

## Master License and Service Agreement

This Master License and Service Agreement (“Agreement” or “MLSA”) is made and entered into by and between Khan Academy, Inc. (“Vendor”), having its principal offices at P.O. Box 1630, Mountain View, CA 94042, and the **Board of Cooperative Educational Services for the First Supervisory District, Erie County** (“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 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 instructional software applications that can be made available to schools and 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”). With regards to the free instructional products outlined below, the NYSITCC members can hold the Opt in document for private and charter schools within their boundaries, as well as their component districts. Through Customer’s process, Khan Academy, Inc. has been identified and accepted by Customer as a provider of the Khan Academy website and related mobile applications and online services for School Accounts, as more fully described herein (the “Product(s)”).

Customer and several other BOCES throughout New York State have expressed an interest in offering coverage to schools for Education Law 2D in reference to the free Product(s) outlined above. Customer wishes to make the free Product(s) available to schools in NY state through an Opt In process. 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, private schools, charter schools and school districts.

### 1. TERM, TERMINATION AND CONSIDERATION

**1.1 Term of Agreement.** The Effective Date of this Agreement shall be October 29, 2021. The initial term of this Agreement shall commence on the Effective Date and continue until 11:59 pm June 30, 2024 (“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.

**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. Customer's only remedy with respect to any dissatisfaction with (i) the Product or Services, (ii) any term of the Agreement, (iii) the level of Services the Vendor provides, (iv) any policy or practice of Vendor in operating the Product or Services, or (v) any content or information transmitted through the Product, is to terminate use of the Services. The Service is offered on an "as is" basis.

**1.4 Consideration.** Vendor agrees and acknowledged that it has received sufficient consideration for its provision of Products through the exposure of those Products to License's end users and through beneficial publicity received by supporting the educational mission of the Licensees.

**1.5 Acknowledgement.** Vendor's free services will be made available to the Participating Educational Agency to the extent made available to the general public. Vendor reserves the right to discontinue providing access to the Services, or any part thereof, with or without notice, and without penalty, and may suspend or terminate any individual user account (or any part thereof) as provided in the Khan Academy Terms of Service.

## **2. SCOPE OF SERVICES**

Vendor will provide the Product(s) for School Accounts as more fully described 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 in **Exhibit A**, attached to this Agreement and incorporated by reference.

## **3. GRANT OF LICENSE**

**3.1** The Product(s) are provided under license. 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), a non-assignable, non-transferable and non-exclusive license to utilize the Product(s) pursuant to the terms and conditions set forth herein. Vendor further grants to each individual school district that contracts for the Product(s) with a BOCES through the NYSITCC by purchasing CoSer 6360 Instructional Technology Service and provides professional development by purchasing CoSer 6368 Model Schools, a non-assignable, non-transferable and non-exclusive license to utilize the Product(s) pursuant to the terms and conditions set forth herein. For purposes of the licenses granted by Vendor pursuant to this Agreement, Customer, each other BOCES, and each individual school district as described herein 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. All use of the Products and Services by Licensee and its authorized users shall be subject to and in compliance with the license terms set forth in the Khan Academy Website Terms of Service ("TOS").

**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.

Vendor may terminate any individual user account (or any part thereof) in accordance with the TOS, and reserves the right at any time and from time to time to modify or discontinue the Product or Services (or any part thereof) with or without notice. These remedies are in addition to any other remedies Vendor may have at law or in equity.

**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 only at such licensed sites as shall be designated by Licensees (or utilized in a cloud environment as designated by Licensees) and shall be used solely for the benefit of 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 (or has rights to use) the copyright in the Product(s) described in **Exhibit A**. 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 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 produce a source language state of the Product(s) or any part thereof, without the prior written consent of Vendor.

**4.4** Ownership and use of data transmitted to, received, or manipulated by the Product(s) is governed by the Data Sharing and Confidentiality Addendum attached at **Exhibit D**.

**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 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. Notwithstanding the foregoing, (a) Confidential Information of Vendor shall include the Software 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' end users provided in connection with the Product(s). For clarity, any security or compliance documentation provided by Vendor (except those portions of the Agreement that Customer may be required to disclose by law or legal process) shall be deemed Vendor Confidential Information. 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. Confidential Information shall not include de-identified data or aggregated information, including data regarding use of the Product. Neither Party shall disclose Confidential Information without the prior written permission of the other party or as otherwise required or permitted under applicable law, this MLSA, or the Data Sharing and Confidentiality Addendum. To the extent that Customer is subject to a public disclosure requirement, then Customer shall offer Vendor an opportunity to redact Confidential Information prior to its public disclosure. 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 Addendum, Exhibit D, incorporated into this Agreement. 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 to the extent attributable to the acts or omissions of Vendor (including its subprocessors or, if applicable, subcontractors). 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. Notwithstanding the foregoing, Vendor's assumption of such risk and obligations do not include a breach to the extent it due to: (i) the actions or inactions of the Participating Educational Agency or its users; or (ii) display or sharing of data arising from the Product functioning as intended. For clarity, Vendor's Services do not constitute data storage or records maintenance services. Customer (and any Participating Educational Agency) acknowledges that the Services are a cloud-based application that relies on the Google Cloud Platform to host the application and store data, and grants the specific permission for Vendor to use third party service providers including Google, to provide platform services.

**4.7 Customer Obligations.** Customer shall comply with all terms, conditions and obligations as set forth in the Data Sharing and Confidentiality Addendum, Exhibit D. Customer acknowledges it is familiar with and agrees to be responsible for compliance with applicable laws governing Customer's disclosure of Personally Identifiable Information in Education Records to a third party without written consent of the parent and/or eligible student or without meeting one of the exemptions set forth in FERPA ("FERPA Exemption(s)"), including the exemption for Directory Information ("Directory Information Exemption") or School Official exemption ("School Official Exemption"). Customer may provide Student Data for the purposes of obtaining the Services in compliance with all applicable federal, state and local privacy laws, rules, and regulations, all as may be amended from time to time (collectively "Applicable Laws"). Customer shall uphold its responsibilities under Applicable Laws, including to grant Vendor access to such data only to the extent permitted by Applicable Laws. For clarity, Customer shall not provide any data in violation of Applicable Laws. At Vendor's request, Customer will designate an employee or agent of Customer as the Customer's representative for the coordination and fulfillment Customer's duties under the Data Sharing Addendum. Customer acknowledges that under the TOS, Customer is responsible for providing appropriate disclosures to students and their parents regarding disclosure of Student Data to Vendor and student use of the Services, including any notices required by the COPPA, FERPA, or other Applicable Laws, and that, prior to creation of School Accounts, the Customer will either obtain any parent consent or comply with an applicable exemption from or exception to parental consent requirements for opening School Accounts for students and use of the Service. Customer shall take reasonable physical, technical, and administrative precautions consistent with industry standards designed to secure usernames, passwords, and any other means of gaining access to the services and hosted Student Data. Customer shall notify Vendor promptly of any known unauthorized access to the Services and assist Vendor in any efforts by Vendor to investigate and respond to such unauthorized access.

## **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 Intentionally Omitted.**

**5.3 Intentionally Omitted.**

**5.4 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.

**5.5 Customer Representations and Warranties.** Customer hereby represent and warrants to Vendor:

**5.5.1** 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.

**5.5.2** 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.

**5.5.3** 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.

**5.5.4** That all BOCES that are participants in the NYSITCC, including Customer, will provide Vendor with the following information for each Participating Educational Agency using the Products and Services pursuant to this Agreement: the name of the school district, the email domain for the school district, and 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 Participating Educational Agencies (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). 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 in connection with the installation or implementation of the Product(s) and Services hereunder. This communication will occur a minimum of two (2) days prior to the demo/visit. Unless directed by that BOCES Contact, the Vendor will have no other contact within the BOCES regardless of previous working relationships.

**6. INTENTIONALLY OMITTED**

**7. IMPLEMENTATION ASSISTANCE SERVICES AND TRAINING SUPPORT**

**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, up to four (4) virtual training sessions during each year of this Agreement.

**8. TECHNICAL SUPPORT SERVICES**

Technical support for teachers and staff is provided by Vendor's customer support team via its online help center. The current standard hours of operation for the customer support team are 7am Eastern/4am Pacific time to 8pm Eastern/5pm Pacific time.

**9. 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.

**10. 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.

**11. 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.

## **12. 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.

## **13. INTENTIONALLY OMITTED**

## **14. AMENDMENT**

This Agreement may be amended by Customer and Vendor provided that any such changes or modifications shall be in writing signed by the parties hereto.

## **15. 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.

## **16. 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. Any notices to Vendor be directed to the attention of the Legal Department and shall include a copy to [schoolpartnerships@khanacademy.org](mailto:schoolpartnerships@khanacademy.org).

## **17. 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.

## **18. 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.

#### **19. EXECUTORY CLAUSE**

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.

#### **20. NON-ASSIGNMENT**

This Agreement shall be binding on the Parties and on their successors and assigns. Both Parties are 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 the other party; and any attempts to assign the Agreement without Customer's prior written consent are null and void. Notwithstanding the foregoing, Vendor may assign this Agreement to a successor in interest from a merger and acquisition, or other reorganization.

#### **21. ENTIRE UNDERSTANDING**

This Agreement and its Exhibits: (i) constitute the entire agreement between the Parties with respect to the subject matter hereof; (ii) supersede any and all other agreements between the Parties, as well as, any agreements between Vendor and a Licensee related to the provision of Products, and (iii) may be executed in two or more counterparts, each of which will be deemed an original hereof. This Agreement and Exhibits shall supersede and control over any conflicting terms contained in the Vendor's General Terms and Conditions or any click-through or packaging agreements associated with accessing the Products. Except as described in this Section 21, all other provisions of the TOS, including (without limitation) any license rights, authorized school use, limitation of liability and damages, and indemnification provisions, shall remain in effect.

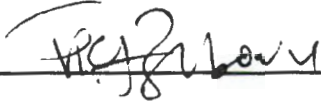
#### **22. SURVIVAL**

Upon termination (or expiration) of this Agreement, any provision which, by its nature or express terms should survive, will survive such termination (or expiration), including but limited to Sections 4, 5, 15, 16, 21, and 22.



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

**KHAN ACADEMY, INC.**

By: 

Printed Name: VICKI ZVBOVIC

Title: Chief External Relations Officer

Date: 5/10/22

**CUSTOMER:**

By: 

Printed Name: Jim Freese He

Title: Executive Director

Date: 5/15/22

## EXHIBIT A

**Khan Academy Standard Features.** Khan Academy provides access to a website located at <http://khanacademy.org> and related mobile applications (collectively "Website"), through which it provides free educational services, including, but not limited to, educational content, and to other products and services that Khan Academy may provide now or in the future (collectively, the "Service"). The Service is governed by and further described in Khan Academy's Terms of Service and Privacy Policy.

The Khan Academy Website offers instructional content (principally videos and articles), practice exercises, and a personalized learning dashboard that empowers learners to study at their own pace in and outside of the classroom. Website services include a wide range of content and learning activities, including instructional content and exercises aligned to core curriculum, teacher support materials, test practice courses (for example, SAT practice) and other learning activities and education programs.

Standard features:

- allow teachers and coaches to assign lessons to learners and monitor learning progress
- provide adaptive and/or customized learning tools
- permit users to share their account data with other authorized users, including a parent or legal guardian ("parent"), or other users as permitted by the intended functionality of the Services
- permit parent to monitor their child's learning progress via the learning dashboard
- permit users to post or respond to questions relating to learning activities on the Website
- offer additional educational programs (Learnstorm, test prep, scholarship programs) through the Website
- in-app or emailed communications to notify users about assignments, suggest additional learning activities, activity reports, service updates (e.g., new features or content), or educational programs
- provide links to educational resources

Khan Academy services include research and analysis to inform the use of, and to improve and develop, the Services and educational services.

Students or teachers may have personal accounts in addition to school accounts created by or at the direction of the school. This Agreement does not apply to personal accounts or use of accounts via a personal login. This Agreement applies only to use of the Services through School Accounts created by or at the direction of the Participating Educational Agency. School Accounts are defined in, and must be established in accordance with, the Terms of Service. Upon deletion of a School Account, protected data received by Vendor will be either: (a) retained in a personal account established for the relevant user; (b) de-identified; or (c) deleted from Vendor's computer systems.

Vendor does not obtain Teacher or principal data, as defined under Education Law 2D, in the course of providing its Service. For clarity, Vendor does not authorize use of the Service in professional performance reviews of classroom teachers or school personnel.

In addition to the free Website and Services for School Accounts covered by this Agreement, Khan Academy offers supplemental services to school districts and educational agencies to facilitate implementation by the district or agency, including, as of the date of this Agreement, Khan Academy Districts and MAP Accelerator (offered by NWEA as a complement to the MAP Growth assessment). These supplemental services are provided under separate terms of service and data protection terms that address the specific features and use of data for those services. This Agreement does not apply to Khan Academy Districts and MAP Accelerator.

## EXHIBIT B

### Sample of Training Provided

BOCES administrators and teachers will receive training through Khan Academy's on-demand training course, Khan for Educators. The complete training program is composed of seven lessons which explore a range of topics, from getting started on Khan Academy, to classroom implementation and Khan Academy's teacher reports. The training content is updated on an annual basis and accessible at any time.

#### **Training course outline:**

##### **Lesson 1: Getting to know Khan Academy**

The course begins with the lesson "Getting to know Khan Academy," which shares a little about Khan Academy's commitment to high quality education and the learning experience Khan Academy hopes to provide to all learners.

##### **Lesson 2: Setting up your teacher account**

Then, the lesson "Setting up your teacher account" covers the main teacher functions, setting up classes, maintaining student rosters, an overview of Khan Academy content and a walkthrough of the student experience.

##### **Lesson 3: Introduction to mastery learning**

The third lesson, "Introduction to mastery learning" provides a broad overview of mastery learning and addresses frequently asked questions related to mastery learning.

##### **Lesson 4: Using course mastery on Khan Academy**

The fourth lesson, "Using course mastery on Khan Academy" dives deeper into Khan Academy's mastery learning system. This lesson includes a closer look at Khan Academy's Skill and Progress reports, and includes teacher recommendations on using skill and progress data with students.

##### **Lesson 5: Using assignments to support mastery learning**

Lesson five "Using assignments to support mastery learning" details how to create and manage student assignments and how to leverage Khan Academy's assignment reports to support mastery learning with students.

##### **Lesson 6: Implementing Khan Academy with students**

Lesson six focuses on Implementing Khan Academy with students. This lesson goes further into the logistics of using Khan Academy with students including pairing Course mastery with Assignments, classroom best practices, and student motivation.

##### **Lesson 7: Distance learning with Khan Academy**

Lesson seven, "Distance learning with Khan Academy" explores implementation recommendations and tips for teaching students beyond the walls of a classroom. These resources are designed to support teachers and students in distance learning experiences using Khan Academy and other educational tools.

Khan Academy reserves the right to modify the content and format of its training materials from time to time in its sole discretion.

## EXHIBIT C

### Technical specifications

For the best experience with Khan Academy, consider the specifications, tips and general guidelines below.

#### Hardware & Software Specifications

Student use: for desktop **web-based** access

- Hardware supported:
  - Windows PC, Apple Mac, and Chromebooks
- Browsers supported: we support the latest versions of:
  - Google Chrome
  - Firefox
  - Microsoft Edge
  - Safari

Student use: **mobile web** and **mobile app** access

- Khan Academy is supported on mobile web as well as our mobile app, for students.
- iPads and Android tablets are supported for mobile web and mobile app
- For our **mobile app**, it is available for download:
  - in the Apple App store for iOS (supports iOS 12 and iOS 13)
  - In the Google Play Store for Android (supports Android 5.X and

above) Teacher use:

- Desktop web-based access (per hardware & browsers listed above) also applies to Teachers. All functionality, including access to their Teacher Dashboard, is available.
- The Teacher Dashboard (teacher tools) are not available in the mobile app (iOS or Android)

#### Network specifications

The following bandwidth recommendations provide guidance for use in the classroom.

- For video watching, adequate bandwidth is necessary to ensure a smooth connection. Most Khan Academy videos require less bandwidth than live-action content, but we suggest ~1.5 Mbps bandwidth per student or device playing standard-definition video.
- If students are focused mainly on exercises, the suggested bandwidth is 150 kbps per user.
- When considering network setup for portable devices, ensure every device has a strong

wireless connection. When many devices are used simultaneously, the wireless network often becomes weaker.

- Because Khan Academy videos are hosted by YouTube, it is necessary to unblock YouTube for Khan Academy to work properly.

## **Firewall configuration**

In order for all Khan Academy material to be available to your students in your district, please remove any viewing restrictions and allow access to the following URLs:

- [khanacademy.org](http://khanacademy.org)
- [kastatic.org](http://kastatic.org)
- [kasandbox.org](http://kasandbox.org)
- [ka-cs-scratchpad-audio.s3.amazonaws.com](http://ka-cs-scratchpad-audio.s3.amazonaws.com)
- [youtube-nocookie.com](http://youtube-nocookie.com)
- [googlevideo.com](http://googlevideo.com)

We make changes to the above from time to time; an up-to-date list can be found [here](#).

## **Account creation**

To be sure that Khan Academy user accounts are properly designated as School accounts associate with the relevant school district and subject to the Agreement, user accounts must be (1) created by the school district, (for example, when a teacher creates the user name, login and password to establish School User accounts, or when the teacher rosters a class using Google Classroom, Clever, or similar single sign-on service), or (2) created by a user at the direction of a School, in each case, using a School email address and associated with a School's class on the Service. School districts shall provide Khan Academy with information for each school district using the Services pursuant to this Agreement, including the name of the school district and the email domain for the school district that will be associated with user accounts. User accounts created with a personal email address may not be recognized as School accounts. Customer is solely responsible for ensuring the creation of user accounts complies with these requirements.

For large organizations or schools, consider using Clever or Google Classroom to help create Khan Academy accounts for students.

## **Accommodations for students**

Our goal is to help ensure that learners with varying abilities and needs are able to access our materials.

Our general content, including quizzes and tests, have time limits; students have all the time they need and can repeat any practice they desire until they have mastered the material.

As assistive technologies change and evolve, we strive to keep our site up to date with the most popular technologies on the browsers we support.

We conduct accessibility reviews and use our findings to improve our software. We have improved our modals to enable keyboard navigation and better screen reader compatibility, adjusted color contrast to meet the [WCAG](#) contrast ratio standards, and updated icon designs that previously relied purely on color to indicate status change.

- For learners with low vision or colorblindness: Khan Academy has developed its own [tool for checking accessibility](#). Since its introduction, the number of help requests concerning accessibility issues for those with low vision or colorblindness has been in steady decline. We've also added the ability to remove color from videos. Logged-in users can choose this feature via Settings > Accessibility.
- For learners who are deaf or hard of hearing: Transcripts & subtitles are available.
- For learners with sensitivity to animations: Khan Academy has a reduce-motion feature. Logged-in users can choose this feature via Settings > Accessibility.
- For screen reader users to automatically hear the captions without the audio from the video overlapping, there is a checkbox in Settings that allows learners to mute the videos on the platform.

### **School responsibility**

The school is solely responsible for configuring role-based access to user accounts and for ensuring the security and availability of the school's own passwords, computers, computer networks, and internet connections, including security patches, choice of browser and browser configuration settings, email, and other transmissions, and for educating users on measures they can take to protect the privacy of their accounts, such as password security and protocols for use of shared computers or devices.

## EXHIBIT D

Data Sharing and Confidentiality Addendum to the MLSA

INCLUDING

PARENTS BILL OF RIGHTS FOR DATA SECURITY AND PRIVACY

AND

SUPPLEMENTAL INFORMATION ABOUT THE MLSA

### 1. Purpose

- (a) This Exhibit provides supplemental terms and conditions to the Instructional Technology Free Application RFP response ("RFP") to which it is attached, to ensure that the RFP 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 Addendum to the RFP, 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 RFP that is required to be posted on Erie 1 BOCES' website (collectively, the "DSA"). This DSA supplements the MLSA and together with the MLSA, is collectively referred to as the "Agreement". Except for the changes made by this DSA, the MLSA remains unchanged and in full force. For clarity, the liability of each party under this DSA shall be subject to the exclusions and limitations of liability set out in the MLSA.
- (b) To the extent that any terms contained within the RFP, or any terms contained within any other Exhibits attached to and made a part of the RFP response, 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 RFP, 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.
- (c) This DSA will terminate simultaneously and automatically with the termination or expiration of the MLSA. In the event that either party seeks to terminate this DSA, they may do so by terminating the MLSA as set forth therein. Either party may terminate this DSA and the MLSA in the event of a material breach of this DSA by the other party. Notwithstanding the foregoing, statutory obligations under New York Education Law 2-d applicable to Vendor in the provision of the Service shall survive termination.

### 2. Definitions

Any capitalized term used within this Exhibit that is also found in the RFP will have the same definition as contained within the RFP or MLSA. For clarity, **Exhibit A** to the MLSA describes the Service. Vendor may update the description of the Service from time to time to reflect new products, features, or functionality compromised within the Service. Vendor will update relevant documentation to reflect such changes.

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 RFP.
- (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 RFP.
- (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 (or otherwise obtains access to) certain shared instructional technology services through a Cooperative Educational Services Agreement with a BOCES, and as a result is able to use Vendor's Product pursuant to the terms of the RFP and the Agreement (including this Exhibit D). The term also includes Erie 1 BOCES or another BOCES that is licensed to use Vendor's Product pursuant to the RFP to support its own educational programs or operations. For the purposes of this DSA, where the Participating Educational Agency is an entity other than Erie 1 BOCES, such Participating Educational Agency expressly assumes and accedes to the obligations of Erie 1 BOCES hereunder; for the avoidance of doubt, each Participating Educational Agency is solely responsible for its own compliance with the terms of the RFP and the Agreement.
- (e) "Learning activity" means information relating to an identified student's use of the Website generated by the user through use of the Website. Learning activity that is De-Identified is not Student Data or personally identifiable information.
- (f) "Sell" shall have the meaning assigned by applicable U.S. federal or state law. Sell does not include sharing, transferring or disclosing Student Data with a Subprocessor that is necessary to perform a business purpose (such as detecting security incidents, debugging and repairing, analytics, storage or other processing activities) provided that the Subprocessor does not Sell the Student Data, or any sharing, transfer or disclosure of Student Data made by the user through the functionality of the Services. Sell also does not include or apply to a purchase, merger or other type of acquisition of a company by another entity, provided that the company or successor entity continues to treat the Personally Identifiable Information contained in Student Data in a manner consistent with this DSA with respect to the previously acquired Personally Identifiable Information contained in Student Data.
- (g) "Website" means the Khan Academy website and related mobile applications and online services.

### 3. Confidentiality of Protected Data

- (a) Vendor acknowledges that the Protected Data it receives pursuant to the RFP 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 or the party who provided such data (such as the student or parent).
- (b) Vendor will maintain the confidentiality of the Protected Data it receives in accordance with applicable federal and state law (including but not limited to Section 2-d) and, to the extent applicable to Vendor, Erie 1 BOCES's policy on data security and privacy. Vendor acknowledges that Erie 1 BOCES is obligated under Section 2-d to adopt a policy on data security and privacy. Erie 1 BOCES will provide Vendor with a copy of its policy and Vendor and Erie 1 BOCES agree to engage in good faith negotiations to modify this DSA to the extent necessary to ensure Vendor's continued compliance with Section 2-d. Erie 1 BOCES shall provide Vendor with copies of



any additional privacy and data security policies or local regulations that are applicable to the Service, and provide Vendor with an opportunity to review and confirm its acceptance of such requirements, or to disclose any variances or exceptions applicable to the Services. Vendor shall not be required to comply with any such policy (i) to the extent inapplicable to the online nature of the Service; or (ii) unless and until Vendor is afforded an opportunity to review and confirm its compliance by expressly accepting such terms in writing.

- (c) De-Identified Data may be used by the Vendor for any lawful purpose including, but not limited to, development, adaptive learning and customized student learning, research, and improvement of educational sites, services, and applications, and to demonstrate market effectiveness of the Services. Vendor's use of De-Identified Data shall survive termination of this DSA or any request by Erie 1 BOCES to return or destroy Student Data. Vendor agrees not to attempt to re-identify De-Identified Data retained after termination of the relevant user account.
- (d) Nothing in the RFP or the Agreement shall prohibit Vendor, both during and after the term of the Agreement, from collecting or analyzing data received in connection with the Services, as well as data about users' access and use of the Services, for purposes of operating, analyzing, improving, marketing or demonstrating the effectiveness of the Services, developing and improving educational sites, services, or applications, conducting research, or any other lawful purpose, provided that the data is De-Identified and/or aggregated such that the information does not reasonably identify a specific individual.

#### 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 DSA, consistent with Erie 1 BOCES' data security and privacy policy, Vendor will: Review its data security and privacy policy and practices to ensure that in the provision of their Services they are in conformance with all applicable federal, state, and local laws and the terms of this DSA. 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 RFP, Vendor will have the following reasonable administrative, technical, operational and physical safeguards and practices in place throughout the term of the RFP:

##### Technical Safeguards.

Encryption of data in transit. Khan Academy employs industry standard encryption technology to protect information and data transmitted over the internet or other public networks.

Data storage and server hosting. Khan Academy utilizes leading secure cloud service providers, and we rely on them for server and datacenter security. The website is hosted on the Google Cloud Platform (GCP). All data on GCP is encrypted at rest in accordance with Google's security practices.

**Data access control.** Khan Academy uses role-based security architecture and requires users of the system to be identified and authenticated prior to the use of any system resources or user data. Asset owners are responsible for granting access based on the users' role, and access is reviewed periodically.

**Software development lifecycle.** Khan Academy maintains documented software development lifecycle policies and procedures to guide personnel in documenting and implementing application and infrastructure changes. We follow NIST and OWASP best practices and recommendations in the course of our product development.

#### **Administrative Safeguards**

**Risk management.** Khan Academy employs a cross-functional risk management process to identify and manage strategic, operational and compliance risks. A variety of methods are used to assess and manage risk, including policies, procedures, and use of industry standard tools to monitor and protect data and systems.

**Background checks.** Khan Academy employees are screened with background checks prior to their employment with us.

**Employee use of equipment and tools.** Laptops issued to our employees for work purposes are managed to ensure that they are properly configured, regularly updated, and tracked. Our default configuration includes full-disk encryption of hard drives, on-device threat detection and reporting capabilities, and lock when idle for a specified amount of time. All laptops are securely wiped following NIST guidelines before we re-issue or dispose of them. All employees are required to use multi-factor authentication and strong passwords following NIST guidelines to access Khan Academy resources.

**Vulnerability management.** Khan Academy uses a variety of tools, practices and procedures to monitor and protect our data and systems. Khan Academy maintains a confidential vulnerability disclosure program that fields reports from security researchers, and reports are promptly triaged, prioritized and addressed according to their severity.

#### **Physical security.**

Access to Khan Academy's headquarters office is restricted to authorized personnel and visitors. All external entrances are locked and require badge access.

#### **Employee Training**

Our employees are required to complete information security awareness training upon hire and periodically thereafter. Employees that have access to Student Education Records receive training on applicable federal and state privacy laws. Personnel are required to acknowledge and agree to our written information security policy and our employee handbook which, among other things, highlights our commitment to keep Student Education Records and confidential information secure.

#### **Third party service providers; Vendor management**

In order to provide its services, Khan Academy may engage third parties to provide services such as server and data hosting, email delivery, customer service support, analytics and communication tools and services. We review third party service provider security controls, privacy and data protection policies, and contract terms upon initial engagement and periodically thereafter. Third party service providers are required to enter into written agreements whereby they agree to protect the security, privacy and confidentiality of personally identifiable information shared in the context of the services relationship. Third party service providers are prohibited from

engaging in targeting advertising and any other use of Student Education Records except in support of the services we provide to the customer.

#### Incident management

Incident response policies and procedures are in place to guide personnel in reporting and responding to information technology incidents. Procedures exist to identify, report, and act upon system security breaches and other incidents.

Khan Academy's incident response procedures include procedures to provide prompt notification regarding security incidents as required by applicable laws, including a description of the security incident based on available information, and contact information for the Khan Academy representative(s) who will be available to assist the subscribing school district.

Khan Academy may review and update this Data Security and Privacy Plan from time to time, provided that any such updates shall not materially diminish the overall security of the Service or Student Protected Data.

- (c) Vendor will comply with all obligations set forth in Erie 1 BOCES' "Supplemental Information about the RFP" below.
- (d) For any of its officers or employees (or officers or employees of any of its subcontractors or assignees) who have access to Protected Data, Vendor has provided or will provide training on the federal and state laws governing confidentiality of such data prior to their receiving access, as follows: Annually, Vendor will require that all of its employees (or officers or employees of any of its subcontractors or assignees) undergo data security and privacy training to ensure that these individuals are aware of and familiar with all applicable data security and privacy laws.
- (e) Vendor [*check one*] \_\_\_\_\_ will \_\_\_x\_\_\_ will not utilize sub-contractors for the purpose of fulfilling one or more of its obligations under the RFP. In the event that Vendor engages any subcontractors, assignees, or other authorized agents to perform its obligations under the RFP, 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 RFP," below. For clarity, Khan Academy provides its services directly. In order to provide its services, Khan Academy engages third parties to provide certain support services, such as website application and data hosting, email delivery, customer service support, analytics and communication tools and services. Khan Academy does not consider such service providers to be subcontractors.
- (a) Vendor will manage data security and privacy incidents that implicate Protected Data, including identifying breaches and unauthorized disclosures, and Vendor will provide prompt notification of any breaches or unauthorized disclosures of Protected Data in accordance with Section 6 of this DSA.
- (f) Vendor will implement procedures for the return, transition, deletion and/or destruction of Protected Data at such time that the RFP is terminated or expires, as more fully described in Erie 1 BOCES' "Supplemental Information about the MLSA," below.

Vendor may also dispose of accounts or personally identifiable information contained in accounts when no longer needed for the purpose for which it was obtained or as required by applicable law. Methods of disposition include erasing any Personally identifiable information contained in Student Data or permanently encrypting or otherwise modifying the Personally identifiable information contained in Student data to make it unreadable or indecipherable, de-identified or anonymized. The duty to dispose of Student Data shall not extend to data that has been rendered unreadable or indecipherable, de-identified or anonymized.

## 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 RFP and the terms of this DSA.

- (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 or service providers that need access in order to assist Vendor in fulfilling one or more of its obligations under the RFP.
- (c) Not use Education Records for any purposes other than those explicitly authorized in this DSA. Such purposes include providing the Service and related purposes described in the Agreement, including fulfilling requests made by a Participating Educational Agency and as otherwise directed or approved by the relevant Participating Educational Agency.
- (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 RFP or as otherwise expressly permitted under the Agreement, unless:
  - (i) the parent or eligible student has provided prior written consent;
  - (ii) the disclosure is 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;
  - (iii) as directed or permitted by Participating Educational Agency or this DSA, including as authorized under statutes referred to herein;
  - (iv) to authorized users of the Service, including students and their parents; or
  - (v) as permitted by law, to protect the safety or integrity of users or others; or the security of the Service

This prohibition against disclosure shall not apply to De-Identified Data, information disclosed pursuant to a lawfully issued subpoena or other legal process, or to Subprocessors performing services on behalf of the Vendor pursuant to this DSA.

For clarity, Vendor may use education records for purposes of providing the Service, as set forth in the MLSA and the TOS, subject to compliance with this DSA

Vendor will use Student Data in order to provide access to and use of Vendor's Services as set forth the MLSA including (i) to provide Students with individual Website accounts; (ii) to provide adaptive and/or customized student learning features of the Service and educational programs offered through the Service; (iii) to allow School Personnel, and Parents and coaches associated with Students, to review and evaluate Student educational achievement and progress on the Service; (iv) to communicate with users regarding use of the Service and provide information regarding educational and enrichment programs; and (v) as otherwise required or permitted by applicable law.

Permitted use of data includes sending in-app or emailed communications relating to the Services, including prompts, messages and content relating to the use of the Services, for example; onboarding and orientation communications, prompts for Students to complete, or teachers to assign exercises or provide feedback as part of the learning exercise, periodic activity reports, suggestions for additional learning activities in the Services,

service updates (for example new features or content, and information about special or additional programs offered through the Services or website/application).

Certain programs may be offered only with the approval of Erie 1 BOCES, the Participating Educational Agency or the Parent, in accordance with applicable laws. The Agreement does not restrict Vendor programs or activities authorized by the Parent or legal guardian.

Permitted disclosures shall include disclosure of protected data to Vendor's employees, agents, third party service providers and program partners that have a legitimate need to access such information in order to provide their services to Vendor, and as permitted by the functionality of the service.

- (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 RFP," 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 Addendum) 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.
- (h) Upon request, promptly pay for or reimburse Erie 1 BOCES, another BOCES, or a Participating School District for the full actual and reasonable cost of notification, to the extent that 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 provided, however, such incident is not attributed to Erie 1 BOCES, another BOCES, or a Participating School District's use of the Service or otherwise a result of the Participating Educational Agency's actions or inactions.

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

- (a) Vendor shall promptly notify Erie 1 BOCES if it determines that there has been any breach or unauthorized release of Protected Data in the most expedient way possible and without unreasonable delay, but no more than seven (7) calendar days after Vendor has discovered or been informed of the breach or unauthorized release.
- (a) Vendor will provide such notification to Erie 1 BOCES by contacting Michelle Okal-Frink directly by email at [mokal@e1b.org](mailto:mokal@e1b.org), or by calling (716) 821-7200 (office) or (716) 374-5460 (cell).
- (b) Vendor will cooperate with Erie 1 BOCES and provide as much information as possible directly to Michelle Okal-Frink or her designee about the incident, including but not limited to: a description of the incident, the date of the incident, the date Vendor discovered or was informed of the incident, a description of the types of personally identifiable information involved, an estimate of the number of records affected, the Participating Educational Agencies affected, what the Vendor has done or plans to do to investigate the incident, stop the breach and mitigate any further unauthorized access or release of Protected Data, and contact information for Vendor representatives who can assist affected individuals that may have additional questions.
- (c) 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

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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 use reasonable efforts to promptly inform Michelle Okal-Frink or her designees.

- (d) Vendor will use reasonable efforts to 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.
- (e) This Section 6 shall not restrict Vendor's ability to provide separate breach notification to its customers, including parents and other individuals with Website accounts.
- (f) In the event of a breach originating from Erie 1 BOCES or Participating Educational Agency's use of the Service, Erie 1 BOCES or Participating Educational Agency shall cooperate with Vendor to the extent necessary to expeditiously secure the impacted data.

**EXHIBIT D (CONTINUED)**

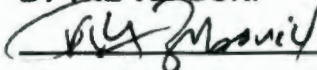
**ERIE 1 BOCES**

**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**

VICKI ZUBOVIC

**Printed Name**

Chief External Affairs Officer

**Title**

5/10/22

**Date**

**EXHIBIT D (CONTINUED)**

In accordance with Education Law §2-d(3)(c) and Section 121.3 of the implementing Regulations, set forth below is the "Supplemental Information" required to be posted on the Participating Educational Agency's website.

**Supplemental Information  
to  
Parents Bill of Rights**

Erie 1 BOCES has entered into an RFP with Khan Academy, Inc. which governs the availability to Participating Educational Agencies of the following Product(s):



Pursuant to and as fully described in the RFP, Vendor will provide access to and use of the Khan Academy website, mobile application and related services (collectively, the "Services") to Participating Educational Agencies (and their students and school personnel) for educational activities under the direction of the Participating Educational Agency.

Services provided under this Agreement are limited to free use of the website and under the Vendor Terms of Service posted on the website ([www.khanacademy.org](http://www.khanacademy.org)) and support services specifically included in the RFP.

**Khan Academy Standard Features.** Khan Academy provides access to a website located at <http://khanacademy.org> and related mobile applications (collectively "Website"), through which it provides free educational services, including, but not limited to, educational content, and to other products and services that Khan Academy may provide now or in the future (collectively, the "Service"). The Service is governed by and further described in Khan Academy's [Terms of Service](#) and [Privacy Policy](#).

Pursuant to the RFP response, 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 Services under the RFP. Vendor agrees that it will not use the Protected Data for any other purposes not explicitly authorized in the RFP or as otherwise legally permissible. 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 RFP (including any hosting service provider), it will require those to whom it discloses Protected Data to execute legally binding agreements acknowledging the obligation to comply with data security and privacy standards no less restrictive than those required of Vendor under the MLSA, this DSA, and applicable state and federal law. Vendor will ensure that such subcontractors, assignees, or other authorized agents abide by the provisions of these agreements, as follows:

Khan Academy maintains a vendor management program to vet and manage third party service providers that have access to protected data in the course of providing services to Khan Academy. Khan Academy reviews third party service provider security controls, privacy and data protection policies, and contract terms upon initial engagement and periodically thereafter. Third party service providers are required to agree in writing to protect the security, privacy and confidentiality of personally identifiable information shared in the context of the services relationship consistent with Khan Academy's obligations to its customer.

#### **Duration of the RFP and Protected Data Upon Expiration:**

The RFP commences on October 29, 2021 and expires on June 30, 2024, unless earlier terminated by the parties.

Upon expiration of the RFP without renewal, or upon termination of the RFP prior to expiration, user accounts created pursuant to the Service will remain open and available for use unless and until the Participating Educational Agency or its personnel instructs Vendor to delete the accounts, or the teacher, Parent or Student takes action to delete the account.

Upon request from the Participating Educational Agency to delete School Accounts, Vendor will securely delete, destroy or permanently De-Identify 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.

Prior to terminating School Accounts (and associated Protected Data) at the direction of the Participating Educational Agency or its personnel, Vendor may (but is not required to) invite Students or Parents to establish a personal account for purposes of retaining any content generated or provided by the Student (including the Student's learning activity on the website). Personally identifiable information required to establish the account and maintain the content (for example, username, password, age, and the user's learning activity) will be retained. Any such personal accounts will be established under Vendor's standard account opening process, including by obtaining Parent consent where required by applicable law.

Upon termination of the Services, Vendor will not be obligated to export Protected Data back to the Participating Educational Agency. Personally identifiable information that is not retained in a personal account as provided herein will be disposed of rather than returned to the Participating Educational Agency.

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 from any deleted account, on any storage medium whatsoever. Upon request, Vendor 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.

Student Data held by Vendor is accessible in the Student's account profile, and may be viewed by the Student or Parent at any time in the Student's account. Parents may elect to open a free Parent account associated with their Student's account on the Website, and will be able to view and correct the Student's account profile information and view their account activity through the Parent account. Certain account controls, including the ability to modify the account profile or delete the account, may be exercisable by the teacher that created the account, by the student account holder or their parent with an associated account. Data that is accessible in the account is limited to basic account data (such as username, password, birthdate) and information regarding Khan Academy usage data (such as videos watched and exercises completed); it does not include school data such as test scores, grades or attendance records.

If Vendor receives a request from a Parent requesting correction of Student data collected by Vendor or its subcontractors, Vendor will either (i) directly assist the Parent or guardian with respect to their request to correct Student data held by Vendor, (ii) direct their request to the Student's teacher or Participating Educational Agency for resolution by the School or (iii) request that the Parent direct their request to the Student's teacher or School for resolution by the Participating Educational Agency.

**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 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. The Khan Academy website is hosted on the Google Cloud Platform (GCP). All data on GCP is encrypted at rest in accordance with Google's security practices.