



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 McGraw Hill**

1. Purpose

(a) **Washington-Saratoga-Warren-Hamilton-Essex BOCES, and on behalf of its subscribed school districts (see Exhibit B)** (hereinafter “District”) and **McGraw Hill** (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 **McGraw Hill** 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 **applicable** 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 **McGraw Hill**". 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 **requirements of** 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 ~~the current District contact on file with the Vendor. Cecilia Dansereau Rumley, Director for Data Privacy & Professional Learning~~ directly by email at ~~cdansereau-rumley@wswhoboces.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 ~~with the understanding that the Vendor also retains aggregate, deidentified, anonymized information for improvement, research, and development purposes.~~

(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 **confirmed** 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@wswhiboces.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.

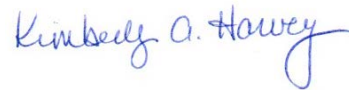
BY THE VENDOR:

Kimberly Harvey

Name (Print)

VP Strategic Services

Title



Signature

11/7/2022

Date

EXHIBIT A (CONTINUED)

Supplemental Information about a Master Agreement between

Washington-Saratoga-Warren-Hamilton-Essex BOCES and McGraw Hill

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

Inspire Science

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 **11/1/2022** 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, **upon written request**, 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 **in writing** 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

McGraw Hill LLC 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 the unlawful access to, acquisition of, disclosure of, loss, or use of Personal Information.
- 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. Data Security Breach.

- a. In the event of a confirmed 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.
- c. McGraw Hill will use commercially reasonable efforts to regularly back up the Subscriber and End User Data and retain any such backup copies for a minimum of 12 months.