

EXHIBIT D

DATA SHARING AND CONFIDENTIALITY AGREEMENT

INCLUDING
PARENTS BILL OF RIGHTS FOR DATA SECURITY AND PRIVACY
AND
SUPPLEMENTAL INFORMATION ABOUT THE MLSA

4. Purpose

- (a) This Exhibit supplements the Master License and Service Agreement ("MLSA") to which it is attached, to ensure that the MLSA conforms to the requirements of New York State Education Law Section 2-d and any implementing Regulations of the Commissioner of Education (collectively referred to as "Section 2-d"). This Exhibit consists of the terms of this Data Sharing and Confidentiality Agreement, a copy of Erie 1 BOCES' Parents Bill of Rights for Data Security and Privacy signed by the Vendor, and the Supplemental Information about the MLSA that is required to be posted on Erie 1 BOCES' website.
- (b) To the extent that any terms contained within the MLSA, or any terms contained within any other Exhibits attached to and made a part of the MLSA, conflict with the terms of this Exhibit, the terms of this Exhibit will apply and be given effect. In the event that Vendor has online or written Terms of Service ("TOS") that would otherwise be applicable to its customers or users of its Product that is the subject of the MLSA, to the extent that any term of the TOS conflicts with the terms of this Exhibit, the terms of this Exhibit will apply and be given effect.

2. Definitions

Any capitalized term used within this Exhibit that is also found in the MLSA will have the same definition as contained within the MLSA.

In addition, as used in this Exhibit:

- (a) "Student Data" means personally identifiable information, as defined in Section 2-d, from student records that Vendor receives from a Participating Educational Agency pursuant to the MLSA.
- (b) "Teacher or Principal Data" means personally identifiable information relating to the annual professional performance reviews of classroom teachers or principals that is confidential and not subject to release under the provisions of New York Education Law Sections 3012-c or 3012-d, that Vendor receives from a Participating Educational Agency pursuant to the MLSA.

- (c) "Protected Data" means Student Data and/or Teacher or Principal Data to the extent applicable to Vendor's Product.
- (d) "Participating Educational Agency" means a school district within New York State that purchases certain shared instructional technology services and software through a Cooperative Educational Services Agreement with a BOCES, and as a result is licensed to use Vendor's Product pursuant to the terms of the MLSA. For purposes of this Exhibit, the term also includes Erie 1 BOCES or another BOCES that is licensed to use Vendor's Product pursuant to the MLSA to support its own educational programs or operations.

3. **Confidentiality of Protected Data**

- (a) Vendor acknowledges that the Protected Data it receives pursuant to the MLSA may originate from several Participating Educational Agencies located across New York State, and that this Protected Data belongs to and is owned by the Participating Educational Agency from which it originates.
- (b) Vendor will maintain the confidentiality of the Protected Data it receives in accordance with federal and state law (including but not limited to Section 2-d) and Erie 1 BOCES's policy on data security and privacy. Vendor acknowledges that Erie 1 BOCES is obligated under Section 2-d to adopt a policy on data security and privacy.. Erie 1 BOCES will provide Vendor with a copy of its policy. Vendor and Erie 1 BOCES agree to engage in good faith negotiations to modify this Data Sharing Agreement to the extent necessary to ensure Vendor's continued compliance with Section 2-d.

4. **Data Security and Privacy Plan**

Vendor agrees that it will protect the confidentiality, privacy and security of the Protected Data received from Participating Educational Agencies in accordance with Erie 1 BOCES' Parents Bill of Rights for Data Privacy and Security, a copy of which has been signed by the Vendor and is set forth below.

Additional elements of Vendor's Data Security and Privacy Plan are as follows:

- (a) In order to implement all state, federal, and local data security and privacy requirements, including those contained within this Data Sharing and Confidentiality Agreement, consistent with Erie 1 BOCES' data security and privacy policy, Vendor will: Review its data security and privacy policy and practices to ensure that they are in conformance with all applicable federal, state, and local laws and the terms of this Data Sharing and Confidentiality Agreement. In the event Vendor's policy and practices are not in conformance, the Vendor will implement commercially reasonable efforts to ensure such compliance.
- (b) In order to protect the security, confidentiality, and integrity of the Protected Data that it receives under the MLSA, Vendor will have the following reasonable administrative,

technical, operational, and physical safeguards and practices in place throughout the term of the MLSA: as described in the attached zSpace FERPA & COPPA Policy, zSpace Applications and PII Statement, and zSpace Application Data Collection. Please see attached Exhibit D

- (c) Vendor will comply with all obligations set forth in Erie 1 BOCES' "Supplemental Information about the MLSA" below.
- (d) For any of its officers or employees (or officers or employees of any of its subcontractors or assignees) who have access to Protected Data, Vendor has provided or will provide training on the federal and state laws governing confidentiality of such data prior to their receiving access, as follows: Annually, Vendor will require that all of its employees (or officers or employees of any of its subcontractors or assignees) undergo data security and privacy training to ensure that these individuals are aware of and familiar with all applicable data security and privacy laws.
- (e) Vendor [*check one*] X will will not utilize sub-contractors for the purpose of fulfilling one or more of its obligations under the MLSA. In the event that Vendor engages any subcontractors, assignees, or other authorized agents to perform its obligations under the MLSA, it will require such subcontractors, assignees, or other authorized agents to execute written agreements as more fully described in Erie 1 BOCES' "Supplemental Information about the MLSA," below.
- (f) Vendor will manage data security and privacy incidents that implicate Protected Data, including identifying breaches and unauthorized disclosures, and Vendor will provide prompt notification of any breaches or unauthorized disclosures of Protected Data in accordance with Section 6 of this Data Sharing and Confidentiality Agreement.
- (g) Vendor will implement procedures for the return, transition, deletion and/or destruction of Protected Data at such time that the MLSA is terminated or expires, as more fully described in Erie 1 BOCES' "Supplemental Information about the MLSA," below.

5. **Additional Statutory and Regulatory Obligations**

Vendor acknowledges that it has the following additional obligations with respect to any Protected Data received from Participating Educational Agencies, and that any failure to fulfill one or more of these statutory or regulatory obligations shall be a breach of the MLSA and the terms of this Data Sharing and Confidentiality Agreement:

- (a) Limit internal access to education records to those individuals that are determined to have legitimate educational interests within the meaning of Section 2-d and the Family Educational Rights and Privacy Act (FERPA).

- (b) Limit internal access to Protected Data to only those employees or subcontractors that need access in order to assist Vendor in fulfilling one or more of its obligations under the MLSA.
- (c) Not use education records for any purposes other than those explicitly authorized in this Data Sharing and Confidentiality Agreement.
- (d) Not disclose any personally identifiable information to any other party, except for authorized representatives of Vendor using the information to carry out Vendor's obligations under the MLSA, unless:
 - (i) the parent or eligible student has provided prior written consent; or
 - (ii) the disclosure is required by statute or court order and notice of the disclosure is provided to Participating Educational Agency no later than the time of disclosure, unless such notice is expressly prohibited by the statute or court order.
- (e) Maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of personally identifiable student information in its custody;
- (f) Use encryption technology that complies with Section 2-d, as more fully set forth in Erie 1 BOCES' "Supplemental Information about the MLSA," below.
- (g) Provide notification to Erie 1 BOCES (and Participating Educational Agencies, to the extent required by, and in accordance with, Section 6 of this Data Sharing and Confidentiality Agreement) of any breach of security resulting in an unauthorized release of Protected Data by Vendor or its assignees or subcontractors in violation of state or federal law or other obligations relating to data privacy and security contained herein.
- (h) Promptly reimburse Erie 1 BOCES, another BOCES, or a Participating School District for the full cost of notification, in the event they are required under Section 2-d to notify affected parents, students, teachers or principals of a breach or unauthorized release of Protected Data attributed to Vendor or its subcontractors or assignees.

6. **Notification of Breach and Unauthorized Release**

- (a) Vendor shall promptly notify Erie 1 BOCES of any breach or unauthorized release of Protected Data in the most expedient way possible and without unreasonable delay, but no more than seven (7) calendar days after Vendor has discovered or been informed of the breach or unauthorized release.
- (b) Vendor will provide such notification to Erie 1 BOCES by contacting Michelle Okal-Frink directly by email at mokal@e1b.org, or by calling (716) 821-7200 (office) or (716) 374-5460 (cell).
- (c) Vendor will cooperate with Erie 1 BOCES and provide as much information as possible directly to Michelle Okal-Frink or her designee about the incident, including but not limited to: a description of the incident, the date of the incident, the date Vendor discovered or

was informed of the incident, a description of the types of personally identifiable information involved, an estimate of the number of records affected, the Participating Educational Agencies affected, what the Vendor has done or plans to do to investigate the incident, stop the breach and mitigate any further unauthorized access or release of Protected Data, and contact information for Vendor representatives who can assist affected individuals that may have additional questions.

- (d) Vendor acknowledges that upon initial notification from Vendor, Erie 1 BOCES, as the educational agency with which Vendor contracts, has an obligation under Section 2-d to in turn notify the Chief Privacy Officer in the New York State Education Department ("CPO"). Vendor shall not provide this notification to the CPO directly. In the event the CPO contacts Vendor directly or requests more information from Vendor regarding the incident after having been initially informed of the incident by Erie 1 BOCES, Vendor will promptly inform Michelle Okal-Frink or her designees.
- (e) Vendor will consult directly with Michelle Okal-Frink or her designees prior to providing any further notice of the incident (written or otherwise) directly to any other BOCES or Regional Information Center, or any affected Participating Educational Agency.

EXHIBIT D (CONTINUED)**PARENTS BILL OF RIGHTS FOR DATA PRIVACY AND SECURITY**

Erie 1 BOCES is committed to protecting the privacy and security of student, teacher, and principal data. In accordance with New York Education Law § 2-d, the BOCES wishes to inform the community of the following:

- (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.
- (3) 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.
- (4) 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 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, 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>.

BY THE VENDOR:

DocuSigned by:

Joseph Powers

FC39CA99EBD945F...

Signature

Joseph Powers

Printed Name

Chief Financial Officer

Title

5/17/2023

Date

EXHIBIT D (CONTINUED)

SUPPLEMENTAL INFORMATION

ABOUT THE MASTER LICENSE AND SERVICE AGREEMENT BETWEEN ERIE 1 BOCES AND ZSPACE, INC.

Erie 1 BOCES has entered into a Master License and Service Agreement (“MLSA”) with ZSPACE, INC. which governs the availability to Participating Educational Agencies of the following Product(s):

[list Product(s) from Vendor]

Various software applications specifically developed for use on zSpaces’ proprietary enabled hardware - Learning Stations. Please see Exhibit A for the complete list of all applications available for use exclusively on zSpace Learning Stations

Pursuant to the MLSA, Participating Educational Agencies may provide to Vendor, and Vendor will receive, personally identifiable information about students, or teachers and principals, that is protected by Section 2-d of the New York State Education Law (“Protected Data”).

Exclusive Purpose for which Protected Data will be Used: The exclusive purpose for which Vendor is being provided access to Protected Data is to provide Participating Educational Agencies with the functionality of the Product(s) listed above. Vendor agrees that it will not use the Protected Data for any other purposes not explicitly authorized in the MLSA. Protected Data received by Vendor, or any of Vendor’s subcontractors, assignees, or other authorized agents, will not be sold, or released or used for any commercial or marketing purposes.

Oversight of Subcontractors: In the event that Vendor engages subcontractors, assignees, or other authorized agents to perform one or more of its obligations under the MLSA (including any hosting service provider), it will require those to whom it discloses Protected Data to execute legally binding agreements acknowledging the obligation under Section 2-d of the New York State Education Law to comply with the same data security and privacy standards required of Vendor under the MLSA and applicable state and federal law. Vendor will ensure that such subcontractors, assignees, or other authorized agents abide by the provisions of these agreements by: working with the vendor to establish the necessary agreements and related procedures to comply with the obligations in such agreements as specified herein.

Duration of MLSA and Protected Data Upon Expiration:

- The MLSA commences on July 1, 2023 and expires on June 30, 2026.
- Upon expiration of the MLSA without renewal, or upon termination of the MLSA prior to expiration, Vendor will securely delete or otherwise destroy any and all Protected Data remaining in the possession of Vendor or its assignees or subcontractors or other authorized persons or entities to whom it has disclosed Protected Data. If requested by Erie 1 BOCES and/or any Participating Educational Agency, Vendor will assist a

Participating Educational Agency in exporting all Protected Data previously received back to the Participating Educational Agency for its own use, prior to deletion, in such formats as may be requested by the Participating Educational Agency.

- In the event the Master Agreement is assigned to a successor Vendor (to the extent authorized by the Master Agreement), the Vendor will cooperate with Erie 1 BOCES as necessary to transition Protected Data to the successor Vendor prior to deletion.
- Neither Vendor nor any of its subcontractors or other authorized persons or entities to whom it has disclosed Protected Data will retain any Protected Data, copies, summaries or extracts of the Protected Data, or any de-identified Protected Data, on any storage medium whatsoever. Upon request, Vendor and/or its subcontractors or other authorized persons or entities to whom it has disclosed Protected Data, as applicable, will provide Erie 1 BOCES with a certification from an appropriate officer that these requirements have been satisfied in full.

Challenging Accuracy of Protected Data: Parents or eligible students can challenge the accuracy of any Protected Data provided by a Participating Educational Agency to Vendor, by contacting the student's district of residence regarding procedures for requesting amendment of education records under the Family Educational Rights and Privacy Act (FERPA). Teachers or principals may be able to challenge the accuracy of APPR data provided to Vendor by following the appeal process in their employing school district's applicable APPR Plan.

Data Storage and Security Protections: Any Protected Data Vendor receives will be stored on systems maintained by Vendor, or by a subcontractor under the direct control of Vendor, in a secure data center facility located within the United States. The measures that Vendor will take to protect Protected Data include adoption of technologies, safeguards and practices that align with the NIST Cybersecurity Framework and industry best practices including, but not necessarily limited to, disk encryption, file encryption, firewalls, and password protection.

Encryption of Protected Data: Vendor (or, if applicable, its subcontractors) will protect Protected Data in its custody from unauthorized disclosure while in motion or at rest, using a technology or methodology specified by the secretary of the U.S. Department of HHS in guidance issued under Section 13402(H)(2) of P.L. 111-5.



Education And FERPA and COPPA

If you are using our applications through a school program, your personal data may be subject to the Family Educational Rights and Privacy Act (FERPA) and Children's Online Privacy Protection Act (COPPA). zSpace commits to protect and secure student data in the manner that FERPA requires and, also, agrees to act as a "school official" to the extent our services are used to store regulated student records in accordance with 34 Code of Federal Regulations (CFR) §99.31(a)(1). To the extent COPPA applies to information we collect, we process such information for educational purposes only, at the direction of the partnering school customer and on the basis of educational institution consent. zSpace applications can be used in compliance with the Children's Online Privacy Protection Act (COPPA).

For more data regarding FERPA, please visit the [FERPA site](#) and the [U.S. Department of Education website](#) for more information. For more information on COPPA, please visit the [COPPA site](#) and the [Federal Trade Commission website](#) for more information.

For a more complete explanation of zSpace collection of data in its applications please see Overview of zSpace Applications and PII and zSpace Application Data Collection available [here](#).

Education Providers and the Family Educational Rights and Privacy Act (FERPA)

If you are an Education Provider (as defined below) who will be using Products with Students in connection with your educational institution, district or class located or based in the United States, Student Data provided or generated through your or your Students' use of Products may be subject to the U.S. Family Educational Rights and Privacy Act ("FERPA"), which may require educational institutions and school districts to obtain parental consent before disclosing Student Data outside of the educational institution. For that reason:

1. You represent and warrant that: (1) you are authorized to act on behalf of, or have permission from, your educational institution or school district to enter into this Agreement and to use the Products with your Students, (2) if at any point in time you are no longer authorized to act on behalf of your educational institution or school district, you will remove any student material from any account you have access to in connection with Products and close any account for Products used by you solely as an Education Provider, and if you are unable to take these actions on your own, contact zSpace for assistance, (3) before you enroll, sign up or permit any Student to use Products, you, your educational institution, or your district will obtain any consents required under applicable law to be provided by a Student or the Student's parent or legal guardian consenting to the Student's use of Products made available to the Student by the Education Provider, and (4) you will not provide to zSpace Student Data of any Student. Notwithstanding the foregoing, when using Products, you may provide Student Data of a Student, if you first obtain a signed and dated consent form that is voluntarily provided by the Student's parent or legal guardian.
2. zSpace agrees that: (1) to the extent that Education Providers subject to FERPA provide zSpace with Student Data, zSpace will be considered a "school official" (as that term is used in FERPA and its implementing regulations), (2) it will comply, within a reasonable time frame, with your requests to review, modify, de-identify or delete any Student Data that zSpace maintains about your Student, and (3) it will not maintain, use, or disclose Student Data except as set forth herein and in the [zSpace Privacy Statement](#), as authorized by you or permitted or required by applicable law or a judicial order.

Defined Terms

"Education Providers" means educational institutions and teachers, administrators, school district representatives and other individuals acting on behalf of the educational institution or the school district, who provide Students with access to Products and/or work with Students in connection with Products.



“Products” means zSpace software or zSpace services made available by zSpace pursuant to the terms of the applicable software license agreement, terms of use or terms of service.

“Student” means an individual person enrolled as a student at an Education Provider.

“Student Data” means information maintained by zSpace or any third party on zSpace’s behalf relating to a Student, including any education records (as defined under FERPA) that are disclosed by Education Providers to zSpace, except that Student Data does not include a record that has had personal data removed such that the Student’s identity is not uniquely identifiable from the record and there is no reasonable basis to believe that the remaining information can be used to identify an individual.



Application Data Collection

Application Technology Meta Data / Other application technology meta data

zSpace collects analytics as a means of providing our customers with usage data so they are better informed regarding how zSpace plays a role in their educational community. These analytics contain no student or PII. The contain only machine information and date/time information to provide analytics data such as: total usage, usage by application, average session time, etc.

We take every reasonably available precaution to protect our users' information. zSpace restricts access to all of our users' information. Only employees who need access to users' information to perform a specific job are granted access to this information. Furthermore, all employees are kept up-to-date on our security and privacy practices.

Should on-line access be necessary, zSpace utilizes Amazon Cognito for authentication to our web properties which is HIPAA eligible and PCI DSS, SOC II, and ISO/IEC 27001, ISO/IEC 27017, ISO/IEC 27018, and ISO 9001 compliant. You can see more details here - <https://aws.amazon.com/cognito/>. Our internal information servers are SOC II Type 2 certified.

Student Name / First and/or Last

"Some zSpace applications may request a student to enter his/her first and/or last name as part of submitting an assignment or activity to the teacher. However, these submissions are not cloud based and never leave the local LEA and are never used by zSpace. They are used only by the teacher to identify the student (or group of students) that submitted the activity".

Student work / Student generated content; writing, pictures, etc.

"Some zSpace applications may request that a student submit an assignment or activity to the teacher. In this case, that assignment will contain student generated content in the form of written answers, explanations, etc. It may also contain pictures taken through the application so a student can provide a graphical representation of his/her findings. However, these submissions are not cloud based and never leave the local LEA systems and are never used by zSpace. They are used only by the teacher to evaluate the student's activity progress and/or findings".

Other

"While zSpace does not directly request any PII (unless noted above), some zSpace applications allow the student to enter free-form text as part of providing answers or findings. In this case, while there is no reason for the student to enter any PII, it is possible they could include personal information as part of those entries. However, any student provided data is not cloud based and never leaves the local LEA systems and is never used by zSpace".



Overview of zSpace Applications and PII

To Whom It May Concern:

This document addresses how zSpace technology and software is used.

The zSpace hardware systems come pre-loaded with Windows 10 and the learning software applications. You can see the specifics on the technical specifications for our systems at these links.

<https://cdn.zspace.com/collateral/brochures/inspire-pro-techspecs.pdf>

https://cdn.zspace.com/collateral/collateral/brochures/zSpace-AIO-TechSpecs_AppOverview.pdf

https://cdn.zspace.com/collateral/zSpaceLaptopTechSpecs_060419.pdf

zSpace applications are run from code installed on the systems and only require an internet connection to update and license the pre-installed applications and the operating system, as well as add any software in the future that might be purchased that was not previously installed.

zSpace does not collect any student information or utilize student logins. Further information on data collection from zSpace applications is in the attached "Applications Data Collection Statement".

We do provide a web site (go.zspace.com) and associated local web service (running on the local system not in the cloud) to facilitate launching local applications previously installed on the system. This site does not provide login capabilities or collect any information beyond standard website usage analytics. This site (go.zspace.com) is provided as a convenience to facilitate teachers and students finding the zSpace content located on the local machines. We do provide the user of the site an ability to click on an emoji letting us know if they enjoyed the experience, but it is not required and is of course anonymous since we do not ask for or retrieve any student information. Using go.zspace.com is not required to launch or use the applications. This article provides some more information.

https://support.zspace.com/s/article/zSpace-zCentral-User-Guide?language=en_US



Overview of zSpace Applications and PII

Like most companies, zSpace provides a website targeting both buyers and customers. This site, www.zspace.com, is not intended for or marketed for student use. We also maintain social media accounts that are used for marketing and customer communication. No social media is required or intended to be used by students. The website terms and conditions, located at zspace.com, reflect the usage of the site as described above. This customer site, zspace.com, does have the ability for a teacher/customer to create a login to facilitate usage of our customer forums and online learning platform. Again, the forum and online learning is ONLY for teachers/customers and not for any students.

Regarding third party links, collection of information, surveys and social media, our teacher community, and marketing site, zspace.com, like other education companies (e.g. <https://www.mheducation.com/terms-use.html>) these terms do not apply to the use of our educational or instructional products or services, which are governed under our software licensing terms (<https://zspace.com/legal/end-user-license-agreements>). We do not collect any student account information and therefore have no ability to contact students. We do communicate with our teacher/customer community that have decided to register on zspace.com, using HubSpot email automation and automated survey tools to collect feedback. It is optional for teachers/customers to provide feedback and they can opt out at any time.

We welcome the opportunity to address any questions or concerns.

Sincerely,

zSpace, Inc.