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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.

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

3. **Confidentiality of Protected Data**

(a) Vendor acknowledges that the Protected Data it receives pursuant to the MLSA may originate from several Participating Educational Agencies located across New York State, and that this Protected Data belongs to and is owned by the Participating Educational Agency from which it originates.

(b) Vendor will maintain the confidentiality of the Protected Data it receives in accordance with federal and state law (including but not limited to Section 2-d) and Erie 1 BOCES's policy on data security and privacy. Vendor acknowledges that Erie 1 BOCES is obligated under Section 2-d to adopt a policy on data security and privacy.. Erie 1 BOCES will provide Vendor with a copy of its policy. Vendor and Erie 1 BOCES agree to engage in good faith negotiations to modify this Data Sharing Agreement to the extent necessary to ensure Vendor's continued compliance with Section 2-d.

4. **Data Security and Privacy Plan**

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

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

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

(b) In order to protect the security, confidentiality and integrity of the Protected Data that it receives under the MLSA, Vendor will have the following reasonable administrative, technical, operational and physical safeguards and practices in place throughout the term of the MLSA:

- Pseudonymization and encryption of PII (TLS v1.2 and v1.3 for all data in transit between clients and server and AES256-CBC (256-bit Advanced Encryption Standard in Cipher Block Chaining mode) for encrypting data at rest).

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- Password protection.
- Ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services.
- Restore the availability and access to personal data in a timely manner in the event of a technical incident.
- Regularly test, assess and evaluate the effectiveness of technical and organizational measures ensuring the security of the processing.

(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. Vendor does not provide training on federal and state laws governing confidentiality of such data to its subcontractors. Notwithstanding the foregoing, the Vendor will execute written agreements with each subcontractor to ensure that they abide by terms consistent with and no less stringent than those outlined herein, including the obligation to provide training on the federal and state laws governing confidentiality of such data, and comply with state and federal laws and regulations. Vendor shall be liable for the acts and omissions of its subcontractors.

(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 breaches and unauthorized disclosures, and Vendor will provide prompt notification of any breaches or unauthorized disclosures of Protected Data in accordance with Section 6 of this Data Sharing and Confidentiality Agreement.

(g) Vendor will implement procedures for the return, transition, deletion and/or destruction of Protected Data at such time that the MLSA is terminated or expires, as more fully described in Erie 1 BOCES' "Supplemental Information about the MLSA," below.

5. **Additional Statutory and Regulatory Obligations**

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

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

(b) Limit internal access to Protected Data to only those employees or subcontractors that need access in order to assist Vendor in fulfilling one or more of its obligations under the MLSA.

(c) Not use education records for any purposes other than those explicitly authorized in this Data Sharing and Confidentiality Agreement.

(d) Not disclose any personally identifiable information to any other party, except for authorized representatives of Vendor using the information to carry out Vendor's obligations under the MLSA, unless:

(i) the parent or eligible student has provided prior written consent; or
(ii) the disclosure is required by statute or court order and notice of the disclosure is provided to Participating Educational Agency no later than the time of disclosure, unless such notice is expressly prohibited by the statute or court order.

(e) Maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of personally identifiable student information in its custody;

(f) Use encryption technology that complies with Section 2-d, as more fully set forth in Erie 1 BOCES' "Supplemental Information about the MLSA," below.

(g) Provide notification to Erie 1 BOCES (and Participating Educational Agencies, to the extent required by, and in accordance with, Section 6 of this Data Sharing and Confidentiality Agreement) of any breach of security resulting in an unauthorized release of Protected Data by Vendor or its assignees or subcontractors in violation of state or federal law or other obligations relating to data privacy and security contained herein.

(h) Promptly reimburse Erie 1 BOCES, another BOCES, or a Participating School District for the full cost of notification, in the event they are required under Section 2-d to notify affected parents, students, teachers or principals of a breach or unauthorized release of Protected Data attributed to Vendor or its subcontractors or assignees.

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

(a) Vendor shall promptly notify Erie 1 BOCES of any breach or unauthorized release of Protected Data in the most expedient way possible and without unreasonable delay, but no more than seven (7) calendar days after Vendor has discovered or been informed of the breach or unauthorized release.

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(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.

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EXHIBIT D (CONTINUED)

PARENTS BILL OF RIGHTS FOR DATA PRIVACY AND SECURITY

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

(1) A student's personally identifiable information cannot be sold or released for any commercial purposes.

(2) Parents have the right to inspect and review the complete contents of their child's education record.

(3) State and federal laws protect the confidentiality of personally identifiable information, and safeguards associated with industry standards and best practices, including but not limited to, encryption, firewalls, and password protection, must be in place when data is stored or transferred.

(4) A complete list of all student data elements collected by the State is available for public review at **http://www.nysed.gov/data-privacy-security/student-data-inventory**, or by writing to the Office of Information & Reporting Services, New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, New York 12234.

(5) Parents have the right to have complaints about possible breaches of student data addressed. Complaints should be directed in writing to the Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, New York 12234. Complaints may also be submitted using the form available at the following website **http://www.nysed.gov/data-privacy-security/report-improper-disclosure**.

BY THE VENDOR:

DocuSigned by:
Xavier Francas
9CCD98830E8946C...
Signature

Jaume Bohigas
Printed Name

Security & Infrastructure
Title

8/31/2023
Date

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EXHIBIT D (CONTINUED)

SUPPLEMENTAL INFORMATION

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

Erie 1 BOCES has entered into a Master License and Service Agreement ("MLSA") with Ed puzzle, Inc. which governs the availability to Participating Educational Agencies of the following Product(s):

Edpuzzle Instructional Software available at https://edpuzzle.com/

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

Exclusive Purpose for which Protected Data will be Used: The exclusive purpose for which Vendor is being provided access to Protected Data is to provide Participating Educational Agencies with the functionality of the Product(s) listed above. Vendor agrees that it will not use the Protected Data for any other purposes not explicitly authorized in the MLSA. Protected Data received by Vendor, or any of Vendor's subcontractors, assignees, or other authorized agents, will not be sold, or released or used for any commercial or marketing purposes. Vendor does not sell, release or otherwise use student personal information for commercial or marketing purposes. Nevertheless, teachers/staff from Participating Educational Agencies using "teacher accounts" within the Edpuzzle Service may receive marketing communications, solely from the Vendor, if express consent has been given in that sense. Teachers/staff may opt in and out of such communications at any time by enabling or disabling them through their account's settings page.

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:

a. Vendor shall ensure that, prior to any such disclosure, the assignee, agent or subcontractor receiving data has agreed in writing to comply with data protection obligations consistent with those applicable to Edpuzzle under applicable laws and regulations.

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b. Vendor shall assess the privacy and security policies and practices of third-party service providers to ensure such third-party service providers comply with best industry standards, including, but not limited to, ISO and NIST regulations.
c. Vendor only sends personal identifiable information to third-party services that are required to support the service and fully attend Vendor's user needs.
d. Vendor shall impose the data protection terms on any third-party service provider it appoints that at a minimum meets the requirements provided for by the MLSA

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 and written request by any Participating Educational Agency, or upon termination of the MLSA prior to expiration and written request by any Participating Educational Agency, or at any point upon written request by a Participating Educational Agency, 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. In the absence of a written request, Vendor will securely delete or otherwise destroy any and all Protected Data when no longer needed for the purposes for which it was collected, which will be deemed to occur upon eighteen (18) months of end-user account inactivity. If requested by Erie 1 BOCES and/or any Participating Educational Agency prior to the deletion of Protected Data, 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. Regarding exportable or retrievable data, teachers/staff of a Participating Educational Agency will have the ability to download names, responses, results and grades obtained by students in their assignments (i.e., student gradebooks) at any point prior to deletion of accounts. It is not possible to export or retrieve data that is (i) not compatible with the Edpuzzle service (such as "downloading" Edpuzzle videos – be it YouTube embeds or Edpuzzle originals, among others), (ii) technically impossible; or (iii) involve a disproportionate effort for Vendor.

- .

- Neither Vendor nor any of its subcontractors or other authorized persons or entities to whom it has disclosed Protected Data will retain any Protected Data, copies, summaries or extracts of the Protected Data, or any de-identified Protected Data, on any storage medium whatsoever. Upon request, Vendor and/or its subcontractors or other authorized persons or entities to whom it has disclosed Protected Data, as applicable, will provide Erie 1 BOCES with a certification from an appropriate officer that these requirements have been satisfied in full.

- Notwithstanding the foregoing, Vendor may keep copies and/or backups of data as part of its disaster recovery storage system, provided such data is (a) inaccessible to the public; (b) unable to be used in the normal course of business by the Vendor; and (c) deleted

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after a maximum term of six (6) months since the creation of said copies and/or backups. In case such copies and/or backups are used by Vendor to repopulate accessible data following a disaster recovery, Erie 1 BOCES shall be entitled to demand from the Vendor the immediate deletion of said copies and/or backups, by sending a written request at privacy@edpuzzle.com.

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. Notwithstanding the foregoing, Vendor may temporarily store user-generated content (which may or not contain personal information) in other countries in order for Vendor to provide a better service. Concretely, uploaded videos, audios or images may have a copy temporarily stored in other regions to reduce the time of load. This would happen if, for example, a user accessed Vendor's Product from Europe and displayed a video created by an American teacher. In such a case, a temporary copy of such media would be hosted on the European server Amazon Web Services has in that region.

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.

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Exhibit E

Functionality of the Edpuzzle Service
and Data Processing Practices

Supplement to

Master License and Service Agreement
between
Erie 1 BOCES and EDpuzzle, Inc.

EDpuzzle, Inc. ("Vendor"), having its principal offices at 833 Market Street (Suite 427), San Francisco, CA 94103, and Board of Cooperative Educational Services for the First Supervisory District, Erie County having its principal offices at 355 Harlem Road, West Seneca, NY 14224 ("Erie 1 BOCES"), have entered into a Master License and Services Agreement, the term of which ends June 30, 2026 (the "Agreement"). By this Supplement, Vendor and Erie 1 BOCES wish to provide additional information on the functionality of the services provided by Vendor (the "Edpuzzle Service") and relevant data processing practices related to the provision of the Edpuzzle Service.

Erie 1 BOCES and Vendor hereby agree:

(1) Licensees shall use the Product(s) in accordance with their nature and purpose and shall respect limitations on usage of the Product(s) as specified in Vendor's "Terms of Service" (https://edpuzzle.com/terms), especially in the "Use Restrictions" section, unless otherwise foreseen in this Agreement.

(2) Vendors will maintain a single statewide agreement. This means the same products shall not be found on other state wide consortium agreements including 6360 Instructional Technology Consortium, 7710 RIC Consortium, 5877 Distance Learning Consortium, or 6316 DREAM. Notwithstanding the foregoing, Vendors may enter into single BOCES and/or school district contracts.

(3) The Edpuzzle Service does not allow for users to transfer information or content from one account to another, especially because content generated by students is fully dependent on teacher assignments, meaning they are an indispensable part of student grading. Consequently, students are not granted control over their responses and assignments.

(4) Without prejudice to the foregoing, and pursuant to Vendor's "Terms of Service" (https://edpuzzle.com/terms), ownership of service accounts held by teachers is retained by such teachers, and removal of teacher accounts is left at the teacher's discretion. In particular:

Edpuzzle Teacher Accounts belong to teachers, regardless of the email address used when signing up for the Services. If an educational institution, organization or company disables an email address and login is not possible, Edpuzzle won't be able to recover said account. Additionally, if teachers utilize the Service through a Pro license acquired

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by another party for them to use (e.g., bought by their school for teaching purposes), the party paying for such feature has the right to control access to and get usage reports of such paid feature; however, such party does not have rights to a teacher's personal account.