



EXHIBIT A: DATA SHARING AND CONFIDENTIALITY AGREEMENT

Including

**Washington-Saratoga-Warren-Hamilton-Essex BOCES Bill of Rights for Data Security and Privacy
and**

**Supplemental Information about a Master Agreement between
Washington-Saratoga-Warren-Hamilton-Essex BOCES and Educational Vistas**

1. Purpose

(a) **Washington-Saratoga-Warren-Hamilton-Essex BOCES, and on behalf of its subscribed school districts (see Exhibit B)** (hereinafter “District”) and **Educational Vistas** (hereinafter “Vendor”) are parties to a contract, Terms of Service, or other written agreement pursuant to which Vendor will receive student data and/or teacher or principal data that is protected under New York Education Law Section 2-d and Part 121 of the Regulations of the Commissioner of Education (collectively referred to as “Section 2-d”) from the District for purposes of providing certain products or services to the District (the “Master Agreement”).

(b) This Exhibit supplements the Master Agreement to which it is attached, to ensure that the Master Agreement conforms to the requirements of Section 2-d. This Exhibit consists of a Data Sharing and Confidentiality Agreement, a copy of the District’s Bill of Rights for Data Security and Privacy signed by Vendor, and the Supplemental Information about the Master Agreement between **Washington-Saratoga-Warren-Hamilton-Essex BOCES and its subscribed school districts (see Exhibit B)** and **Educational Vistas** that the District is required by Section 2-d to post on its website.

(c) In consideration of the mutual promises set forth in the Master Agreement, Vendor agrees that it will comply with all terms set forth in the Master Agreement and this Exhibit. To the extent that any terms contained in the Master Agreement, or any terms contained in any other Exhibit(s) attached to and made a part of the Master Agreement, conflict with the terms of this Exhibit, the terms of this Exhibit will apply and be given effect. In addition, in the event that Vendor has online or written Privacy Policies or Terms of Service (collectively, “TOS”) that would otherwise be applicable to its customers or users of the products or services that are the subject of the Master Agreement between the District and Vendor, to the extent that any terms of the TOS, that are or may be in effect

at any time during the term of the Master Agreement, conflict with the terms of this Exhibit, the terms of this Exhibit will apply and be given effect.

2. **Definitions**

As used in this Exhibit:

(a) "Student Data" means personally identifiable information, as defined in Section 2-d, from student records that Vendor may receive from the District pursuant to the Master Agreement.

(b) "Teacher or Principal Data" means personally identifiable information, as defined in Section 2-d, relating to the annual professional performance reviews of classroom teachers or principals that Vendor may receive from the District pursuant to the Master Agreement.

(c) "Protected Data" means Student Data and/or Teacher or Principal Data, to the extent applicable to the product or service actually being provided to the District by Vendor pursuant to the Master Agreement.

(d) "NIST Cybersecurity Framework" means the U.S. Department of Commerce National Institute for Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity (Version 1.1).

3. **Confidentiality of Protected Data**

(a) Vendor acknowledges that the Protected Data it receives pursuant to the Master Agreement originates from the District and that this Protected Data belongs to and is owned by the District.

(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 the District's policy on data security and privacy. The District's policy on data security and privacy is available on the district website and at the following link: [WSWHE BOCES Board of Education Policy #6810: Privacy & Security of Student Data, Teacher Data & Principal Data](#)

4. **Data Security and Privacy Plan**

As more fully described herein, throughout the term of the Master Agreement, Vendor will have a Data Security and Privacy Plan in place to protect the confidentiality, privacy and security of the Protected Data it receives from the District.

Vendor's Plan for protecting the District's Protected Data includes, but is not limited to, its agreement to comply with the terms of the District's Bill of Rights for Data Security and Privacy, a copy of which is set forth below and has been signed by the Vendor.

Additional components of Vendor's Data Security and Privacy Plan for protection of the District's Protected Data throughout the term of the Master Agreement are as follows:

(a) Vendor will implement all state, federal, and local data security and privacy requirements including those contained within the Master Agreement and this Data Sharing and Confidentiality Agreement, consistent with the District's data security and privacy policy.

(b) Vendor will have specific administrative, operational and technical safeguards and practices in place to protect Protected Data that it receives from the District under the Master Agreement.

(c) Vendor will comply with all obligations contained within the section set forth in this Exhibit below entitled "Supplemental Information about a Master Agreement between **Washington-Saratoga-Warren-Hamilton-Essex BOCES** and **Educational Vistas**". Vendor's obligations described within this section include, but are not limited to:

- i. its obligation to require subcontractors or other authorized persons or entities to whom it may disclose Protected Data (if any) to execute written agreements acknowledging that the data protection obligations imposed on Vendor by state and federal law and the Master Agreement shall apply to the subcontractor, and
- ii. its obligation to follow certain procedures for the return, transition, deletion and/or destruction of Protected Data upon termination, expiration or assignment (to the extent authorized) of the Master Agreement.

(d) Vendor has provided or will provide training on the federal and state laws governing confidentiality of Protected Data for any of its officers or employees (or officers or employees of any of its subcontractors or assignees) who will have access to Protected Data, prior to their receiving access.

(e) Vendor will manage data security and privacy incidents that implicate Protected Data and will develop and implement plans to identify breaches and unauthorized disclosures. Vendor will provide prompt notification to the District of any breaches or unauthorized disclosures of Protected Data in accordance with the provisions of Section 5 of this Data Sharing and Confidentiality Agreement.

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

(a) Vendor will promptly notify the District of any breach or unauthorized release of Protected Data it has received from the District 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 the District by contacting **Cecilia Dansereau Rumley, Director for Data Privacy & Professional Learning** directly by email at **cdansereau-rumley@wsweboces.org** or by calling **518-581-3518**.

(c) Vendor will cooperate with the District and provide as much information as possible directly to **Cecilia Dansereau Rumley** or his/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 Protected Data involved, an estimate of the number of records affected, the schools within the District 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, the District, 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 agrees not to provide this notification to the CPO directly unless requested by the District or otherwise required by law. 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 the District, Vendor will promptly inform **Cecilia Dansereau Rumley** or his/her designee.

6. Additional Statutory and Regulatory Obligations

Vendor acknowledges that it has the following additional obligations under Section 2-d with respect to any Protected Data received from the District, and that any failure to fulfill one or more of these statutory or regulatory obligations will be deemed a breach of the Master Agreement and the terms of this Data Sharing and Confidentiality Agreement:

(a) To limit internal access to Protected Data to only those employees or subcontractors that are determined to have legitimate educational interests within the meaning of Section 2-d and the Family Educational Rights and Privacy Act (FERPA); *i.e.*, they need access in order to assist Vendor in fulfilling one or more of its obligations to the District under the Master Agreement.

(b) To not use Protected Data for any purposes other than those explicitly authorized in this Data Sharing and Confidentiality Agreement and the Master Agreement to which this Exhibit is attached.

(c) To not disclose any Protected Data to any other party, except for authorized representatives of Vendor using the information to carry out Vendor's obligations to the District and in compliance with state and federal law, regulations and the terms of the Master Agreement, 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 the District no later than the time of disclosure, unless such notice is expressly prohibited by the statute or court order.

(d) To maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of Protected Data in its custody.

(e) To use encryption technology to protect Protected Data in its custody while in motion or at rest, using a technology or methodology specified by the Secretary of the U.S. Department of Health and Human Services in guidance issued under Section 13402(H)(2) of Public Law 111-5.

(f) To adopt technologies, safeguards and practices that align with the NIST Cybersecurity Framework.

(g) To comply with the District's policy on data security and privacy, Section 2-d and Part 121.

(h) To not sell Protected Data nor use or disclose it for any marketing or commercial purpose or facilitate its use or disclosure by any other party for any marketing or commercial purpose or permit another party to do so.

(i) To notify the District, in accordance with the provisions of Section 5 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 applicable state or federal law, the District's Bill of Rights for Data Security and Privacy, the District's policies on data security and privacy, or other binding obligations relating to data privacy and security contained in the Master Agreement and this Exhibit.

(j) To cooperate with the District and law enforcement to protect the integrity of investigations into the breach or unauthorized release of Protected Data.

(k) To pay for or promptly reimburse the District for the full cost of notification, in the event the District is 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.

Washington-Saratoga-Warren-Hamilton-Essex BOCES

EDUCATION LAW §2-d Bill of Rights for Data Security and Privacy

The **Washington-Saratoga-Warren-Hamilton-Essex BOCES** is committed to protecting the privacy and security of student data and teacher and principal data. In accordance with New York Education Law Section 2-d and its implementing regulations, the District informs the school community of the following:

Parents (including legal guardians or persons in parental relationships) and Eligible Students (students 18 years and older) can expect the following:

1. A student's personally identifiable information (PII) cannot be sold or released for any commercial purpose. PII, as defined by Education Law § 2-d and FERPA, includes direct identifiers such as a student's name or identification number, parent's name, or address; and indirect identifiers such as a student's date of birth, which when linked to or combined with other information can be used to distinguish or trace a student's identity. Please see FERPA's regulations at 34 CFR 99.3 for a more complete definition.
2. The right to inspect and review the complete contents of the student's education record stored or maintained by an educational agency. This right may not apply to parents of an Eligible Student.
3. State and federal laws such as Education Law § 2-d; the Commissioner of Education's Regulations at 8 NYCRR Part 121, the Family Educational Rights and Privacy Act ("FERPA") at 12 U.S.C. 1232g (34 CFR Part 99); Children's Online Privacy Protection Act ("COPPA") at 15 U.S.C. 6501-6502 (16 CFR Part 312); Protection of Pupil Rights Amendment ("PPRA") at 20 U.S.C. 1232h (34 CFR Part 98); the Individuals with Disabilities Education Act ("IDEA") at 20 U.S.C. 1400 et seq. (34 CFR Part 300); protect the confidentiality of a student's identifiable information.
4. Safeguards associated with industry standards and best practices including but not limited to encryption, firewalls and password protection must be in place when student PII is stored or transferred.
5. A complete list of all student data elements collected by NYSED is available for public review at www.nysed.gov/data-privacy-security, and by writing to the Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, New York 12234.
6. The right to have complaints about possible breaches and unauthorized disclosures of student data addressed.
 - Contact WSWHE BOCES Data Protection Officer: Ceilia Dansereau-Rumley, Director for Data Privacy & Professional Learning, by email: cdansereau-rumley@wsweboces.org, or by phone: 518-581-3518. Complaints should be submitted in writing using the form that is available on the BOCES website and in the BOCES offices.
 - Complaints may also be submitted to NYSED online at www.nysed.gov/data-privacy-security, by mail to: Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, New York 12234, by email to privacy@nysed.gov, or by telephone at 518-474-0937.
7. To be notified in accordance with applicable laws and regulations if a breach or unauthorized release of their student's PII occurs.


8. Educational agency workers that handle PII will receive training on applicable state and federal laws, the educational agency's policies, and safeguards associated with industry standards and best practices that protect PII.

9. Educational agency contracts with vendors that receive PII will address statutory and regulatory data privacy and security requirements.

BY THE VENDOR:

Lukas J. Crowder
Name (Print)

Chief Financial Officer
Title


Signature

December 8th, 2022
Date

EXHIBIT A (CONTINUED)

Supplemental Information about a Master Agreement between

Washington-Saratoga-Warren-Hamilton-Essex BOCES and Educational Vistas

Washington-Saratoga-Warren-Hamilton-Essex BOCES and its subscribed school districts (see Exhibit B) has entered into a Master Agreement with **Educational Vistas**, which governs the availability to the District of the following products or services:

Services to be delivered - Third Party Regional Scoring for NYS 3-8 Tests & NYS High School Regents Exams
software, and/or apps, and/or technology tools, and/or web-services

Pursuant to the Master Agreement (which includes a Data Sharing and Confidentiality Agreement), the District may provide to Vendor, and Vendor will receive, personally identifiable information about students and/or teachers and principals that is protected by Section 2-d of the New York Education Law ("Protected Data").

Exclusive Purposes for which Protected Data will be Used: The exclusive purpose for which Vendor is receiving Protected Data from the District is to provide the District with the functionality of the products or services listed above. Vendor will not use the Protected Data for any other purposes not explicitly authorized above or within the Master Agreement.

Oversight of Subcontractors: In the event that Vendor engages subcontractors or other authorized persons or entities to perform one or more of its obligations under the Master Agreement (including subcontracting hosting of the Protected Data to a hosting service provider), it will require those subcontractors or other authorized persons or entities to whom it will disclose the Protected Data to execute legally binding agreements acknowledging their obligation under Section 2-d of the New York Education Law to comply with all applicable data protection, privacy and security requirements required of Vendor under the Master Agreement and applicable state and federal law and regulations.

Duration of Agreement and Protected Data Upon Termination or Expiration:

- The Master Agreement commences on **12/1/2022 and expires on 6/30/2025.**
- Upon expiration of the Master Agreement without renewal, or upon termination of the Master Agreement prior to its expiration, Vendor will securely delete or otherwise destroy any and all Protected Data remaining in the possession of Vendor or any of its subcontractors or other authorized persons or entities to whom it has disclosed Protected Data. If requested by the District, Vendor will assist the District in exporting all Protected Data previously received back

to the District for its own use, prior to deletion, in such formats as may be requested by the District.

- 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 the District 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 the District 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 the District to Vendor, by contacting the District regarding procedures for requesting amendment of education records under the Family Educational Rights and Privacy Act (FERPA). Teachers or principals may request to challenge the accuracy of APPR data provided to Vendor by following the appeal process in the District's applicable APPR Plan.

Data Storage and Security Protections: Any Protected Data that 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 (and, if applicable, its subcontractors) will take to protect Protected Data include adoption of technologies, safeguards and practices that align with the NIST Cybersecurity Framework, and safeguards associated with industry standards and best practices including, but not limited to, disk encryption, file encryption, firewalls, and password protection.

Encryption of Protected Data: Vendor (and, 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 that complies with Section 2-d of the New York Education Law.

Exhibit B:

**School Districts Subscribed to the Washington-Saratoga-Warren-Hamilton-Essex BOCES
Data Privacy & Security and/or
Educational Technology and/or
School Library Systems Cooperative Service Agreement(s)**

Component School Districts

Argyle Central School
Ballston Spa Central School
Bolton Central School
Cambridge Central School
Corinth Central School
Fort Ann Central School
Fort Edward Union Free School
Galway Central School
Glens Falls City School
Glens Falls Common District
Granville Central School
Greenwich Central School
Hadley-Luzerne Central School
Hartford Central School
Hudson Falls Central School
Indian Lake Central School
Johnsburg Central School
Lake George Central School
Mechanicville City School
Minerva Central School
Newcomb Central School
North Warren Central School
Queensbury Union Free School
Salem Central School
Saratoga Springs City Schools
Schuylerville Central School
South Glens Falls Central School
Stillwater Central School
Warrensburg Central School
Waterford-Halfmoon Union Free School
Whitehall Central School

Other Subscribing School Districts

Beekmantown Central School District
Broadalbin-Perth Central School District
Deposit Central School District
Fonda-Fulton Central School District
Greater Amsterdam School District
Johnstown Central School District
Ravena Coeymans Central School District
Rensselaer City School District
Saranac Lake Central School District
Shenendehowa Central School District
Walton Central School District
Windsor Central School District
Willsboro Central School District



INCREASING EFFICIENCY.
REDUCING COSTS.

Educational Vistas, Inc.

2200 Maxon Rd. Ext.
Schenectady, NY 12308
(518) 344-7022

Data Privacy and Security Statement

Parent Bill of Rights for Data Privacy and Security

Educational Vistas, Inc. complies with and exceeds all expectations of Section 2-c and 2-d of the Education Law.

Physical Safeguards

Educational Vistas' programs and data are housed at TurnKey in Latham which is a secure data Center. TurnKey is a 24/7 monitored facility that restricts physical access to the servers. The servers are also appliance and firewall protected from outside access. There are only 3 of our technicians allowed into the data center and the data center is required to call our offices before granting anyone access to the servers. The center requires physical sign-in to the facility as well. Data is housed on multiple redundant load-balanced servers within the facility. Backed up data is encrypted and has to be restored to the data center before it can be used.

Encryption in Motion

The data center uses SHA-256 bit encryption along with <https://> to encrypt the data to and from the end points.

Encryption at Rest

Data at rest refers to data that is not moving, data on a drive, or backed up data. For example, this may be a file from a customer. Our internal policies restrict us from putting any client data on a laptop, or USB, or personal devices. Client data can only be accessed through the secure server. Any backed up data is encrypted and cannot be accessed without being restored to the data center.

Staff Training related to the Law(s)

Staff is instructed and trained to not store, remove, or share any customer data. We only use the customer's information in training the customer at the customer's site. Staff is trained on HIPAA Privacy, Security Rules, GLBA, which talks about safeguard procedures against fraud or identity theft and instruction about computer security, and FISMA (Federal Information and Security). We also comply with FERPA, which includes hiring contractors to minimize security risks. Every employee and contractor is required to sign a confidentiality agreement as part of their employment package.

Breach Plan and Notification Process

Our IT security company WLS monitors the servers for Security related Breaches. We require immediate Notification of any security breach so we can in turn immediately notify our clients that a breach has occurred, and what was breached. We have, to this date not had any security breach.

Process and Policy to restrict data access to only those with educational interest

The login and security policies within the program restrict access to the data to individuals that need access to the data. The district will specify to us who is allowed to access the information in the programs. The district also has the ability to change the level of access individuals have within the programs. Normal access is program dependent, e.g. teachers see own students, principals their building, etc. Educational Vistas can also use secure LDAP to allow the district's active directory server to provide an additional restriction on top of the security the programs provide.



INCREASING EFFICIENCY.
REDUCING COSTS.

Educational Vistas, Inc.

2200 Maxon Rd. Ext.
Schenectady, NY 12308
(518) 344-7022

Data Disclosure (Statement of Use)

Educational Vistas does not use client data. Client data is the property of the client. We do not share client information or client data with anyone. In our services to client district we use client data within the programs for many reasons. Examples would be: To show a teacher which students missed specific standards, print student answer sheets for assessments, build Teacher SLOs, spin assessment data by student for use for teacher driven professional learning, use disaggregated data to set target scores for the district, for the districts to do state reporting like the Civil rights reports, VADIRS, DASA, Discipline Reporting, parent communication templates or to assist setting initial RTI goals based on assessment scores.

Data return or destruction upon end of contract or contract termination

Educational Vistas will remove all customer data from our servers after receiving a written request from the customer to do so. We will also allow the customer to download extracts of the data before we remove it.

Security protocols related to any subcontractors

Subcontractors are required to adhere to the same level of security as our internal staff. We require contractors to sign documents stating they will safeguard the data and not use or share any of the districts data.

Ability to Challenge Data Accuracy

Much of the data we house comes from outside systems such as the district's Student Information System (SIS). We do have the ability to validate data on import to our system(s) and send email notifications to someone at the district that data may be missing that could cause inaccurate reporting to occur. Our Data Sync tool does this automatically if the district wants it. In the StaffTrac APPR system, where evidence can be entered by multiple users, the district can turn on the ability for the data to be user-, time-, and date-stamped. In the SafeSchoolsNY program, the system tracks who reported and who recorded each incident. The district also has the ability to change their own information in order to correct anything that is not accurate. We make it our priority to ensure data accuracy within the programs.

LUKAS J. CROWDER - CFO

(Authorized Representative)


(Signature)

SUPPLEMENTAL INFORMATION

Complete the chart below with information required to post about the contract, along with our parent bill of rights.

SUPPLEMENTAL INFORMATION ELEMENT	2-D	121	SUPPLEMENTAL INFORMATION
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	3(c)	3(c)	To support and enhance the use of licensed products and services each year.
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	3(c)	3(c)	EVI will not share any protected data with any other entities.
When the agreement expires and what happens to the protected data when the agreement expires	3(c)	3(c)	All data will be housed, secured, and maintained until such a time as the licensor requests it's removal from our servers in writing.
If 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	3(c)	3(c)	All directives for the changing of data will come from the licensor's administrator(s) and not from Parents / Students directly. If contacted directly, EVI will refer all Parents / Students to the licensor.
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	3(c)	3(c)	Our servers are housed at Turnkey Internet - Data Center & Cloud Hosting Solutions, 175 Old Loudon Rd, Latham, NY 12110. This facility has 24/7 physical safeguards in place, along with redundancy measures and load balancing.
How the data will be protected using encryption.	3(c)	3(c)	SHA-256 Encryption