



**Liberty Common School**

1725 Sharp Point Dr. Fort Collins, CO 80525

**Liberty Common High School**

2745 Minnesota Dr. Fort Collins, CO 80525

**EXHIBIT A**

**CONFIDENTIALITY, PRIVACY, AND SECURITY ADDENDUM**

This Confidentiality Addendum (“Addendum”) is hereby incorporated into any Agreement between Liberty Common School (LCS) and McGraw-Hill School Education, LLC (Contractor). This Addendum is part of the Contract between LCS and the Contractor.

**RECITALS**

- A. LCS wishes to disclose certain information to Contractor pursuant to the work being performed by Contractor, some of which may constitute Student Personally Identifiable Information (PII) (defined below).
- B. LCS and Contractor intend to protect the privacy and provide for the security of Student PII (PII) disclosed to Contractor pursuant to the Contract. Contractor shall adhere to 22-16-101 *et. al.*, C.R.S.; the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g; and 34 C.F.R. Part 99.

The parties agree as follows:

**A. Definitions**

- 1. "Aggregate Data" means Student PII collected and reported at the group, cohort, or institutional level that is aggregated using protocols that are effective for preserving the anonymity of each individual included in the data.
- 2. "Destroy" refers to data destruction, and means to remove Student PII from Contractor’s systems, paper files, records, databases, and any other media regardless of format, in accordance with governing law and current industry standards, so that the Student PII is permanently irretrievable in the Contractor’s and Subcontractor’s normal

course of business.

3. "Incident" means a confirmed accidental or deliberate activity that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of communication and information resources. Activities that result in an Incident may include, but are not limited to (i) successful attempts to gain unauthorized access to a LCS system or Student PII regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a LCS system for the processing or storage of Student PII; (iv) a material breach of the Contract that involves the misuse or unauthorized release of Student PII; or (v) changes to LCS system hardware, firmware, or software characteristics without LCS's knowledge, instruction, or consent.
4. "School Service" means an internet website, online service, online application, or mobile application that is designed and marketed primarily for use in a preschool, elementary school, or secondary school; is used at the direction of teachers or other employees of LCS; and collects, maintains, or uses Student PII. School Service does not include an internet website, online service, online application, or mobile application that is designed and marketed for use by individuals or entities generally, even if it is also marketed to a United States preschool, elementary school, or secondary school.
5. "School Service Contract Provider (Contractor)" means an entity, other than a public education entity or an institution of higher education that enters into a formal, negotiated contract with LCS to provide a School Service.
6. "Student PII" means information that, alone or in combination, personally identifies an individual student or the student's parent or family, and that is collected, maintained, generated, or inferred by a public education entity, either directly or through a School Service, or by a School Service Contract Provider. Student PII also includes other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.
7. "Subcontractor" means any third party engaged by Contractor to aid in performance of Contractor's obligations. LCS understands that Contractor will rely on one or more subcontractors to perform services under this Agreement. Contractor agrees that all subcontractors, and any successor entities, will be subject to state and federal laws and to the terms of the Agreement, and any Student PII disclosed to subcontractors shall be revealed to LCS upon request.
8. "Targeted Advertising" means selecting and sending advertisements to a student based on information obtained or inferred over time from the student's online behavior, use

of applications, or Student PII. Targeted Advertising does not include advertising to a student at an online location based on the student's current visit to that location or in response to the student's request for information or feedback and is without the collection and retention of a student's online activities over time. Targeted Advertising also does not include adaptive learning, personalized learning, or customized education.

9. "Data" means all Student PII and other non-public information. Data may not be used for any purposes other than the specific purposes outlined in this Agreement. Data does not include Aggregate Data.

## B. General Provisions

1. LCS reserves all right, title, and interest, including all intellectual property and proprietary rights, in and to LCS system data, Student PII, and all related identifiable data and content.
2. Contractor shall comply with all applicable laws and regulations concerning confidentiality of Student PII.
3. Except as otherwise expressly prohibited by law, Contractor shall immediately forward to LCS's principal representative any request or demand from a third party for Student PII in the possession of Contractor.
4. Upon written request of LCS, Contractor shall submit its data processing facilities for an audit of the measures referred to in this Addendum by LCS or by a LCS approved delegate no more than once per year.
5. Contractor shall send LCS a written notice, which includes a clear explanation of the proposed changes prior to making a material change to Contractor's privacy policies that will have a material detrimental effect on LCS's rights under this Addendum. Contractor shall require LCS's informed consent before any such new privacy policies are implemented.

## C. Subcontractors

1. Contractor shall not use a Subcontractor or disclose Student PII to a Subcontractor unless and until the Contractor contractually requires the Subcontractor to comply with C.R.S. §§22-16-108 through 22-16-110 and the requirements of this Addendum.
2. If Contractor discovers that Subcontractor or any subsequent subcontractor has committed a material breach of the contract between Contractor and Subcontractor that involves the misuse or unauthorized release of Student PII, Contractor acknowledges that LCS may terminate the contract with Contractor.
3. Upon discovering the misuse or unauthorized release of Student PII held by a Subcontractor or any subsequent Subcontractor, Contractor shall notify LCS as soon as reasonably feasible, subject to compliance with any investigations by law enforcement, in the event the misuse or unauthorized release by the Subcontractor results in a

material breach of the terms of the Contract or results in an Incident.

4. No later than thirty (30) days after the signing of this Addendum, upon written request of LCS, Contractor will provide LCS information detailing the purpose of the contract between the Contractor and all Subcontractors and the types and uses of Student PII that Subcontractor(s) holds under the contract between the Contractor and Subcontractor(s).
5. Unless necessary to provide the Services under the Contract, Contractor shall not maintain or forward Student PII to or from any other facility or location except for backup and disaster recovery purposes. Any backup or disaster recovery contractor shall be considered a Subcontractor that must comply with the Subcontractor requirements in this Addendum.

#### D. End of Agreement

1. Should Contractor not comply with the requirements of this Addendum and that non-compliance results in the unauthorized use or release of Student PII by the Contractor that results in a data breach under applicable law, LCS may terminate the Contract immediately as provided under the Contract and in accordance with C.R.S. Section 22-16-107 (2)(a).
2. Upon written request by LCS made before or within thirty (30) calendar days after termination of the Contract, Contractor shall make available to LCS a complete and secure (i.e. encrypted and appropriately authenticated) download file of all Student PII and, to the extent available, its associated schema and transformation definitions, or associated delimited text files with documented, detailed schema definitions along with attachments in its native format.
3. In compliance with the prescriptions of C.R.S. 22-16-110 (3), following the termination of the Contract and upon written request from LCS, Contractor shall, within thirty (30) calendar days, Destroy all Student PII collected, generated, or inferred as a result of this Addendum. The Contractor shall notify LCS of the date upon which all Student PII is Destroyed.
4. LCS retains the right to use Contractor's established operational services to access and retrieve Student PII stored on Contractor's infrastructure.

#### E. Use

1. In compliance with C.R.S. 22-16-109 (1)(a), the Contractor shall not use or share Student PII beyond the purposes set forth as follows:
  - a. To only carry out the Contractor's responsibilities listed in Exhibit A, Statement of Work.
  - b. To provide certain online educational products and services and related content licensed by LCS from Contractor, to be accessed by end users enrolled by LCS. .
2. In the event the Contract requires Contractor to store, process or transfer Student PII, Contractor shall store, process, and transfer Student PII only in or to facilities located within the United States.

3. During the term of the Contract, if LCS requests in writing the destruction of any Student PII collected, generated or inferred as a result of this Addendum, the Contractor shall Destroy the information within twenty-eight (28) days after the date of the request unless:
  - a. LCS obtains the consent of the student (provided that the student is over the age of 18) or the student's parent or legal guardian to retain the student's PII; or
  - b. The student has transferred to another public education entity and the receiving public education entity has requested from LCS to retain the student's PII.
4. If Contractor seeks to share or publicly release Student PII without complying with the requirements of this Addendum for Subcontractors, Contractor must de-identify or aggregate the Student PII prior to providing that information to a third party or releasing the data publicly. For Student PII that is de-identified or aggregate, the following requirements apply:
  - a. Student PII that must be aggregated or de-identified shall include not only direct identifiers, such as names, student IDs or social security numbers, but also any other sensitive and non-sensitive information that, alone or combined with other information that is linked or linkable to a specific individual, would allow identification.
  - b. Simple removal of direct identifiers from the Student PII to be released shall not constitute adequate de-identification.
  - c. Contractor shall de-identify Student PII to remove cumulative re-identification risks.
  - d. Contractor shall remove all Student PII that in conjunction with previous data releases and other reasonably available information, including publicly available directory information and de-identified data releases from education records and other sources would allow for identification of a particular student.
  - e. Contractor shall have specific steps and methods used to de-identify or aggregate Student PII to protect the confidentiality of the individuals. Contractor shall, at the written request of LCS, provide LCS with a document that lists the steps and methods the Contractor shall use to de-identify the information.
  - f. Any aggregate or de-identified data that is not properly de-identified or aggregated and is transferred to a third party without the controls of this Addendum for subcontractors or publicly released will be considered an Incident, misuse of Student PII, or unauthorized disclosure of Student PII.

#### F. Incident

1. If Contractor becomes aware of an Incident, , it shall notify LCS within as soon as reasonably feasible, subject to cooperation with any law enforcement investigation, and cooperate with LCS regarding recovery, remediation, and the necessity to involve law enforcement, if any.

2. If Contractor or any of its Subcontractors is the direct cause or source of the Incident, Contractor shall be responsible for the cost of legally required notifications to be sent to each person whose personal information may have been compromised by the Incident. Contractor shall determine the cause of an Incident and produce a remediation plan to reduce the risk of incurring a similar type of breach in the future. Contractor shall present its analysis and remediation plan to LCS as soon as feasible after notifying LCS of an Incident.
3. Disclosure of Student PII by Contractor or any Subcontractor for any reason may be cause for legal action by third parties against Contractor, LCS, or their respective agents. Contractor shall indemnify, save, and hold harmless LCS, its employees, and agents against any and all third party claims, damages, liability, and court awards including costs, expenses, and reasonable attorney fees incurred as a result of any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees that caused an Incident as defined under this Addendum. Notwithstanding any other provision of the Contract, Contractor shall be liable to LCS for all direct damages arising from an Incident caused by Contractor or its Subcontractors.
4. In the event of an Incident, Contractor shall provide LCS or its designated representatives with access seven (7) days a week, twenty-four (24) hours a day, for the purpose of evaluating, mitigating, or resolving the Incident.

#### G. Disallowed Activities

A Contractor that uses, creates, or acquires Student PII shall not knowingly engage in any of the following activities:

1. Contractor shall not collect, use or share Student PII for any purpose not specifically authorized by the Contract. Contractor may use Student PII for a purpose not strictly authorized by the Contract only with the written consent of LCS.
2. Contractor shall not use Student PII in a manner or disclose Student PII to any third party that is materially inconsistent with the Contractor's privacy policy, except as stated in subsection 3, below, of this Section G.
3. Contractor may use Student PII in a manner that is inconsistent with Contractor's privacy policy without violating the terms of this Addendum provided that the use does not involve selling or using Student PII for Targeted Advertising or creating a personal profile of the student, and the use is for one or more of the following purposes:
  - a. To ensure legal or regulatory compliance or to take precautions against liability.
  - b. To respond or to participate in the judicial process.
  - c. To protect the safety of users or others on Contractor's website, online service, online application, or mobile application.
  - d. To investigate a matter related to public safety.

If Contractor uses or discloses Student PII in accordance with Section G.3., Contractor

shall notify LCS within two (2) calendar days of the use or disclosure of the Student PII, unless legally prohibited.

4. Contractor shall not sell Student PII, except that this prohibition does not apply to the purchase, merger, or other type of acquisition of the Contractor, or any assets of the Contractor, by another entity, so long as the successor entity continues to be subject to the provisions of this Addendum.
5. Contractor shall not use or share Student PII with any party for the purposes of Targeted Advertising to students.
6. Contractor shall not use Student PII to create a personal profile of a student other than for supporting the purposes authorized by LCS.

#### H. Data Security

1. Contractor shall maintain a comprehensive information security program that is reasonably designed to protect the security, privacy, confidentiality, and integrity of Student PII. At a minimum, the information security program shall include the requirements listed in this Section H – Data Security.
2. Contractor shall provide physical and logical protection for all related hardware, software, applications, and data that meet or exceed industry standards and requirements as set forth in this Addendum. Contractor shall take full responsibility for the security of all Student PII in its possession, and shall hold LCS harmless for any damages or liabilities arising from a third party claim directly resulting from Contractor's unauthorized disclosure or loss thereof. Contractor shall provide for the security of such Student PII, based on industry standards and industry practices, including, without limitation, non-disclosure, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, network firewalls, intrusion detection (host and network), data security logging and monitoring systems, and audits.
3. Contractor shall provide LCS or its designated representatives with access, subject to Contractor's reasonable access security requirements, for the purpose of inspecting and monitoring access and use of Student PII, maintaining LCS systems, and evaluating physical and logical security control effectiveness no more frequently than one every twelve (12) months.
4. Contractor shall perform, to the extent legally permitted, background checks on all of its respective employees and agents performing services or having access to Student PII provided under this Addendum. The background checks must include, but are not limited to the following areas: County, State, National and Federal Criminal Records and a Sex Offender Registry Search.
5. Contractor shall have strong access controls in place.
6. Workstations and other data processing devices must automatically lock when not in use, and must be manually locked when left unattended.
7. Contractor shall protect all Student PII with a complex password. Contractor shall

ensure passwords are confidential and prohibit the sharing of passwords. Passwords must not be written down or stored in an unsecure location. Contractor shall periodically change passwords and shall ensure passwords are not reused. Contractor shall have password locks for laptops and mobile devices.

8. Contractor shall disable and/or immediately delete unused and terminated user accounts. Contractor shall periodically assess account inactivity for potential stale accounts.
9. Contractor shall not share Student PII on display screens, during demonstrations or presentations, or when sharing screen shots for troubleshooting or other purposes.
10. Contractor shall implement annual intrusion penetration/vulnerability testing.
11. Contractor will encrypt Student PII in transit and Student PII at rest on central computing systems. Contractor shall also encrypt any backup, backup media, removable media, tape, or other copies. In addition, Contractor shall fully encrypt disks and storage for all laptops and mobile devices.
12. Contractor shall provide annual, mandatory security awareness and Student PII handling training for all of its employees/independent contractors handling Student PII pursuant to this Addendum.
13. Contractor shall install and maintain on computers accessing or processing Student PII appropriate endpoint security anti-virus and anti-malware software. Contractor shall ensure all Contractor's data processing systems, servers, laptops, PCs, and mobile devices are regularly scanned and have all security patches applied in a timely manner.
14. Contractor shall use a secure method such as Secure File Transfer Protocol (SFTP) or comparable method to transmit Student PII. Contractor shall never send Student PII via unencrypted email or transport Student PII on unencrypted removable media.
15. Contractor shall have physical security in buildings housing Student PII, along with controlled physical access to buildings and/or data centers.
16. Contractor's devices used to copy or scan hard copies of Student PII must have encrypted storage. Contractor shall scrub storage devices when equipment is retired. Hard copies containing Student PII are discouraged and must be physically secured, not left unattended, and physically Destroyed.
17. Contractor shall protect Student PII stored in cloud-based systems in the same manner as local Student PII. Use of free cloud based services is prohibited. Contractor shall use secondary encryption to protect Student PII in cloud storage. Cloud environments, when employed by Contractor, must be fully documented by Contractor and reasonably open to LCS inspection and verification. Access to Contractor's cloud based computing environments is only permitted via restricted access, by VPN or least privileged access lists, and never accessible directly via the Internet.

#### I. Transparency Requirements

1. Contractor shall facilitate access to and correction of any factually inaccurate Student



PII in response to a written request from LCS.

2. Contractor acknowledges that LCS may post this Addendum to LCS's website.
3. Contractor shall provide transparency to parents, school districts and the public about its collection and use of Student PII including posting the following information on its public website:
  - a. Contact information for an individual within Contractor's organization that can provide information on or answer questions related to the use of Student PII by Contractor.
  - b. An explanation of how the Student PII will be shared with Subcontractors or disclosed to any third party or successor entities.
  - c. The types of Student PII that are collected, generated, or used by the Contractor. This information must include all Student PII that is collected regardless of whether it is initially collected or ultimately held individually or in the aggregate.
  - d. An explanation of the Student PII, an explanation of how the Student PII is used, and the learning purpose for which the Student PII is collected and used.

Contractor shall update this information on its website as necessary to maintain accuracy. For purposes of this Addendum, Contractor's end user privacy notice can be found at <https://www.mheducation.com/privacy.end-user.html>

4. Contractor shall, upon written request from LCS, provide the names of Subcontractors, data elements accessible by Subcontractors, and Subcontractors use or planned use of sharing Student PII.

J. Exclusions:

This Addendum does not:

1. Impose a duty on a provider of an interactive computer service, as defined in 47 U.S.C Sec. 230, to review or enforce compliance with this Addendum.
2. Impede the ability of a student to download, export, or otherwise save or maintain his or her own Student PII or documents.
3. Limit internet service providers from providing internet connectivity to public schools or to students and their families.
4. Prohibit a Contractor from marketing educational products directly to parents so long as the marketing does not result from the use of Student PII obtained by the Contractor as a result of providing its services under this Addendum.
5. Impose a duty on a provider of an electronic store, gateway, marketplace, or other means of purchasing or downloading software or applications to review or enforce compliance with this Addendum on that software or those applications.

K. This Addendum does not prohibit Contractor's use of Student PII to:

1. Use adaptive learning or design personalized or customized education, so long as Contractor has agreed to the transparency requirements of this Agreement.
2. Maintain, develop, support, improve, or troubleshoot a Contractor's website, online service, online application, or mobile application.
3. Provide recommendations for school, education, or employment purposes, provided Contractor does not receive any payment or other consideration from a third party to make or support the recommendation.
4. Respond to a student's request for information or feedback provided Contractor does not receive any payment or other consideration from a third party for the information or feedback.
5. Identify, for a student, institutions of higher education or scholarship providers that are seeking students who meet specific criteria, only if Contractor has obtained the written consent of the student or the student's parent or legal guardian. Contractor may use Student PII for this purpose regardless of whether the institutions of higher education or scholarship providers provide payment or other consideration to the Contractor.
6. In accordance with the terms of this Addendum, produce and distribute, free or for payment or other consideration, student class photos and yearbooks only to LCS, students, parents, or individuals authorized by parents.
7. Provide for the student, only with the express written consent of the student or the student's parent or legal guardian given in response to clear and conspicuous notice, access to employment opportunities, educational scholarships or financial aid, or postsecondary education opportunities, regardless of whether the Contractor receives payment or other consideration from one or more third parties in exchange for the Student PII. This exception applies only to Contractors that provide nationally recognized assessments that postsecondary institutions of higher education use in making admissions decisions.

## **THE PARTIES HERETO HAVE EXECUTED THIS ADDENDUM**

**Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that LCS is relying on their representations to that effect.**

**McGraw-Hill School Education, LLC  
"CONTRACTOR)**

By: Brian Joniak  
Name of Authorized Individual

Title: Sr. Director Finance/Controller  
Official title of Authorized Individual



\*Signature  
Date: 1/27/2020

**LCS**

By: William Kranz  
Name of Authorized Individual

Title: Director of IT  
Official title of Authorized Individual



\*Signature  
Date: 6/20/2019