Master License and Service Agreement

This statewide Instructional Technology Contract Consortium ("NYSITCC") Master License and Service Agreement ("Agreement" or "MLSA") is made and entered into by and between ExploreLearning, LLC ("Vendor"), having its principal offices at 17855 Dallas Parkway, Suite 400, Dallas, TX 75287, and the **Board of Cooperative Educational Services for the First Supervisory District, Erie County, on behalf of itself and each participating BOCES hereunder** ("Customer"), having its principal offices at 355 Harlem Road, West Seneca, NY 14224. Vendor and Customer are sometimes referred to herein, individually, as a "Party," and collectively, as the "Parties."

Boards of Cooperative Educational Services ("BOCES"), including Customer, are municipal corporations organized and existing under Section 1950 of the New York Education Law, and are authorized to provide access to cooperative educational services to school districts in New York State pursuant to cooperative educational service agreements ("CoSers") approved by the New York State Education Department.

Regional Information Centers ("RICs"), organized and administratively aligned under a BOCES, provide shared technology and other educational support services on a regional basis to its BOCES' component school districts, and to other BOCES and school districts located within the RIC's respective region.

Cooperative educational services provided by a BOCES (by the BOCES itself, or if applicable, its respective RIC) include shared computer services, software, and technical training and support that are provided to school districts that enter into applicable CoSers.

Customer is authorized to issue requests for proposals, award and enter into contracts for the purchase of instructional software applications that can be made available to school districts as part of applicable approved CoSers, on behalf of itself and other BOCES across New York State that participate in a statewide Instructional Technology Contract Consortium ("NYSITCC"). Through Customer's procurement process, ExploreLearning, LLChas been identified and accepted by Customer as a provider of ExploreLearning, LLC products and services, as more fully described herein in Exhibit A attached hereto and by this reference made part hereof of this Agreement (hereinafter referred to as the "Product(s)" or "Application(s)").

As Customer and several other BOCES throughout New York State have expressed an interest in offering the Product(s) to school districts as part of the applicable approved CoSers, Customer wishes to make the Product(s) available through the NYSITCC.   Accordingly, the Parties have entered into this Agreement to set forth the terms upon which the Product(s) will be made available by Customer to itself and to other BOCES and school districts through the NYSITCC.

For clarity, references to "school district" in this Agreement shall be understood to mean a "Participating Educational Agency" as defined in Exhibit D hereto, and refers to districts in the state that purchase a product or service under this NYSITCC Agreement.

1. TERM and TERMINATION

1.1 Term of Agreement. The Effective Date of this Agreement shall be July 1, 2023. The initial term of this Agreement shall commence on the Effective Date and continue until 11:59 pm June 30, 2026 ("the Initial Term"), unless earlier terminated as otherwise set forth herein. The Initial Term may be extended for successive renewal terms of three (3) years (each a "Renewal Term") only by mutual execution by the Parties of either a written Amendment to this Agreement, or, a new Agreement.

1.2 Termination of Agreement. Either Party may terminate this Agreement for any reason prior to the expiration of its Initial Term (or the expiration of any Renewal Term) upon ninety (90) days' written notice to the other, provided however that Customer will be responsible for payment by Customer or districts in the state that purchase service under this NYSITCC Agreement of all orders processed and fees incurred under this Agreement prior to the end of this ninety day notice period. For clarity, while other BOCES may withdraw from this Agreement by providing thirty (30) day written notice to Vendor (and subject to payment by such BOCES for all orders processed and fees incurred), Erie 1 BOCES, as the prime BOCES for this Agreement, is the only BOCES authorized to terminate this Agreement.

1.3 Termination by Customer. Customer shall have the right to terminate this Agreement at any time prior to the expiration of its Initial Term (or the expiration of any Renewal Term) in the event of Vendor's failure to cure any default or breach of this Agreement within (30) days written notice from Customer.

2. SCOPE OF SERVICES

Acting as an independent contractor, Vendor will provide the Product(s) as more fully described and at the prices stated in **Exhibit A**, attached to this Agreement and incorporated by reference. Any services related to the Product(s) to be provided by Vendor, including but not limited to consulting, educational, hosting, system administration, training or maintenance and support services ("Services"), shall be as more fully described within this Agreement and at the prices stated in **Exhibit A**, attached to this Agreement and incorporated by reference.

3. GRANT OF LICENSE

3.1 The Product(s) are provided under license, and are not sold. Upon acceptance of this Agreement by Customer and acceptance of each applicable Order Form by Vendor, Vendor grants to Customer, as a participating BOCES in the NYSITCC on behalf of the Western New York Regional Information Center ("WNYRIC"), and to each other BOCES that is a participant in the NYSITCC (and, where applicable, on behalf of its RIC), on behalf of itself and each applicable school district identified on the applicable Order Form ("Licensee"), a limited, revocable, non-assignable, non-transferable and non-exclusive license to utilize the Product(s) and receive the services identified in and for the period of time set forth in the applicable Order Form pursuant to the terms and conditions set forth herein. Vendor further grants to each individual school district that contracts for and purchases the Product(s) through a BOCES through the NYSITCC Agreement by purchasing CoSer 6360 Instructional Technology Service and provides professional development by purchasing CoSer 6368 Model Schools, as identified in the applicable Order

Form, a limited revocable non-assignable, non-transferable and non-exclusive license to utilize the Product(s) and receive the services identified in the applicable Order Form pursuant to the terms and conditions set forth herein. For purposes of the preceding sentence, utilization of the Product means access by an Authorized End User to the functionality of the Product by means of password-protected access to a Vendor Website, mobile application, or Licensee's or school district's Learning Management System ("LMS") for K- 12 student literacy instruction purposes only. For purposes of the licenses granted by Vendor pursuant to this Agreement, Customer, each other BOCES, and each individual school district as described herein shall be as identified in the applicable Order Form, and may also be referred to individually as a "Licensee" and collectively as "Licensees." Licensees shall not assign, sublicense or otherwise encumber or transfer the Product(s) without the prior written consent of the Vendor. Nothing herein shall act to transfer any interest in the Product(s) to any Licensee, and title to and ownership of the Product(s) shall at all times remain with the Vendor. The license granted by Licensor gives Licensee the right to access and receive the applicable Products and services as follows

      3.1.1   Licenses: The subscription period shall be from the effective date through the next June 30th and in no case can extend beyond the next June 30th ("Subscription Period"). The Subscription Period and maximum number of Authorized End Users of the Product is specified on the applicable Order Form. No material terms of this Agreement can be amended or changed by the Order Form. A unique user name will be required for each Authorized End User to access the Product in the context of the specified license and will then become a single user subject to above. Information regarding the counting mechanism is available from the online administrative portal or from the Vendor account representative.

      3.1.2   Internet: Continuous Internet access and minimum systems requirements are required to use the Vendor Product. These are the responsibility of Licensee and its Authorized End Users and is not provided by Licensor.

      3.1.3   Enterprise Administrators: Licensee will designate at least one Licensee staff Authorized End User to act as Enterprise Administrator for the Product licenses with each account. The Enterprise Administrator will be granted administrator privileges for the account, enabling the Enterprise Administrator to assign, disable and otherwise administer all other Authorized User access. Licensee represents, warrants and agrees that each Enterprise Administrator shall have authority, on behalf of Licensee, to perform his or her duties, and serve as primary point of contact to and direct Licensor with respect to Product, Student Data, Teacher or Principal Data and service operations to Licensee and its Authorized End Users under the applicable Vendor account. If, during the term of the Product Subscription Period as defined in the applicable Order Form, a then-current Enterprise Administrator ceases to be an active employee of Licensee or ceases to serve as an Enterprise Administrator, and if there are no remaining Enterprise Administrators, Licensee shall promptly appoint another staff Authorized End User as an Enterprise Administrator. When an Enterprise Administrator accesses the Product using his or her Password, the Product shall provide the Enterprise Administrator with certain administrative capabilities with respect to Licensee's

use of the Product that other Authorized End Users will not have, including the ability to cancel Password access and thereby deny access to the Product through use of such Password. Using such functionality provided by the Product, Licensee agrees that the Enterprise Administrator shall promptly deactivate and cancel Password access of any Authorized End User, including any Enterprise Administrator, who (i) ceases to be employed by Licensee, (ii) Licensee no longer wishes to have access to the Product, or (iii) Licensee knows or reasonably believes is causing or may cause Licensee to breach any provision of this Agreement or is in any way mishandling Passwords or accessing or using the Product in violation of this Agreement. Licensee shall notify Licensor at the time a password access is deactivated or cancelled for any of the reasons specified in clauses (i) through (iii) above.

3.1.4   Vendor reserves all rights in the Product not expressly granted to Licensee in these terms and conditions. Licensee acknowledges and agrees that Vendor or its third-party licensors own all right, title and interest in and to the Product (including, without limitation, all software, code, interfaces, text, photographs, graphics, animation, applets, music, video and audio incorporated therein and any related user guides and documentation), the trademarks and other marks related to Licensor's products and URLs such as www.explorelearning.com, and the trade dress, and look and feel of the Product, all of which are covered by various protections including, without limitation, copyright, trademark, and trade secrecy law. If Licensee suggests new features or functionality that Vendor, in its sole discretion, adopts for the Product, such new features or functionality will be the sole and exclusive property of Vendor and any and all claims of Licensee as to the same are hereby waived and released. Vendor reserves the right, in its sole discretion and without incurring any liability to Licensee, to update, improve, replace, modify or alter the specifications for and functionality of all or any part of the Product from time to time.

3.1.5   Trademark License: During the Term of this Agreement, Vendor grants Customer a limited, revocable, non-exclusive, non-transferrable and royalty-free right and license to use those certain names, logo, trademarks, service marks and trade name, and/or other proprietary content (collectively the "Proprietary Materials") of and as provided by Vendor, for the purposes of messaging the availability of Product under this Agreement to its Participating Educational Agencies and Authorized End Users, subject to the Vendor's standard licensing guidelines as provided by the Vendor and Vendor's regular quality review. Such license does not confer on Customer any other rights with respect to the intellectual property of Vendor. All advertising, promotional and marketing material containing the licensed name, logo, trademarks, service marks or trade name of Vendor is subject to the prior review and approval of the Vendor.

3.2   Vendor may terminate the license granted to a Licensee under this Agreement if the Licensee fails to comply with any terms and conditions of this Agreement that are specifically applicable to that entity as a Licensee. Within five (5) days of receipt of such termination, the Licensee shall return all materials related to the Product(s) and, to the extent applicable, arrange with Vendor to remove the Product(s) from the computers located at the Licensee's sites or under the direct control of Licensee.

3.3   Vendor warrants that it has full power and authority to grant the rights herein described.   Vendor's obligation and liability under this Section 3 shall be to obtain any

authorization necessary to make effective the grant of license to Licensees to use the Product(s), in such a manner or method as determined by Vendor, at Vendor's own cost and expense.

4. USE of PRODUCTS, PROTECTION OF APPLICATION and CONFIDENTIAL INFORMATION

4.1 Product(s) shall be utilized in a cloud environment hosted by Vendor with license accounts to the designated Participating Educational Agency identified in the applicable Order Form, and shall be used solely for the benefit of the applicable Licensees. Licensees shall not permit or provide for transfer or reproduction of the Product(s), or any portion thereof, to be placed on a computer not at the Licensee's designated sites or under the direct control of the Licensee, by physical or electronic means, unless specifically authorized by Vendor and/or as otherwise provided in this Agreement.

4.2 The Product(s) are protected by copyright law. Vendor hereby confirms that Vendor is the owner of the copyright in the Product(s) described in **Exhibit A**, as well as an authorized source or reseller for the Product(s) in the state of New York. Licensees shall not make or allow others to make copies or reproduction of the Product(s), or any portion thereof in any form without the prior written consent of Vendor and/or as otherwise provided in this Agreement. The unauthorized copying, distribution or disclosure of the Product(s) is prohibited and shall be considered a material breach of this Agreement.

4.3 Except as expressly stated herein, no Licensee may, or knowingly permit others to, alter, modify, or adapt the Product(s), including but not limited to translating, reverse engineering, decompiling, disassembling, or creating derivative works, and may not take any other steps intended to derive or produce the source code or language state of the Product(s) or any part thereof, or access or use the Product or any component thereof for any purpose other than the literacy instruction of Authorized End Users according to the terms hereof, without the prior written consent of Vendor. Licensee may not, and may not permit others to, directly or indirectly sell, rent, lease, loan, or timeshare the Product, or sublicense the Product except to is Authorized End Users as provided hereunder.

4.4 The Licensee shall be the sole owner and custodian of any information or data, including but not limited to any Student Data as defined herein, transmitted to, received, or manipulated by the Product(s), and associated with Product accounts and services purchased under this Agreement, except as otherwise specifically set forth in this Agreement. For clarity, the applicable district-designated account administrator(s) for each purchasing district's Product account, which account administrator may be a BOCES personnel, if and as determined, designated and assigned to such account administrator role and privilege by the applicable district, will serve as primary point(s) of contact to Vendor with respect to that district's Product account, with authority to instruct and/or authorize Vendor with respect to Protected Data and other actions associated with the district's Product account.

4.5 Confidential Information. Each Party will use the same degree of care to protect the other Party's Confidential Information as it uses to protect its own confidential information of like nature, but in no circumstances less than reasonable care. "Confidential Information" for purposes of this subparagraph means any information that is (i) marked or otherwise indicated as

confidential or proprietary, in the case of written materials, or, in the case of information that is disclosed orally or written materials that are not marked, by notifying the other Party of the proprietary and confidential nature of the information, such notification to be done orally, by email or written correspondence, or via other means of communication as might be appropriate, and/or (ii) is of a type or nature that would be clearly recognized as confidential by a reasonable party acting in good faith. Notwithstanding the foregoing, (a) Confidential Information of Vendor shall include the Product(s) and the terms of this Agreement (except those portions of the Agreement that Customer may be required to disclose by law or legal process) and (b) the Confidential Information of Customer shall include personally identifiable information regarding its and other Licensees' Authorized End Users provided in connection with the Product(s). Confidential Information does not include information which (a) was known to the receiving Party or in the public domain before disclosure; (b) becomes part of the public domain after disclosure by a publication or other means except by a breach of this Agreement by the receiving Party; (c) was received from a third party under no duty or obligation of confidentiality to the disclosing Party; or (d) was independently developed by the receiving Party without reference to Confidential Information. Disclosures of Confidential Information that are required to be disclosed by law or legal process shall not be considered a breach of this Agreement as long as the recipient notifies the disclosing Party, provides it with an opportunity to object and uses reasonable efforts (at the expense of the disclosing Party) to cooperate with the disclosing Party in limiting disclosure to the extent allowed by law.

   4.6   **Vendor Obligations Under NYS Education Law 2-d.**   For Student Data, or Teacher and Principal Data, as such terms are defined in New York Education Law Section 2-d, Vendor shall comply with all terms, conditions and obligations as set forth in the Data Sharing and Confidentiality Agreement incorporated into this Agreement by reference as **Exhibit D**. In the event that Vendor receives, stores or maintains Student Data, or Teacher and Principal Data provided to it by a Licensee, whether as a cloud provider or otherwise, the Vendor assumes all risks and obligations in the event of a breach of security of such data by Vendor or its Authorized Persons. "Authorized Persons" shall mean service providers and/or subcontractors utilized by Vendor to provision and support its products and services to its school and district customers, who are under contractual obligations of confidentiality and security with Vendor with respect to the data processed. Vendor shall not otherwise Vendor shall not subcontract or assign its obligation to store or maintain Student Data, or Teacher and Principal Data provided to it pursuant to this Agreement to a third-party cloud provider unless granted specific prior written permission from Customer.

   For clarity, the parties acknowledge and agree that, to the extent consistent with applicable law, Vendor may collect, use, analyze, and retain data generated through the use by BOCES, the Participating Educational Agency and authorized end users of the Vendor Products and services, from which all personally identifiable information and individually identifying attributes have been removed ("De-identified Data"), for benchmarking, development of best practices, improvement or development of Vendor's educational products and services, and/or for educational research and statistical purposes. Vendor shall in no event attempt to re-identify De-identified Data or authorize others to do so and will not disclose it to any third party unless the recipient agrees not to attempt to re-identify the information

5.   REPRESENTATIONS, WARRANTIES AND DISCLAIMERS

5.1   Mutual. Each Party represents and warrants that it has the power and authority to enter into this Agreement and that the Party's execution, delivery, and performance of this Agreement (a) have been authorized by all necessary action of the governing body of the Party; (b) do not violate the terms of any law, regulation, or court order to which such Party is subject or the terms of any agreement to which the Party or any of its assets may be subject; and (c) are not subject to the consent or approval of any third party, except as otherwise provided herein.

5.2   Intellectual Property. Vendor warrants that use of the Product(s) does not infringe any United States patent, copyright, or trade secret. Vendor will indemnify Customer and any other applicable Licensee and hold it or them harmless from and against any and all claims, actions, damages, liabilities and expenses in connection with any allegation that the use of the Product(s) provided hereunder infringed upon any United States patent or pending application for letters patent or constituted an infringement of any trademark or copyright. Customer or the other Licensee, as applicable, MUST notify Vendor in writing of such suit, claim, action, proceeding or allegation(s) promptly upon becoming aware of same. Vendor shall have sole control of the defense. Customer or the other Licensee, as applicable, shall provide reasonable information and assistance to the Vendor at the Vendor's expense.

5.2.1 Vendor shall have the right to make such defense by counsel of its choosing and Customer or the other Licensee, as applicable, shall cooperate with said counsel and Vendor therein and promptly provide all reasonable information and assistance to the Vendor at the Vendor's expense.

5.2.2 If the Product(s) are held to infringe, or in Vendor's opinion is likely to be held to infringe, any United States Patent or pending applications for Letters Patent, or any Trademark or Copyright, Vendor shall, in addition to its obligations as set forth in paragraphs 5.2 and 5.2.1 above, at its expense, (a) secure the right for Customer or the other Licensee, as applicable, to continue use of the Product(s) or (b) replace or modify the Product(s) to make it non-infringing. If commercially reasonable efforts to perform the foregoing are unsuccessful, Customer or the other Licensee, as applicable, shall be entitled to a pro-rata refund of fees paid by Customer or the Licensee to Vendor pursuant to this Agreement, calculated as of the date Customer or the Licensee, as applicable, was prohibited from using the Product(s). **5.2.3** Vendor shall have no obligation with respect to any such claim of infringement based upon or arising from (a) the use of the Product other than in accordance with this Agreement, provided the claim or liability would have been avoided but for such misuse; or (b) modifications of Vendor Products, machines, content or programming made by Customer or any other Licensee without Vendor's approval, or upon their combination, operation, or use by Customer or any other Licensee with apparatus, data, or programs not furnished by Vendor, without Vendor's approval.

5.3   Warranties. Vendor represents and warrants that (a) the Product(s) will perform substantially in accordance with the specifications set forth in the then-current Documentation, if any, for such Product(s), and that (b) the Services will be performed in a professional and workmanlike manner. In the event of a non-conformance of the Product(s) or Services, reported to Vendor by Customer or any other Licensee, Vendor shall make commercially reasonable efforts to correct such non-conformance. In the event that Vendor is unable to correct such non-conformance, Vendor will provide Customer or the other Licensee, as applicable, with replacement or repair of defective Product(s), re-performance of Services, or a pro-rata refund of

fees paid pursuant to this Agreement, calculated as of the date of commencement of any period of non-conformance.

5.4 Remedies available to Customer or any other Licensee for damage or loss to the Product(s) shall be the repair or replacement of the Product(s) or a pro-rata refund of fees paid pursuant to this Agreement, calculated as of the date of commencement of the damage or loss. Vendor shall have no liability or responsibility for damage or loss to the Product(s) caused by any alteration or modification by a Licensee not authorized by Vendor, or for damage or loss arising out of the malfunction of Licensee's equipment or other software not supplied by Vendor.

5.5 **Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, VENDOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY WITH RESPECT TO THE PRODUCT(S) AND SERVICES, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. VENDOR DOES NOT WARRANT THAT THE PRODUCT(S) WILL PERFORM OR OPERATE UNINTERRUPTED OR ERROR-FREE, OR THAT THE FUNCTIONS CONTAINED IN THE PRODUCT(S) WILL MEET ANY LICENSEE'S PARTICULAR REQUIREMENTS OR PURPOSE.

During the term of this Agreement or any Order Form hereunder, Vendor may provide certain alterations, modifications, patches or other changes ("Updates") to the Product offered under this Agreement that Vendor determines to make generally available to users of such Product at no additional charge. Vendor anticipates that its products and solutions will evolve over the course of any multi-year contract and therefore reserves the right to discontinue and/or replace any Product with a product of materially similar functionality during the Term or any renewal, provided however that Vendor shall use commercially reasonable efforts to notify Customer in advance of such change and to provide and support existing product through the remainder of any then- existing Customer or school district's subscription term.

5.6 **Customer Representations and Warranties.** Customer on behalf of itself and school districts that purchase a product or service under this NYSITCC Agreement hereby represent and warrants to Vendor:

5.6.1 That all BOCES that are participants in the NYSITCC, including Customer, have agreed to be bound by the terms of this Agreement and perform their specific obligations as participating BOCES herein.

5.6.2 That the provision of Student Data and/or Teacher and Principal Data (as defined herein and in Exhibit D), and the authorization and instructions by the BOCES and/or the Enterprise Administrator for the applicable school district for the applicable account with respect to Vendor's processing of same, shall at all times be in compliance with all applicable laws, including FERPA and NYS Education Law 2-d, and including all notice and consent requirements.

5.6.3 That all BOCES that are participants in the NYSITCC, including Customer, will take reasonable measures to ensure that all of the sites used by BOCES and school district Licensees within their jurisdiction will meet the systems and network minimum requirements set forth on **Exhibit C**, attached to this Agreement and made a part hereof.

5.6.4 That all BOCES that are participants in the NYSITCC, including Customer, will take steps to ensure that BOCES and school district Licensees within their jurisdiction use their best efforts to make staff available for training in how to utilize the Product(s) as requested by Vendor.

5.6.5 That all BOCES that are participants in the NYSITCC, including Customer, will provide Vendor with the name of a contact person (hereinafter referred to as the "BOCES Contact") who will have the authority to act on behalf of the BOCES and school district Licensees within their jurisdiction with regards to any questions or issues that may arise during the installation or implementation of the Product(s). Unless authorized or directed by that BOCES Contact, the Vendor will have no other contact within the BOCES regardless of previous working relationships. The Vendor will provide written communication to the BOCES Contact if it plans to demo/visit a BOCES or school district Licensee within that BOCES' jurisdiction. This communication will occur a minimum of two (2) days prior to the demo/visit. For clarity, nothing in this Agreement shall be deemed to restrict or prohibit Vendor in any way from marketing or offering to, accepting orders for, or responding to technical or other inquiries regarding the Products or any other Vendor Product or Service apart from this Agreement from any district or other entity.

6. INDEMNIFICATION AND LIMITATION OF LIABILITY

6.1 Indemnification. Customer shall indemnify and hold harmless Vendor and its officers, directors, employees and agents and hold them harmless from any and all third party claims, liabilities, costs, and expenses, including attorney fees and expenses, arising from or relating to any breach by Customer of this Agreement. Vendor shall indemnify and hold harmless Customer and its officers, directors, employees and agents and hold them harmless from any and all third party claims, liabilities, costs, and expenses, including attorney fees and expenses, arising from or relating to any breach by Vendor of this Agreement.

6.2 **Limitation of Liability.** EXCEPT FOR A PARTY'S INDEMNITY OBLIGATIONS; THE CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTION 4.5 OF THIS AGREEMENT; A PARTY'S GROSS NEGLIGENCE OR WILFUL MISCONDUCT; AND THE VENDOR'S OBLIGATION UNDER NTS EDUCATION LAW 2- D SET FORTH IN SECTION 4.6 AND EXHIBIT D, EACH PARTY'S TOTAL LIABILITY TO THE OTHER PARTY FOR DAMAGES (OTHER THAN AS REQUIRED BY LAW) SHALL NOT EXCEED THE FEES PAYABLE FOR THE PRODUCT AND/OR SERVICES OVER THE LIFETIME OF THE AGREEMENT. WITH RESPECT TO A BREACH OF THE CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTION 4.5 OF THIS AGREEMENT AND A VENDOR'S OBLIGATIONS UNDER NTS EDUCATION LAW 2-D SET FORTH IN SECTION 4.6 AND EXHIBIT D, A PARTY'S TOTAL LIABILITY WILL NOT EXCEED TWO MILLION DOLLARS ($2,000,000.00). IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGE, WHATSOEVER, INCLUDING DAMAGES FOR LOST PROFITS, TIME, SAVINGS OR DATA OR FOR BUSINESS INTERRUPTION.

7. FEES AND PAYMENT

7.1 **License Fees.** In consideration of the licenses granted to each applicable BOCES and all applicable school district Licensees as described herein, and the Services to be performed

by Vendor hereunder, Customer agrees that each participating BOCES (including Customer) shall pay Vendor the applicable fees set forth in **Exhibit A** on behalf of each Licensee within its jurisdiction that participates in the applicable CoSers to receive Products and/or services under this Agreement during any fiscal year within the Initial Term of this Agreement or any Renewal Term in accordance with Exhibit A and applicable Order Form.

> **7.2   Pricing**. The fees set forth in **Exhibit A** shall be applicable during the period July 1, 2023 through June 30, 2024 (the first fiscal year within the Initial Term of this Agreement).

Vendor will provide to Customer proposed new pricing for each succeeding fiscal year within the Initial Term of this Agreement (or each succeeding fiscal year within any Renewal Term) by November 1 of each fiscal year, by notification to Michelle Okal-Frink, Erie 1 BOCES through the Vendor Hub Site - https://sites.google.com/e1b.org/erie1bocesvendorhub/home   or by certified letter addressed to 355 Harlem Road, West Seneca, NY 14224.   Michelle Okal-Frink will work with the Vendor to evaluate and accept pricing to be applicable during each succeeding fiscal year; however, in no event shall pricing increase by more than 2% annually. The Parties shall revise **Exhibit A** as needed to reflect any new prices as mutually agreed. If no notification is received by November 1 of any fiscal year, the fees established for the then current fiscal year will remain in effect for the subsequent fiscal year. After acceptance of the annual price list, vendors will send out renewal quotes to the individual BOCES by Nov 15th of that contract year. Quotes will be prorated for new business or renewals to align with the agreement annual terms ending June 30th as agreed to in the RFP response. If there is an overage with a school district the overage must be provided to BOCES prior to May 1st of the school year. The district will be able to cover those overages through a PO before June 1st. BOCES and school districts are not responsible for overages that come after May 1st and cannot pay any overages not identified by May 1st in the current or any future fiscal years.

> **7.3   Quotes**. Quotes applicable to any BOCES or school district Licensees based on the fees set forth in **Exhibit A** shall be provided to each BOCES Contact (including Customer's) or his/her designee. The Vendor will not provide quotes for Products to be purchased subject to this Agreement directly to any school district.. Each quote will reference the NYSITCC contract number and will be subject to this agreement. Each participating BOCES (including Customer) will issue a purchase order to Vendor confirming the applicable Order Form quote (such quote being consistent with the pricing agreed upon in the RFP response) on behalf of each Licensee within its jurisdiction that wishes to participate in the applicable CoSers and receive the Product/services ordered under this Agreement. The Vendor will not provide a BOCES quote for Products to be purchased subject to this Agreement to any BOCES outside of the consortium.

> **7.4   Invoices.**   When invoicing Customer, Vendor shall send Erie 1 BOCES invoices addressed to 355 Harlem Road, West Seneca, NY 14224 (Attention: Business Office) or email to ap@e1b.org; any other BOCES invoices shall be sent by Vendor to the other participating BOCES initiating the request. Vendor shall contact the BOCES contact at each other participating BOCES to receive the proper invoicing address. Payment shall be made by each participating BOCES (including Customer) within forty-five (45) days of either completion of the order for the activation of the Product(s) at the site of a Licensee, or the implementation meeting for service. Invoices must match the BOCES PO in order for payment to be released.

7.5 **Withdrawal.** Vendor acknowledges that due to the nature of BOCES services, individual Licensees may from time to time, during the Initial Term of this Agreement or any Renewal Term, withdraw from or choose not to renew their participation in the applicable BOCES service for a subsequent fiscal year. Each participating BOCES (including Customer) shall provide written notification to Vendor of any such withdrawal or non-renewal by any Licensee within its jurisdiction no later than thirty (30) days prior to its effective date (typically July 1st), without penaltyUpon receipt of written notification (email acceptable), Vendor shall securely delete or otherwise destroy any and all Protected Data received from that Licensee remaining in the possession of Vendor or any of its subcontractors or other authorized persons or entities to whom it has disclosed the Protected Data; if requested by the Licensee, Vendor will assist in exporting all Protected Data previously received back to the Licensee prior to deletion. Once completed and upon written request (email acceptable), Vendor will provide Customer and the Licensee with written certification from an appropriate officer that these requirements have been satisfied in full. For purposes of this subsection 7.5, "Protected Data" shall have the same meaning as set forth in the Data Sharing and Confidentiality Agreement incorporated into this Agreement by reference as **Exhibit D**. Notwithstanding the non-renewal or withdrawal of any Licensee from participation under this Agreement, the terms of this Agreement shall continue in full force and effect with respect to Customer and any other remaining BOCES or school district Licensees.

8. IMPLEMENTATION ASSISTANCE SERVICES AND TRAINING SUPPORT

8.1 **Training.** The Vendor will provide initial training, at no cost, to Customer's staff and the staff of each participating BOCES so that they are able to turn key and train school district Licensees using RIC/BOCES accounts or Product(s) provided to the RIC/BOCES at no cost, at four (4) sites during each year of this Agreement. These accounts will be fully active within the system and not simply a training site. This training should be in person and be robust whereas the BOCES staff developers are able to provide the support and professional development to the school district Licensee in order to promote a successful implementation. The 4 initial training days (per product) should be help in person if possible. The 4 additional update training sessions (per product) may be held virtually. This is a total of 8 sessions, per product, awarded. The Vendor will provide on-site training and installation to the BOCES staff as outlined in **Exhibit B**, attached and incorporated herein by reference.

8.2 **Use of Training Materials**. Customer, all other participating BOCES, and all school district Licensees may use the entire Vendor provided training materials, on an ongoing basis, at no cost. Customer, all other participating BOCES, and all Licensee school districts may modify the Documentation for use solely within the Licensee school districts that have purchased the Product(s) pursuant to this Agreement.

8.3 **Training Logins & Sites.** The Vendor will provide Customer and all other participating BOCES the Product(s) or application logins and demo sites, at no cost, for utilizing the Product(s) while training Licensee school districts. The Vendor will provide administrative logins to Customer and all other participating BOCES for each Licensee school district in order for Customer and all other participating BOCES, as owners of the equipment/licenses, to manage and maintain accounts as required by the State Department of Education. The Vendor will provide updates and training each year for four additional sites throughout New York State for new and current trainers to be coordinated through Michelle Okal-Frink or her designee. Michelle Okal-

Frink or her designee must approve any marketing that would include the name and or logo of Customer or any other participating BOCES.

9.   TECHNICAL SUPPORT SERVICES

9.1   Technical support and Updates provided by Vendor shall include assistance and consultation by phone or chat to assist Customer, any other participating BOCES, or any school district Licensee in resolving problems with the use of the Product(s), at no charge.

9.2   Vendor shall provide support for the Product(s) for at least one (1) year following any notification by Vendor to Customer, any other participating BOCES, or any school district Licensee that the Product(s) has been discontinued.

9.3   All requests for assistance to Vendor by Customer, any other participating BOCES, and/or any school district Licensee to resolve problems which cause the software to become "inoperative" will be acknowledged by Vendor by phone or email within twenty-four (24) hours during Vendor's normal support hours. For less severe problems, Vendor must acknowledge the request for assistance by phone or email within forty-eight (48) hours.

9.4   Vendor also agrees to provide the following technical support services to Customer, any other participating BOCES, and any school district Licensee:

9.4.1   Toll Free Number support 866-882-4141 from 8:30 A.M. to 6:00 P.M. EST (Eastern Standard Time) Monday through Thursday and 8:30 A.M. to 5;00 P,M. EST on Friday.

9.4.2   Bug Correction – Vendor shall use its best efforts to correct any software bugs in the Product(s). Customer, any other participating BOCES, and any school district Licensee shall allow Vendor in each instance the opportunity to make repeated efforts within a reasonable time to correct any such bugs.

9.4.3   Training, free of charge, for technical staff of Customer and/or any other participating BOCES to install or upgrade any equipment. This training can be provided via webinar.

10.   APPLICABLE LAW

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New York without regard to that State's choice-of-law provisions. In the event a dispute arises between the Parties in connection with this Agreement, the Parties shall use good faith efforts to resolve such dispute by negotiation. In the event the Parties are unable to resolve such dispute by negotiation, the matter shall be venued in any court of competent jurisdiction located in the County of Erie, State of New York and the Parties hereby agree to submit to personal jurisdiction in any such court.

11.   FORCE MAJEURE

Notwithstanding anything to the contrary contained herein, neither Party shall have any liability to the other Party for any default or delay in performance of its obligations hereunder to

the extent attributable to unforeseen events beyond the reasonable control of the Party. Such events shall include but not be limited to, natural disasters or "acts of God;" war; acts of public enemies; terrorism; flood; government action, orders or regulations; fire; civil disturbance or unrest; work stoppage or strike; unusually severe weather conditions; disease, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restriction (each, a "Force Majeure" event). Vendor's performance of some or all of its obligations hereunder may also cease at any time upon mutual written agreement between the Parties. Any warranty period affected by a Force Majeure event shall be extended for a period equal to the duration of such Force Majeure event.

12. CONSENT TO BREACH NOT WAIVER

No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent to breach shall be in writing and signed by the Party granting the waiver or consent. If either Party grants a waiver or consent to a breach of a term or provision of this Agreement, such waiver or consent shall not constitute or be construed as a waiver of or consent to any other or further breach of that term or provision or any other different or subsequent breach of any other term or provision.

13. SEVERABILITY

If any term, clause or provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed severed from the Agreement.

14. RISK OF LOSS OR DAMAGE

Vendor and its insurers agree at a minimum to assume all risks of loss and damage to the Product(s) during transportation except for loss or damage caused by the gross negligence of Customer, any other participating BOCES, and/or any school district Licensee.

Vendor assumes all risks for injuries to or death of its employees and for damage to its tangible property, excluding damage to data, while on the premises of, or traveling to or from, facilities of Customer, any other participating BOCES, and/or any school district Licensee. Vendor shall use reasonable, good faith efforts to provide assistance to recover or resolve any damaged data to the reasonable satisfaction of Customer, any other participating BOCES, and/or any school district Licensee.

15. AMENDMENT

This Agreement may be amended by Customer and Vendor provided that any such changes or modifications shall be in writing signed or initialed by the parties hereto. Unless otherwise set forth in writing, any mutually agreed amendment or modification to this Agreement, including but not limited to renewal terms, Products and pricing changes, etc., that have been accepted by Erie 1 BOCES, shall be deemed accepted and immediately applicable to all BOCES and all applicable school district Licensees purchasing services under this Agreement. This Agreement can be extended by mutual written agreement of Vendor and Erie 1 BOCES.

16. HEADINGS

The headings of the paragraphs and sections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part hereof.

17. NOTICES

Except as otherwise provided in this Agreement, all notices required hereunder shall be in writing and sent by certified mail, return receipt requested to the Party at the address written above, or such other address as noticed to the other Party.

18. CONFLICT OF INTEREST

Vendor represents and warrants that Vendor presently has no interest and shall not acquire any interest, direct or indirect that would conflict in any manner or degree with the performance of Vendor's obligations under this Agreement. Vendor further represents and warrants that it has not employed nor retained any person or company, other than a bona fide employee working solely for Vendor or the Vendor's bona fide agent, to solicit or secure any agreement with any other participating BOCES or any school district Licensee. Further, Vendor represents that Vendor has not paid, given, or agreed to pay or give any company or person, other than a bona fide employee working solely for Vendor or the Vendor's bona fide agent, any fee, commission, percentage, brokerage fee, gift, contribution, or any other consideration contingent upon or resulting from the award or making of any agreement with any other participating BOCES or any school district Licensee. Upon discovery of a breach or violation of the provisions of this paragraph, Customer shall have the right to terminate this Agreement in accordance with subsection 1.3, however, it may do so immediately and without providing Vendor the opportunity to cure such breach or violation.

19. EMPLOYMENT PRACTICES

Vendor warrants that there shall be no discrimination against any employee who is employed in the work covered by the Agreement, or against any applicant for such employment, because of race, religion, color, sex, age or national origin. This shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, recruitment advertising, lay-off, termination, rates of pay or other tools of compensation, and selection for training, including apprenticeship. Vendor shall insert similar provisions in any authorized subcontracts for the performance of Services covered by this Agreement.

20. EXECUTORY CLAUSE

This Agreement shall be deemed executory only to the extent of monies appropriated and available to Customer or any other BOCES or school district Licensee for the purpose of this Agreement, and no liability on account thereof shall be incurred by Customer or any other BOCES or school district Licensee beyond the amount of such monies. The Agreement is not a general obligation of Customer or any other BOCES or school district Licensee. Neither the full faith and credit nor the taxing power of any school district Licensee is pledged to the payment of any amount due or to become due under this Agreement. It is understood that neither this Agreement

nor any representation by any public employee or officer creates any legal or moral obligation to appropriate or to make monies available from the purpose of this Agreement.

21. NON-ASSIGNMENT

This Agreement shall be binding on the Parties and on their successors and assigns. Vendor is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement, or its right, title or interest therein, or its power to execute this Agreement or any amendment thereto, or its power to perform the obligations required by this Agreement to any other person or corporation without the previous consent, in writing, of Customer; and any attempts to assign the Agreement without Customer's prior written consent are null and void.

22. ENTIRE UNDERSTANDING

This Agreement and all Exhibits attached hereto constitute the entire understanding between Customer and Vendor.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the dates set forth below.

EXPLORELEARNING, LLC

By: _____

Printed Name: Christy Williams
_____

Title: _____

Date: _____

ERIE 1 BOCES

By: _____

Printed Name: James Fregelette

Title: Executive Director, Administrative Services & Operations

Date: _____

EXHIBIT A

EXHIBIT A (2023–2024 Pricing) ExploreLearning, LLC – Revised 10/26/2022

Reflex is an award-winning, innovative, research-based system that enables students of all abilities in grades 2–8 to develop instant, effortless recall of math facts in the four operations.

Key *Reflex* features:
- Adaptive and individualized system continuously monitors each student's performance to create the optimal learning experience for students across RtI tiers I, II, and III
- Fun, game-based coaching and practice keeps students engaged and adapts to personalize students' quick and effortless recall of basic math facts
- Continually assesses student retention of facts, accuracy of response, patterns of response, and time to response throughout every session
- Algined to NY Standards Next Generation Math Learning Standards:
    - Supports development of basic math fact fluency, fact strategies, number and number sense, and more
    - Based on a fact family approach that builds on and reinforces important mathematical concepts such as the commutative property and the relationship between the operations
    - Students use Standards for Mathematical Practice (SMPs) during a *Reflex* session: Make sense of problems and persevere in solving them; attend to precision; look for and make use of structure; look for and express regularity in repeated reasoning
- Proven results show students of all abilities make gains in math fact fluency—Most students make fluency gains in 4–8 days when using *Reflex* three or more days per week
- Intuitive and powerful reporting gives educators everything they need to easily monitor and support student progress

Frax uses the latest research-proven instructional methods to create a better way to learn fractions. Now available, *Frax* Foundations builds the fractions conceptual understanding that students need to do more advanced reasoning and arithmetic.

Key *Frax* Foundations features:
- Adaptive and individualized instruction helps every student experience success with understanding and working with fractions
- 27 story-based missions, each with 3–4 standards-based instructional activities
- Aligned to NY Standards Next Generation Math Learning Standards:
    - Meets math content domains: Operations and algebraic thinking; number and operations – fractions; the number system; measurement and data
    - Students use all eight SMPs throughout *Frax* sessions
- Research-based conceptual learning strategies that demystify fractions

- Fun, game-based challenges and frequent rewards for effort and progress
- Real-time monitoring immediately identifies when students need help so teachers can intervene with offline, teacher-led instruction

Gizmos is an award-winning, online library of simulations and STEM case studies that drive inquiry and understanding of math and science in grades 3–12. Subscriptions give teachers and students access to a library of more than 550 *Gizmos.*

Key *Gizmos* features:
- Correlated to major textbooks and NY state and provincial standards in math and science to support cross-curricular connections
- Aligned to NY State Regents Examination and 3–8 Assessments
    - *Gizmos* meets the virtual, simulated NY State regents exam requirement that states the 1200-minute lab requirement can be met through virutal, simulated and/or hands-on labs.
- Aligned to New York State P–12 Science Learning Standards with a library of hundreds of simulations and STEM case studies that integrate the three-dimentions of NGSS, including DCIs, SEPs, and CCCs
    - Throughout *Gizmos* simulated experiments and STEM case studies, students:
        - Develop deep conceptual understanding of underlying principles through age-appropriate tasks for elementary, middle, and secondary students
        - Manipulate variables and coefficients, explore patterns, and draw their own conclusions about what they see
        - Predict and hypothesize; design experiments to achieve specific outcomes; contribute and analyze data and results; present findings
        - Analyze concepts behind phenomena to understand the deeper underlying concept of a topic and apply it to solving new scenarios and problems
        - Learn vocabulary and key language and concepts of the math and science from the lesson in order to deepen students' understanding of concepts
        - Virtually explore topics that feature vast scales of time and space, highly-complex and abstract concepts, otherworldly and theoretical locations, and real-world situations and settings, all within the simulated experiments and case studies
- Downloadable and printable lesson materials include teacher guides and student exploration sheets with customizable inquiry-based lessons, vocabulary sheets, formative assessment, and real-time reporting
- Flexible for small-group work, flipped classrooms, whole-group instruction, individual exploration

Elementary STEM K–5 and K–8 Licenses include elementary *Gizmos* for students in grades 3–8 and *Science4Us* for students in grades K–2:

- *Gizmos* simulated experiments and STEM case studies and *Science4Us* 5E lessons and investigations prepare elementary and intermediate students for NY science tests and required investigations administered in grades 5 and 8

Science4Us is an award-winning, research-based program specially designed for K–2 students that covers topics in physical, life, inquiry, and earth/space science using animated lessons, activities, songs, and worksheets to engage and teach kids.

Key *Science4Us* features:
- Structured around the 5E model for inquiry-based instruction, imparting time to introducing, thinking about, explaining, reinforcing, and assessing each foundational science concept taught
- Aligned to New York State P-12 Science Learning Standards and meets NGSS Innovations:
  - Make sense of and explain phenomena and design solutions to problems
  - Follows the Framework for K–12 Science Education:
    - Scope and sequence is aligned to grade-level NGSS and the pillars of three-dimensional learning: *DCIs*, *SEPs*, and CCCs
      - Covers four disciplines of K–2 science across 28 modules/units that include more than 350 online animated activities, games, investigations, songs, videos, stories, simulations, assessments, and 1000s of offline activities
      - Hands-on approach to learning and includes multiple opportunities for students to investigate, analyze, question, and express what they know
  - Alignment with ELA & math standards:
    - Lessons focus on explicit instruction of literacy skills, such as inferencing, cause and effect, compare and contrast, speaking and listening, and sequencing
    - Direct instruction on a variety of strategies for vocabulary acquisition
    - Students learn the basics of interacting with charts, graphs, and measuring tools
  - Builds K–12 progressions
- Hundreds of short lessons for use with whole group, small group, or 1:1
- Easy-to-use, customizable lesson plans, reporting features, and embedded professional development

All licenses include the following in the cost of the programs:
- Access for all teachers and students (and their parents/guardians) in one school for one year
- Classroom-level class management and assessment reporting features for teachers
- Anytime, anywhere access for students, teachers, and administrators on devices with an internet connection for asynchronous and synchronous delivery
- Free phone, email, and online technical support and on-demand professional development

Delivered online, *Reflex*, *Gizmos*, *Frax,* and *Science4Us* require no shipping costs. There are no print textbooks or eBooks, though there are downloadable lesson materials for each *Gizmos*, *Science4Us*, and *Frax* lesson, included in the cost of the programs. There are no ancillary materials available for separate purchase. Updates are made to all programs and are automatic to the user.

Additional discounts are available for multi-product purchases. ExploreLearning can work with the district to develop custom quotes based on needs and volume.

ExploreLearning Item Listing (Name of Product)	UNIT LIST PRICE	ITCC Price and % Discount	% Increase from 2022–2023
Reflex Site License, grades 2–8	$3,295 per site	$3,290.00 per site (<1% discount)	1% price increase from 22–23
Frax Foundations **	$1,295 per school per year	$1,295 per school per year	0% price increase from 22–23
Frax Foundations 2 (includes Frax Foundations 1)	$2,295 per school per year	$2,295 per school per year	NA; Foundations 2 is a new offering
Math Bundle (*Reflex* Site License and *Frax* Foundations) **	$3,995 per school per year	$3,995 per school per year	0% price increase from 22–23
Math Bundle (Reflex Site License and Frax Foundations 2	$4,795 per school per year	$4,795 per school per year	NA; Foundations 2 is a new offering

ExploreLearning Item Listing	UNIT LIST PRICE	23–24 BOCES Price and % Discount	% Increase from 2022–2023
Gizmos Site License (for all teachers and students at one school), grades K–5	$2,750	$2,625.00 (5% discount)	2% increase from 22-23
Science4Us Site License (for all teachers and students at one school), grades K–6+	$2,500	$2,386.00(5% discount)	2% increase from 22-23

**Standard volume discounting applies to above mentioned Frax Foundations and Math Bundle options:*
    1) *2–9 students =10% discount*
    2) *10–19 students =15% discount*

ExploreLearning Item Listing (Name of Product)	UNIT LIST PRICE	ITCC Price and % Discount	% Increase from 2022–2023
Gizmos Science and Math, Site License, grades 6–12	$8.25 per student (per site) for math and science departments	$5.94 per student (per site) for math and science departments (28% discount)	2% price increase from 22–23
Gizmos Science or Math Department License at Single School, grades 6–12	$4.95 per student (per site) for math or science departments only	$4.05 per student (per site) for math or science departments only (18% discount)	2% price increase from 22–23

ExploreLearning Item Listing (Name of Product)	UNIT LIST PRICE	ITCC Price and % Discount	% Increase from 2022–2023
Elementary STEM License: *Science4Us & Gizmos* Schools serving up to grade 6 (i.e., K–5, K–6, etc.)	$2,995 per school per year	$2,876 (4% discount)	N/A; this is a new license-type offering
Gizmos Teacher License, grades 3–12	$920 per teacher for 1–2 licenses on the same subscription	$793 per teacher for 1–2 licenses at the same site (11% discount)	2% price increase from 22–23
K–8 STEM License: *Science4Us & Gizmos* Schools serving up to grade 8 (i.e., K–8)	$3,995 per school per year	$3,876 (3% discount)	N/A; this is a new license-type offering
Science4Us site-license for 2-9 schools	**$2,250.00 per school per year**	**10% discount from list price**	**0% price increase from 22-23**
Gizmos Science or Math Department License Pricing applies if purchase covers 2 or more secondary students in the district.	$3.95 per student (per site) for math or science departments only	$3.82 per student (3% discount)	2% price increase from 22–23

For *Reflex*, we offer small district discount of 10% off list ($2,965.50/site) if a single site purchase covers the entire applicable students in the district. For example: A district with 1 elementary school (K–5). Volume discounting for *Reflex* includes the licensing options outlined below:

Reflex License	UNIT LIST PRICE	*Reflex* Volume Discount	% Increase from 2022–2023
Reflex site licenses for 2–9 schools	$3,295 per site	$2,965.50/school (10% discount)	0% price increase from 22–23
Reflex site licenses for 10–19 schools	$3,295 per site	$2,800.75/school (15% discount)	0% price increase from 22–23

Gizmos Elementary License	UNIT LIST PRICE	*Gizmos* Volume Discount	% Increase from 2022–2023
K–5 STEM License: *Science4Us & Gizmos* Schools serving up to grade 5 (i.e., K–5)	$2,995.00 per site	$2, 695.50/school (10% discount)	N/A; this is a new license-type offering
K–8 STEM License: *Science4Us & Gizmos* Schools serving up to grade 8 (i.e., K–8)	$3,995.00 per site	$3,595.50/school (10% discount)	N/A; this is a new license-type offering
Elementary Gizmos site license for 2-9 schools	**$2,475.00 per school per year**	**10% discount from list price**	**0% price increase from 22-23**

Gizmos Secondary License, 2 Subject	UNIT LIST PRICE	*Gizmos* Volume Discount	% Increase from 2022–2023
Gizmos site licenses for 10,000–19,999 enrollment	$7.75/student	$5.53/student (29% discount)	0% price increase from 22–23

Gizmos Secondary License, 1 Subject (or secondary with elementary addition)	UNIT LIST PRICE	*Gizmos* Volume Discount	% Increase from 2022–2023
Gizmos site licenses for 5,000–9,999 enrollment	$4.95/student	$3.43/student (29% discount)	2% price increase from 22–23
Gizmos site licenses for 10,000–19,999 enrollment	$4.95/student	$3.25/student (31% discount)	2% price increase from 22–23

Gizmos Secondary License, 1 Subject (or secondary with elementary addition)	UNIT LIST PRICE	*Gizmos* Volume Discount	% Increase from 2022–2023
Gizmos site licenses for 5,000–9,999 enrollment	$4.95/student	$3.43/student (29% discount)	2% price increase from 22–23
Gizmos site licenses for 10,000–19,999 enrollment	$4.95/student	$3.25/student (31% discount)	2% price increase from 22–23

EXHIBIT B

Typical implementation services and ongoing support program elements include introductory and higher-level workshops to strengthen math and science pedagogy, as well as coaching and workshops to build systemic support, like planning support, pacing guide alignments, and classroom lesson modeling.

Erie 1 BOCES teachers and administrators have access to on-demand, live online, or onsite professional development each year based on annual subscription level. Additional professional development days and higher level courses are also available at an extra cost, as are project management options. Phone, email, and online customer service and technical support are provided on a complimentary basis to all subscribers.

*Each of the following onsite workshops will be offered across the state in the four identified regions, followed by webinar-based workshops before the end of the calendar year.

Reflex

PROFESSIONAL DEVELOPMENT

Introduction to Reflex
Audience: Grade 2-6 math teachers

About the Workshop

About the workshop: The Introduction to Reflex workshop is designed to enable a teacher to get students up and running with Reflex immediately and to effectively monitor progress and coach students towards fluency. First there will be a segment discussing math fact fluency and its importance to student achievement in math. Then teachers learn the importance of each of the three sections of a typical Reflex student session. Finally they will login to the site and learn to manage student accounts and review the individual and group reports.

Workshop Agenda (Webinar)

- Opening Session
- Workshop Introduction
- Discussion of the Importance of Fluency
- Typical Student Experience
- Classroom setup
- Assignments
- Reporting
- Making the most of Reflex
- Closing Session

Participants will:

- Understand the importance of math fact fluency
- Learn to create classes and manage student assignments
- Review group and individual reports showing usage and progress
- Identify the best ways to incorporate Reflex

Onsite delivery = 2 Hours

Reflex

PROFESSIONAL DEVELOPMENT

Delving Deeper into Reflex Data

Audience: Grade 2-6 math teachers
Prerequisite: Introduction to Reflex, 4+ months of use

About the Workshop

About the workshop: This workshop will offer experienced Reflex users the opportunity to ask questions about the basics of Reflex, but the bulk of the workshop will be in reporting features. Teachers will learn to more deeply examine their own student data. The instructor will guide teachers to a more thorough analysis of the reports and the custom filters that are available within those reports. The session will conclude with a discussion of effective recognition strategies and the processes for promoting and graduating students.

Workshop Agenda (Webinar)

- Opening Session
- Workshop Introduction
- Brief Summary of the Student Experience
- Analyzing Group Reports
- Analyzing Student Reports
- Promoting Usage/ Engagement

Participants will:

▲ Review the three different phases of a typical Reflex session and the importance of each.

▲ Examine each group and individual report with current data to identify students who are and are not progressing adequately within Reflex.

▲ Design an effective student recognition program to provide support and encouragement for student effort and progress.

Online delivery= 90 Minutes

Reflex

PROFESSIONAL DEVELOPMENT

Building Success with Reflex for Administrators

Audience: Grade 2-6 math teachers
Prerequisite: Intro to Reflex, recommended

About the Workshop

About the workshop: A webinar designed to help Reflex Administrators get the most out of Reflex. Learn the administrative side of Reflex and how to support your students and teachers to ensure a successful Reflex Implementation.

Workshop Agenda (Webinar)

- Opening Session
- Workshop Introduction
- Brief Summary of the Student Experience
- Analyzing Group Reports
- Analyzing Student Reports
- Promoting Usage/ Engagement

Participants will:

- Explore reports for teachers, administrators and students
- Investigate the Correlation between high usage and high growth
- Review incentive ideas

Online Delivery= 60 Minutes

Introduction to Frax

PROFESSIONAL DEVELOPMENT

Audience: Math teachers
Prerequisite: None. Timing of scheduling: It's suggested that PD is scheduled 1 month before fractions will be taught in the classroom.

About the Workshop

About the workshop: The Introduction to Frax workshop is designed to enable a teacher to get students up and running with Frax immediately and to effectively monitor progress and coach students towards conceptual understanding of fractions. In this workshop, teachers will see a sample Frax Mission and identify the pedagogical methodologies used. They will learn to import student accounts, provide assignments, and monitor student progress over time and also live during a session. Teachers will gain a good understanding of how to support the Frax pedagogy as students are using the program, including the use of offline activities.

Participants will:

- Understand the importance for students of having conceptual understanding of fractions
- Learn to create classes, add students to those classes, and manage students' assignments within Frax.
- Review group and individual reports showing usage and progress through fractions standards.

Workshop Agenda (Webinar)

- Opening Session
- Workshop Introduction
- What is Frax?
- Setting up your account
- A typical student session
- Why is fractions instruction important?
- Teacher's role in Frax
- Reading Reports
- Systems for Success

Onsite Delivery= 2 Hours

Frax

PROFESSIONAL DEVELOPMENT

Take Frax Offline Agenda

Audience: Grades 3-5
Prerequisite: Intro to Frax recommended, and/or previous Frax usage

About the Workshop

The Take Frax Offline webinar is designed to assist experienced Frax users with utilizing the Teacher Guide, Mission Debrief questions, and Captain's Checkpoints effectively in their classroom. The instructor will guide teachers through each section of the Teacher Guide, so they are able to support their students during each mission. The session will end with instructors deeply examining two Captain's Checkpoints, so that teachers are able to reinforce student learning and application of fraction knowledge.

Participants will:

▲ Understand the use of the Teacher Guide, Mission Debrief Questions, and Captain's Checkpoints.

▲ Review each section of the Teacher Guide to understand the importance of each component.

▲ Learn to guide students as they process their learning and verbalize their thinking

▲ Experience two of the Captain's Checkpoints from a student's perspective.

▲ Understand how to utilize Captain's Checkpoints to reinforce student learning and apply fraction knowledge.

Workshop Agenda (Webinar)

- Opening Session
- Workshop Introduction
- Webinar Norms
- The Online Frax Experience
- Guided Instruction: The Offline Frax Experience
- Tips for Success
- Promoting Engagement
- Resources
- Getting Help
- Top 3 Takeaways
- Closing Session

Online Delivery= 90 Minutes

Gizmos

PROFESSIONAL DEVELOPMENT

Introduction to Gizmos

Audience: Grade 3-12 math and science teachers

About the Workshop

This workshop is designed to prepare teachers to use Gizmos immediately in their classrooms. An experienced ExploreLearning instructor introduces the major features and functions of the ExploreLearning website and shows teachers how Gizmos can look in their classrooms.

Notes:

Full-Day Workshops are often 6 content hours in duration, include a lunch break, and development of a Gizmos lesson by teachers.

Half-Day Workshops are often 3 content hours in duration and will begin the Gizmos lesson development process.

Participants will:

▲ Learn to navigate the **ExploreLearning.com** website

▲ Customize their Teacher Homepage and learn to enroll students

▲ Employ research-based teaching strategies with Gizmos

▲ Create standards-based lessons incorporating Gizmos

Workshop Agenda (Onsite)

- Opening Session
- Sign-In to Workshop and ExploreLearning
- Guided Instruction: Modeling a Gizmo using Teaching Strategies
- Reflection
- Break
- Guided Instruction: Website Navigation and Setting up My Homepage
- Guided Instruction: Modeling a Gizmo using Teaching Strategies
- Reflect and Review
- Guided Instruction: Providing Students with Access
- Guided Instruction: Modeling a Gizmo using Teaching Strategies
- Independent Application: Planning a Gizmo Lesson
- Closing Session

Onsite Delivery= 3 Hours

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el Gizmos

PROFESSIONAL DEVELOPMENT

Expanding the Gizmos Experience

Audience: Grade 3-12 math and science teachers

Prerequisite: Introduction to Gizmos workshop

About the Workshop

This workshop helps teachers develop a deeper understanding of how to integrate Gizmos into their curriculum, and effective uses of whole group and small group instruction.

Notes:

Full-Day Workshops are often 6 content hours in duration, include a lunch break, and development of a whole class and a collaborative group Gizmos lesson by teachers.

Half-Day Workshops are often 3 content hours in duration and will begin the Gizmos lesson development process.

Participants will:

▲ Understand the similarities and differences between whole group and small group instruction and effective ways to utilize each method to improve student learning

▲ Learn to incorporate Gizmos into collaborative classroom discussions, cooperative learning, and situations where students are constructing arguments supported by evidence

▲ Develop customized lessons by modifying Gizmo Lesson Materials

Workshop Agenda (Onsite)

- Opening Session
- Guided Instruction: Modeling a Gizmo using Whole Class Instruction
- Reflection and Best Practices Discussion
- Break
- Sign-In to Workshop and ExploreLearning as a Student
- Guided Instruction: Modeling a Gizmo using Collaborative Group Instruction
- Reflection and Best Practices Discussion
- Guided Instruction: Gizmologist Case Studies
- Independent Application: Planning a Gizmo Lesson
- Closing Session

Online Delivery= 2 Hours

Science4Us

PROFESSIONAL DEVELOPMENT

Introduction to Science4Us

Audience: Grade K-2 teachers
Prerequisite: N/A

About the Workshop

About the workshop: This workshop is designed to get teachers started TEACHING SCIENCE in K-2 with Science4Us. Teachers will learn to navigate the program, the key components of a Science4Us instructional model, and how Science4Us lessons can look in their classrooms.

Participants will:

- Learn to navigate Science4Us
- Enroll their students and assign an online activity
- Utilize a variety of teaching strategies in their lessons
- Plan engaging science lessons that build problem-solving skills and support literacy

Workshop Agenda (Onsite)

- Opening Session
- Sign-In to workshop and Science4Us
- Guided Instruction: Modeling a Science4Us lesson using Teaching Strategies
- Reflection
- Guided Instruction: Adding students and classes, Website Navigation, and Module Basics
- Break
- Guided Instruction: Modeling a Science4Us Elaborate Session
- Independent Application: Jigsaw Elaborate sessions to determine literacy and science components in each of the four Elaborate Sessions.
- Guided Instruction: Assigning Student Work and Reviewing Student Work
- Independent Application: Planning a Science4Us Lesson and Group Share out
- Closing Session

Onsite Delivery= 3 Hours

Science4Us

PROFESSIONAL DEVELOPMENT

Using Science4Us as a Foundation for Science Instruction

Audience: Grades K-2

Prerequisite: Introduction to Science4Us and/or previous Science4Us usage

About the Workshop

About the workshop: This workshop is designed to help teachers develop a deeper understanding of how to integrate Science4Us into their curriculum. Teachers will learn how to get the most from Science4Us Lesson Materials by making intentional instructional decisions as they design a lesson plan. Teachers work individually or in small groups to integrate best teaching practices with Science4Us into their curriculum.

Participants will:

- Effectively utilize Science4Us tools for K-2 instruction to improve student learning

- Learn to incorporate Science4Us into a variety of instructional settings.

- Develop customized lessons by modifying the Science4Us resources.

Workshop Agenda (Onsite)

- Opening Session
- Workshop Introduction
- Getting to know the participants activity
- Sign-In to workshop and Science4Us
- Review Website Navigation and Module Organization
- Guided Instruction: Planning a lesson using the offline and digital tools
- Reflection
- Break
- Guided Instruction: Modeling a Science4Us lesson using lesson planning we reviewed.
- Debrief the Lesson and Teaching Strategies
- Reflection and Discussion Activity/ Group Share Out
- Independent Application: Planning a Science4Us Lesson and Group Share out
- Closing Session

Online Delivery= 90 Minutes

EXHIBIT C

Science4Us is HTML5 web-based and is accessible on most devices including PC, Mac, Chrome, iPad, and Android devices capable of running the latest version of Chrome, Firefox, Microsoft Edge, or Safari. Due to the detailed, interactive design of Science4Us we recommend a tablet screen size or greater for the optimal experience (1024 x 768+ recommended). Please see all system requirements:
https://explorelearningllc.force.com/help/s/article/System-Requirements-for-Science4Us

Reflex and *Frax* are 100 percent web-based hosted by ExploreLearning, making them accessible anytime, anywhere an internet connection is available. Reflex runs on most Chromebooks, Macs, PCs, and iPad. For Reflex system requirements, visit:
https://explorelearningllc.force.com/help/s/topic/0TO0b000000UTuzGAG/reflex-system-requirements

Reflex and *Frax* run on devices with the following recommended settings:

All (PC, Mac, Chromebook, iPad and Android tablets)
- Web Browser: The latest versions of Chrome, Edge, Internet Explorer, Firefox, or Safari
- Sound capability
- Display Size: 1024 x 768 or higher

For iPad:
- Access the *Reflex*/*Frax* Student application from the website; do not use the *Reflex* Student App from the App Store
- iPad 4 or below is not recommended to use *Reflex*/*Frax* from the website; for *Reflex* please use the *Reflex* Student App from the App Store

All
- Sound Capability
- Display Size: 1024 x 768 or higher

Gizmos is 100 percent web-based hosted by ExploreLearning, making the simulations and STEM case studies accessible anytime, anywhere an internet connection is available. *Gizmos* runs on most Chromebooks, Macs, PCs, and iPad. For *Gizmos* system requirements, visit:
https://explorelearningllc.force.com/help/s/topic/0TO0b000000UTsBGAW/gizmos-system-requirements

Gizmos recommended settings: *Gizmos* is accessible on most Chromebooks, Macs, PCs and mobile devices, like iPads and Android tablets, via a web browser.
- Browser: The latest version of Internet Explorer, Microsoft Edge, Safari, Firefox, or Chrome.
- Video Card: Support for WebGL. WebGL will not run on certain Chromebooks (about ten 3D *Gizmos* use WebGL)

Due to the detailed, interactive design of *Gizmos* we recommend a tablet screen size or greater for the optimal experience. Users can visit the *Gizmos* systems test page at
https://explorelearningllc.force.com/help/s/article/System-Requirements-and-Systems-Test-Page to determine if their system has the basic hardware and software needed to run *Gizmos*.

wnyric
www.wnyric.org
Erie 1 BOCES Education Campus • 355 Harlem Road • West Seneca, NY 14224-1892

erie boces

Supplement to

MASTER LICENSE AND SERVICES AGREEMENT
(Term Ending June 30, 2026)

ExploreLearning, LLC having its principal offices at ***17855 Dallas Parkway, Suite 400, Dallas, TX 75287***, 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, ***ExploreLearning, LLC*** and Erie 1 BOCES wish to provide for the potential purchase of ***ExploreLearning, LLC*** licenses and services by other Board of Cooperative Educational Services (BOCES) in the State of New York (intermediate units of the NYS Education Department) on the same terms and conditions.

ExploreLearning, LLC agrees to honor the pricing in Exhibit A only for the BOCES that adopt the contract at their Boards of Education. If a RIC or BOCES has not adopted the resolution ***ExploreLearning, LLC*** may not extend the same or lesser pricing than has been set forth in Exhibit A. Lower prices will not be offered to school districts/BOCES/RICs in NY state. Vendors may utilize national promotions or sales within the state of New York and those prices would be extended through the contract after the approval of Michelle Okal-Frink or her designee. Special pricing for specific BOCES or RICs is not allowable under this contract. For clarity, the forgoing restrictions on pricing shall not extend to any Products offered to schools or districts or other educational entities in the New York City, Buffalo, Rochester, Yonkers, Syracuse or other districts or areas of New York State not served by BOCES. In order to streamline procurement, Vendors will maintain this MLSA with Erie 1 BOCES as the single, statewide NYSITCC agreement for the specific Vendor products offered under this MLSA. This means the same products would not be found on any other statewide NYSITCC consortium agreements, including 7710 RIC Consortium, 5877 Distance Learning Consortium, or 6316 DREAM.

Erie 1 BOCES and ***ExploreLearning, LLC*** hereby agree:

1. From time to time during the term of the Agreement, another BOCES in New York State (an "Other BOCES") may adopt a Board of Education resolution that permits Erie 1 BOCES to represent the Other BOCES' interests and to enter into the Agreement on behalf of the Other BOCES.

2. The Other BOCES shall purchase under the Agreement by issuing an Addendum in the form of a Board resolution, appropriately amended to reflect that the Other BOCES is the purchaser. By issuing that Addendum, the Other BOCES will agree to be bound by all of the terms of the Agreement with respect to its purchase thereunder.

IN WITNESS WHEREOF, the parties have signed this Supplement to Agreement.

Erie 1 Board of Cooperative Educational Services   ***ExploreLearning, LLC***

By:_____   By: _____
        Authorized Signature   Authorized Signature

Name: _____James Fregelette_____

Title: Executive Director_____

Address: 355 Harlem Rd_

West Seneca, NY 14224_

Name: Christy Williams
_____

Title: _____

Address: _____

 Date: _____

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 as reflected in this Exhibit D. 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: ExploreLearning, LLC products are on servers and equipment owned and operated by its parent company Cambium Learning. Our servers and all user-specific data are hosted in a secure Tier 4 enterprise data center located in Texas with a failover data center in Michigan. All of our administrative controls are behind firewalls and also require username/password access, which is limited to Cambium Learning operational staff.

(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 who have access to Protected Data 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) The ExploreLearning, LLC subscriptions and services are SaaS-based and provider-hosted, with certain aspects of the program functionality supported for all Vendor's K-12 educational customers through established service provider and/or subcontractor relationships to enable Vendor to provision and perform its Services under the Agreement, who are under contractual obligations of confidentiality and security with Vendor with respect to same, and Vendor shall remain responsible and liable to Erie 1 BOCES, other applicable BOCES, and each Participating Education Agency for same. Other than the foregoing, Vendor _____will __X___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 by Vendor or its assignees or subcontractors, 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:

(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 applicable Participating Education Agency has directed and/or authorized Vendor to do so in writing; or
    (ii) the parent or eligible student has provided prior written consent; or
    (iii) 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 Educational Agency 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 and Participating Educational Agencies in writing 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 determined a breach or unauthorized release has occured.

(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 the impacted Participating Educational Agencies, and will also 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

Christy Williams
_____
Printed Name

_____
Title

_____
Date

EXHIBIT D (CONTINUED)

SUPPLEMENTAL INFORMATION

ABOUT THE MASTER LICENSE AND SERVICE AGREEMENT
BETWEEN
ERIE 1 BOCES AND *EXPLORELEARNING, LLC*

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

Frax, Gizmos, Reflex, and Science4Us

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.

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 comply with 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: *Entering into written contracts protecting the confidentiality and security of data, including Protected Data, at least as strict as Vendor's obligations under 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, or upon termination of the MLSA prior to expiration, or upon written instructions from the 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. 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 and that are supported by Vendor.

- In the event the Master Agreement is assigned to a successor Vendor (to the extent authorized by the Master Agreement and that are supported by Vendor), 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. Upon written request, Vendor, on behalf of itself 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.