

West Seneca, NY 14224Date: 7/20/2023**EXHIBIT D****DATA SHARING AND CONFIDENTIALITY AGREEMENT**

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

**1. 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, but that adoption may not occur until a date subsequent to the effective date of the MLSA. Erie 1 BOCES will provide Vendor with a copy of its policy as soon as practicable following adoption, and 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: **[Insert here – also provide a copy of Data Security and Privacy Plan]**

- (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]**  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 confirmed breaches and unauthorized disclosures, and Vendor will provide prompt notification of any confirmed breaches or unauthorized disclosures of Protected Data in accordance with Section 6 of this Data Sharing and Confidentiality Agreement.
- (g) Upon written request, 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 with the understanding that the Vendor also retains aggregate, deidentified, anonymized information for improvement, research, and development purposes.
  - (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 as provided by Erie 1 BOCES; 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 confirmed 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 reasonable cost of legally required 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.

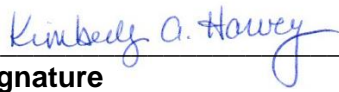
- (d) Vendor acknowledges that upon initial notification from Vendor, Erie 1 BOCES, as the educational agency with which Vendor contracts, has an obligation under Section 2-d to in turn notify the Chief Privacy Officer in the New York State Education Department (“CPO”). Vendor shall not provide this 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:**

  
\_\_\_\_\_  
Signature

**Kimberly Harvey**  
\_\_\_\_\_  
Printed Name

**VP Strategic Services**  
\_\_\_\_\_  
Title

**7/20/2023**  
\_\_\_\_\_  
Date

## EXHIBIT D (CONTINUED)

### SUPPLEMENTAL INFORMATION

#### ABOUT THE MASTER LICENSE AND SERVICE AGREEMENT BETWEEN ERIE 1 BOCES AND MCGRAW HILL LLC

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

*[list Product(s) from Vendor]* StudySync, IMPACT Social Studies, Networks, Redbird Mathematics, ALEKS, Wonders, Open Court Reading, Achieve3000 Math, Achieve3000 Literacy with Boost (formerly Boost, Access and Espanol), Achieve3000 Literacy Intensive, Smarty Ants, and Actively Learn Prime and Unlimited

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 with the understanding the Vendor also retains aggregate, deidentified, anonymized information for improvement, research, and development purposes. 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:

McGraw Hill engages with subcontractors, such as cloud storage vendors, to assist with providing certain aspects of our platforms to customers. Any such subcontractors are limited to receipt and use of only the personal information required to assist with providing, maintaining, or improving the service, and limited to using the personal information solely for those specific purposes. Our subcontractors are contractually bound to uphold our standards of privacy and data security including the commitments of this MLSA and applicable state and federal law.

**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, upon written request, 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, on any storage medium whatsoever with the understanding the Vendor retains aggregate, deidentified, anonymized information for improvement, research, and development purposes. Upon written 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.



### 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.