security and Privacy Plan set forth in Attachment C to this Contract and made a part of this Contract.
- 12.2. Vendor warrants that the conditions, measures, and practices described in the Vendor's Data Security and Privacy Plan:
- 12.3. align with the NIST Cybersecurity Framework 1.0;
- 12.4. equal industry best standard practices including, but not necessarily limited to, disk encryption, file encryption, firewalls, and password protection;
- 12.5. outline how the Vendor will implement all state, federal, and local data security and privacy contract requirements over the life of the contract, consistent with the BOCES data security and privacy policy (Attachment B);
- 12.6. specify the administrative, operational and technical safeguards and practices it has in place to protect Protected Information that it will receive under this Contract;
- 12.7. demonstrate that it complies with the requirements of Section 121.3(c) of this Part;
- 12.8. specify how officers or employees of the Vendor and its assignees who have access to Protected Information receive or will receive training on the federal and state laws governing confidentiality of such data prior to receiving access;



- 12.9. specify if the Vendor will utilize sub-contractors and how it will manage those relationships and contracts to ensure Protected Information is protected;
- 12.10. specify how the Vendor will manage data security and privacy incidents that implicate Protected Information including specifying any plans to identify breaches and unauthorized disclosures, and to promptly notify BOCES; and
- 12.11. describe whether, how and when data will be returned to BOCES, transitioned to a successor contractor, at BOCES's option and direction, deleted or destroyed by the Vendor when the contract is terminated or expires.

### 13. Additional Vendor Responsibilities

Vendor acknowledges that under Education Law Section 2-d and related regulations it has the following obligations with respect to any Protected Information, and any failure to fulfill one of these statutory obligations shall be a breach of this Contract:

- 13.1 Vendor shall limit internal access to Protected Information to those individuals and Assignees or subcontractors that need access to provide the contracted services;
- 13.2 Vendor will not use Protected Information for any purpose other than those explicitly authorized in this Contract **with the understanding that the Vendor retains aggregate, deidentified, anonymized information for improvement, research, and development purposes;**
- 13.3 Vendor will not disclose any Protected Information to any party who is not an authorized representative of the Vendor using the information to carry out Vendor's obligations under this Contract or to the BOCES unless (1) Vendor has the prior written consent of the parent or eligible student to disclose the information to that party, or (ii) the disclosure is required by statute or court order, and notice of the disclosure is provided to BOCES no later than the time of disclosure, unless such notice is expressly prohibited by the statute or court order;
- 13.4 Vendor will maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of Protected Information in its custody;
- 13.5 Vendor will 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 U.S. Department of HHS in guidance issued under P.L. 111-5, Section 13402(H)(2);
- 13.6 Vendor will notify the BOCES of any breach of security resulting in an unauthorized release of student data by the Vendor or its Assignees in violation of state or federal law, or of contractual obligations relating to data privacy and security in the most expedient way possible and without unreasonable delay but no more than seven calendar days after the discovery of the breach; and

Where a breach or unauthorized disclosure of Protected Information is attributed to the Vendor, the Vendor shall pay for or promptly reimburse BOCES for the full cost incurred by BOCES to send notifications required by Education Law Section 2-d.



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**Signatures**

**For Wayne-Finger Lakes BOCES/EduTech**

**For McGraw Hill LLC**

*[Handwritten signature]*

2/13/2024

*[Handwritten signature: Kimberly A. Harvey]*

Date

*2/20/24*

Date

Kimberly Harvey, VP Strategic Services



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**Attachment A – Parent Bill of Rights for Data Security and Privacy**

**Wayne-Finger Lakes BOCES (EduTech)**

**Parents' Bill of Rights for Data Privacy and Security**

The Wayne-Finger Lakes BOCES (EduTech) seeks to use current technology, including electronic storage, retrieval, and analysis of information about students' education experience in the BOCES, to enhance the opportunities for learning and to increase the efficiency of our BOCES and school operations.

The Wayne-Finger Lakes BOCES (EduTech) seeks to insure that parents have information about how the BOCES stores, retrieves, and uses information about students, and to meet all legal requirements for maintaining the privacy and security of protected student data and protected principal and teacher data, including Section 2-d of the New York State Education Law.

To further these goals, the Wayne-Finger Lakes BOCES (EduTech) has posted this Parents' Bill of Rights for Data Privacy and Security.

1. A student's personally identifiable information cannot be sold or released for any commercial purposes.
2. Parents have the right to inspect and review the complete contents of their child's education record. The procedures for exercising this right can be found in Board Policy 5500 entitled Family Educational Rights and Privacy Act (FERPA).
3. State and federal laws protect the confidentiality of personally identifiable information, and safeguards associated with industry standards and best standard 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 at <http://www.nysed.gov/data-privacy-security/student-data-inventory> and a copy may be obtained by writing to the Office of Information & Reporting Services, New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, New York 12234.
5. 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, Room 863 EBA, 89 Washington Avenue, Albany, New York 12234.

Revised October 2019

**Signatures**

**For Wayne-Finger Lakes BOCES/EduTech**

**For McGraw Hill LLC**

2/13/2024

**Date**

**Date**

Kimberly Harvey, VP Strategic Services

2/20/24



## **Attachment B – Wayne-Finger Lakes BOCES/EduTech Data Privacy and Security Policy**

In accordance with New York State Education Law §2-d, the BOCES hereby implements the requirements of Commissioner’s regulations (8 NYCRR §121) and aligns its data security and privacy protocols with the National Institute for Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity Version 1.1 (NIST Cybersecurity Framework or “NIST CSF”).

In this regard, every use and disclosure of personally identifiable information (PII) by the BOCES will benefit students and the BOCES (for example, improving academic achievement, empowering parents and students with information, and/or advancing efficient and effective school operations). PII will not be included in public reports or other documents.

The BOCES also complies with the provisions of the Family Educational Rights and Privacy Act of 1974 (FERPA). Consistent with FERPA’s requirements, unless otherwise permitted by law or regulation, the BOCES will not release PII contained in student education records unless it has received a written consent (signed and dated) from a parent or eligible student. For more details, see Policy 6320 and any applicable administrative regulations.

In addition to the requirements of FERPA, the Individuals with Disabilities Education Act (IDEA) provides additional privacy protections for students who are receiving special education and related services. For example, pursuant to these rules, the BOCES will inform parents of children with disabilities when information is no longer needed and, except for certain permanent record information, that such information will be destroyed at the request of the parents. The BOCES will comply with all such privacy provisions to protect the confidentiality of PII at collection, storage, disclosure, and destruction stages as set forth in federal regulations 34 CFR 300.610 through 300.627.

The Board of Education values the protection of private information of individuals in accordance with applicable law and regulations. Further, the BOCES Director of Educational Technology is required to notify parents, eligible students, teachers and principals when there has been or is reasonably believed to have been a compromise of the individual's private information in compliance with the Information Security Breach and Notification Act and Board policy and New York State Education Law §2-d

a) "Private information" shall mean \*\*personal information in combination with any one or more of the following data elements, when either the personal information or the data element is not encrypted or encrypted with an encryption key that has also been acquired:

1. Social security number.
2. Driver's license number or non-driver identification card number; or
3. Account number, credit or debit card number, in combination with any required security code, access code, or password, which would permit access to an individual's financial account.
4. Any additional data as it relates to administrator or teacher evaluation (APPR)

"Private information" does not include publicly available information that is lawfully made available to the general public from federal, state or local government records.

\*\*\*"Personal information" shall mean any information concerning a person, which, because of name, number, symbol, mark or other identifier, can be used to identify that person.



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- b) Personally Identifiable Information, as applied to student data, means 40 personally identifiable information as defined in section 99.3 of Title 34 of the Code of 41 Federal Regulations implementing the Family Educational Rights and Privacy Act, 20 42 U.S.C 1232-g, and as applied to teacher and principal data, means personally 43 identifying information as such term is defined in Education Law §3012-c(10).
- c) Breach means the unauthorized access, use, or disclosure of student data 9 and/or teacher or principal data. Good faith acquisition of personal information by an employee or agent of the BOCES for the purposes of the BOCES is not a breach of the security of the system, provided that private information is not used or subject to unauthorized disclosure.

### **Notification Requirements Methods of Notification**

The required notice shall be directly provided to the affected persons and/or their guardians by one of the following methods:

- a) Written notice;
- b) Secure electronic notice, provided that the person to whom notice is required has expressly consented to receiving the notice in electronic form; and a log of each such notification is kept by the BOCES when notifying affected persons in electronic form. However, in no case shall the BOCES require a person to consent to accepting such notice in electronic form as a condition of establishing any business relationship or engaging in any transaction;

Regardless of the method by which notice is provided, the notice shall include contact information for the notifying BOCES and a description of the categories of information that were, or are reasonably believed to have been, acquired by a person without valid authorization, including specification of which of the elements of personal information and private information were, or are reasonably believed to have been, so acquired. This notice shall take place 60 days of the initial discovery.

In the event that any residents are to be notified, the BOCES shall notify the New York State Chief Privacy Officer, the New York State Cyber Incident Response Team, the office of Homeland Security, and New York State Chief Security Officer as to the timing, content and distribution of the notices and approximate number of affected persons. Such notice shall be made without delaying notice to affected residents.

The Superintendent or his/her designee will establish and communicate procedures for parents, eligible students, and employees to file complaints about breaches or unauthorized releases of student, teacher or principal data (as set forth in 8 NYCRR §121.4). The Superintendent is also authorized to promulgate any and all other regulations necessary and proper to implement this policy.

#### **Data Protection Officer**

The BOCES has designated a BOCES employee to serve as the BOCES's Data Protection Officer.





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The Data Protection Officer is responsible for the implementation and oversight of this policy and any related procedures including those required by Education Law Section 2-d and its implementing regulations, as well as serving as the main point of contact for data privacy and security for the BOCES.

The BOCES will maintain a record of all complaints of breaches or unauthorized releases of student data and their disposition in accordance with applicable data retention policies, including the Records Retention and Disposition Schedule ED-1 (1988; rev. 2004).

#### **Annual Data Privacy and Security Training**

The BOCES will annually provide data privacy and security awareness training to its officers and staff with access to PII. This training will include, but not be limited to, training on the applicable laws and regulations that protect PII and how staff can comply with these laws and regulations.

#### **References:**

Education Law §2-d

8 NYCRR §121

Family Educational Rights and Privacy Act of 1974, 20 USC §1232(g), 34 CFR 99

Individuals with Disabilities Education Act (IDEA), 20 USC §1400 et seq., 34 CFR 300.610–300.627



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**Attachment C – Vendor’s Data Security and Privacy Plan**

The Wayne-Finger Lakes BOCES Parents Bill of Rights for Data Privacy and Security, which is included as Attachment B to this Addendum, is incorporated into and make a part of this Data Security and Privacy Plan.

(Vendor can attach)

## McGraw Hill Data Privacy and Security Guidelines

This Data Privacy and Security Guidelines (“DPSG” or “Security Guidelines”) document sets forth the duties and obligations of McGraw Hill (defined below) with respect to Personal Information (defined below). In the event of any inconsistencies between the DPSG and the Agreement (defined below), the parties agree that the DPSG will supersede and prevail. Capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement.

### 1. Definitions.

- a. **"Agreement"** means the Agreement for the Services between the McGraw Hill LLC entity (“McGraw Hill”) and Subscriber incorporating the Privacy Notice to which these Security Guidelines are referenced and made a part thereof.
- b. **"Applicable Laws"** means federal, state and international privacy, data protection and information security-related laws, rules and regulations applicable to the Services and to Personal Information.
- c. **"End User Data"** means the data provided to or collected by McGraw Hill in connection with McGraw Hill’s obligations to provide the Services under the Agreement.
- d. **"Personal Information"** means information provided to McGraw Hill in connection with McGraw Hill’s obligations to provide the Services under the Agreement that (i) could reasonably identify the individual to whom such information pertains, such as name, address and/or telephone number or (ii) can be used to authenticate that individual, such as passwords, unique identification numbers or answers to security questions or (iii) is protected under Applicable Laws. For the avoidance of doubt, Personal Information does not include aggregate, anonymized data derived from an identified or identifiable individual.
- e. **"Processing of Personal Information"** means any operation or set of operations which is performed upon Personal Information, such as collection, recording, organization, storage, use, retrieval, transmission, erasure or destruction.
- f. **"Third Party"** means any entity (including, without limitation, any affiliate, subsidiary and parent of McGraw Hill) that is acting on behalf of, and is authorized by, McGraw Hill to receive and use Personal Information in connection with McGraw Hill’s obligations to provide the Services.
- g. **"Security Incident"** means a confirmed, unsecured, unlawful access to, acquisition of, disclosure of, loss, or use of Personal Information which poses a significant risk of financial, reputational or other harm to the affected End User or Subscriber.
- h. **"Services"** means any services and/or products provided by McGraw Hill in accordance with the Agreement.

### 2. Confidentiality and Non-Use; Consents.

- a. McGraw Hill agrees that the Personal Information is the Confidential Information of Subscriber and, unless authorized in writing by Subscriber or as otherwise specified in the Agreement or this DPSG, McGraw Hill shall not Process Personal Information for any purpose other than as reasonably necessary to provide the Services, to exercise any rights granted to it under the Agreement, or as required by Applicable Laws.
- b. McGraw Hill shall maintain Personal Information confidential, in accordance with the terms set forth in this Security Guidelines and Applicable Laws. McGraw Hill shall require all of its employees authorized by McGraw Hill to access Personal Information and all Third Parties to comply with (i) limitations consistent with the foregoing, and (ii) all Applicable Laws.
- c. Subscriber represents and warrants that in connection with any Personal Information provided directly by Subscriber to McGraw Hill, Subscriber shall be solely responsible for (i) notifying End

Users that McGraw Hill will Process their Personal Information in order to provide the Services and (ii) obtaining all consents and/or approvals required by Applicable Laws.

3. Data Security.

McGraw Hill shall use commercially reasonable administrative, technical and physical safeguards designed to protect the security, integrity, and confidentiality of Personal Information. McGraw Hill's security measures include the following:

- a. Access to Personal Information is restricted solely to McGraw Hill's staff who need such access to carry out the responsibilities of McGraw Hill under the Agreement.
- b. Access to computer applications and Personal Information are managed through appropriate user ID/password procedures.
- c. Access to Personal Information is restricted solely to Subscriber personnel based on the user role they are assigned in the system (provided, however, that it is the Subscriber's responsibility to ensure that user roles match the level of access allowed for personnel and that their personnel comply with Applicable Law in connection with use of such Personal Information).
- d. Data is encrypted in transmission (including via web interface) and at rest at no less than 256-bit level encryption.
- e. McGraw Hill or a McGraw Hill authorized party performs a security scan of the application, computer systems and network housing Personal Information using a commercially available security scanning system on a periodic basis.

4. Security Incident.

- a. In the event of a Security Incident, McGraw Hill shall (i) investigate the Security Incident, identify the impact of the Security Incident and take commercially reasonable actions to mitigate the effects of any such Security Incident, (ii) timely provide any notifications to Subscriber or individuals affected by the Security Incident that McGraw Hill is required by law, subject to applicable confidentiality obligations and to the extent allowed and/or required by and not prohibited by Applicable Laws or law enforcement.
- b. Except to the extent prohibited by Applicable Laws or law enforcement, McGraw Hill shall, upon Subscriber's written request and to the extent available, provide Subscriber with a description of the Security Incident and the type of data that was the subject of the Security Incident.

5. Security Questionnaire.

Upon written request by Subscriber, which request shall be no more frequently than once per twelve (12) month period, McGraw Hill shall respond to security questionnaires provided by Subscriber, with regard to McGraw Hill's information security program applicable to the Services, provided that such information is available in the ordinary course of business for McGraw Hill and it is not subject to any restrictions pursuant to McGraw Hill's privacy or data protection or information security-related policies or standards. Disclosure of any such information shall not compromise McGraw Hill's confidentiality obligations and/or legal obligations or privileges. Additionally, in no event shall McGraw Hill be required to make any disclosures prohibited by Applicable Laws. All the information provided to Subscriber under this section shall be Confidential Information of McGraw Hill and shall be treated as such by the Subscriber.

6. Security Audit.

Upon written request by Subscriber, which request shall be no more frequently than once per twelve (12) month period, McGraw Hill's data security measures may be reviewed by Subscriber through an informal audit of policies and procedures or through an independent auditor's inspection of security methods used within McGraw Hill's infrastructure, storage, and other physical security, any such audit to be at Subscriber's sole expense and subject to a mutually agreeable confidentiality agreement and at mutually

agreeable timing, or, alternatively, McGraw Hill may provide Subscriber with a copy of any third party audit that McGraw Hill may have commissioned.

7. Records Retention and Disposal.

- a. Subscriber may access, correct, and delete any Personal Information in McGraw Hill's possession by submitting McGraw Hill's Personal Information Request Form:  
<https://www.mheducation.com/privacy/privacy-request-form>.
- b. McGraw Hill will use commercially reasonable efforts to retain End User Data in accordance with McGraw Hill's End User Data retention policies.