

Master License and Service Agreement

This Master License and Service Agreement (“**Agreement**” or “**MLSA**”) is made and entered into by and between Liminex, Inc. dba GoGuardian on behalf of itself and its Affiliates (“**Vendor**” or “**GoGuardian**”), having its principal offices at 2030 East Maple Avenue, Suite 100, El Segundo, California 90245, and the Wayne-Finger Lakes BOCES/EduTech (“**Customer**”), having its principal offices at [insert BOCES’s office address]. Vendor and Customer are sometimes referred to herein, individually, as a “**Party**,” and collectively, as the “**Parties**.” “**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with a party. “**Control**” for purposes of this definition means the power to direct or cause the direction of the management and policies of the subject entity, whether through equity ownership, a credit arrangement, franchise agreement or other contractual arrangement. “**Vendor Parties**” or “**GoGuardian Parties**” means Vendor, its affiliates, licensors, and suppliers, and their respective officers, directors, employees, shareholders, agents and representatives. This Agreement incorporates by this reference GoGuardian’s Terms of Service and End User License Agreement available at www.goguardian.com/eula.html (as may be amended from time to time in accordance with the terms contained therein) (the “**Vendor Terms**”). In the event of a conflict between any provision in this MLSA and any provision in the Vendor Terms incorporated herein, the provision in this MLSA will govern, unless the provision in this MLSA expressly references the conflicting provision in the Vendor Terms and this MLSA expressly acknowledges that such conflicting provision shall apply.

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 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 its school districts within the BOCES. Through Customer’s procurement process, Vendor has been identified and accepted by Customer as a provider of software products and professional development services as more fully described herein (the “**Product(s)**”). Only a school district served by Customer may participate in this Agreement (a “**school district Licensee**”). 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 its school districts pursuant to the terms herein.

1. TERM and TERMINATION

1.1 Term of Agreement. The Effective Date of this Agreement shall be July 1, 2022. The initial term of this Agreement shall commence on the Effective Date and continue until 11:59 pm June 30, 2023 (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.

the benefit of that Licensee. Licensees shall not permit or provide for transfer or reproduction of the Product(s) or Services, 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 As between Vendor, on the one hand, and Customer and their respective school district Licensees shall be the sole owner and custodian of Protected Data transmitted to, received, or manipulated by the Product(s), except as otherwise specifically set forth in this Agreement. Notwithstanding the foregoing, the Parties acknowledge and agree that Protected Data does not include Deidentified Data. "Deidentified Data" means aggregated and anonymized data which may be derived from information that is transmitted to Vendor through the Product(s), including student records; provided that the Deidentified Data cannot be unaggregated or have the anonymization reversed. Notwithstanding anything to the contrary contained herein, Vendor agrees not to attempt to re-identify any Deidentified Data and Vendor will not to transfer Deidentified Data to any party unless that party agrees not to attempt reidentification.

4.3 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 (including their respective design, architecture, interfaces, databases, data bases structures, nonliteral elements, capabilities and functionality, source code and object code) as well as research and development efforts, marketing and distribution efforts licensing, cross-licensing, marketing and distribution practices), trade secrets, the terms of this Agreement (except those portions of the Agreement that Customer may be required to disclose by law or legal process), financial information, and (b) the Confidential Information of Customer shall include Protected Data regarding its and other Licensees' 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.

4.4 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 **New York Education Law 2-d Rider to Contractor Products Terms of Service and End User License Agreement ("Data Sharing Agreement")** incorporated into this Agreement by reference as **Exhibit B**. 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 such breach is attributable to Vendor. All subcontractors have agreed to be subject to terms that are at least as restrictive as the Data Sharing Agreement contained in **Exhibit B**.

CUSTOMER UNDER PURCHASE ORDERS EXECUTED HEREUNDER FOR THE PRODUCT(S) OR SERVICES GIVING RISE TO SUCH CLAIM FOR THE CALENDAR YEAR IN WHICH SUCH CLAIM AROSE. WITH RESPECT VIOLATIONS OF THE CONFIDENTIALITY OBLIGATIONS UNDER SECTION 4.3 AND VENDOR'S OBLIGATIONS UNDER NYS EDUCATION LAW 2-D SET OUT IN SECTION 4.4 AND EXHIBIT B, FOR ANY AND ALL CLAIMS ARISING BETWEEN ANY OF THE VENDOR PARTIES AND CUSTOMER AS, (A) THE TOTAL LIABILITY OF, ON THE ONE HAND, THE VENDOR PARTIES, COLLECTIVELY, TO CUSTOMER COLLECTIVELY (ON BEHALF OF ITSELF AND ITS SCHOOL DISTRICTS), AND ON THE OTHER HAND, (B) THE TOTAL LIABILITY OF CUSTOMER COLLECTIVELY (ON BEHALF OF ITSELF AND ITS SCHOOL DISTRICTS), TO VENDOR PARTIES COLLECTIVELY ON THE OTHER HAND, SHALL NOT EXCEED THREE (3) TIMES THE TOTAL AMOUNT OF FEES PAID TO VENDOR BY CUSTOMER UNDER PURCHASE ORDERS EXECUTED HEREUNDER FOR THE PRODUCT(S) OR SERVICES GIVING RISE TO SUCH CLAIM FOR THE CALENDAR YEAR IN WHICH SUCH CLAIM AROSE, IN THE AGGREGATE. THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE ANY LIMITATION IN SECTION 6.2.

7. 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 Customer, State of New York and the Parties hereby agree to submit to personal jurisdiction in any such court. The Parties and Vendor further waive any constitutional and statutory rights to have a trial in front of a jury. The parties are instead electing that all claims not otherwise resolved informally as permitted above shall be resolved in a bench trial before a judge without a jury.

8. 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.

9. 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.

10. SEVERABILITY

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

LIMINEX, INC. DBA GOGUARDIAN ON BEHALF OF ITSELF AND ITS AFFILIATES

By: _____
Printed Name: _____
Title: _____
Date: _____

Wayne-Finger Lakes BOCES/EduTech

By: *Kelli Eckdars*
Printed Name: *Kelli Eckdars*
Title: *Director*
Date: *7/12/22*
Address for Notice:

[Signature Page to MLSA]

Exhibit B
DATA SHARING AGREEMENT

[insert New York Education Law 2-d Rider to Contractor Products Terms of Service and End User License Agreement]

NEW YORK EDUCATION LAW 2-D RIDER

TO CONTRACTOR PRODUCTS TERMS OF SERVICE AND END USER LICENSE AGREEMENT

This New York Education Law 2-d Rider ("**Rider**") to Liminex Products Terms of Service and End User License Agreement (currently available at <https://www.goguardian.com/policies/eula> as may be updated from time to time in accordance with the terms therein) and incorporated Product Privacy Policy (currently available at <https://www.goguardian.com/policies/product-privacy> as may be updated from time to time in accordance with the terms therein) ("**Terms**") (together, the "**Rider**" and "**Terms**" as the "**Agreement**") shall be accepted by each school district within the Wayne-Finger Lakes BOCES/EduTech School District by purchasing licenses to GoGuardian Offering(s) through the Wayne-Finger Lakes BOCES/EduTech (each, a "**Wayne-Finger Lakes BOCES/EduTech School District**") between July 1, 2022 until June 30, 2023 and shall continue co-terminous with that particular Wayne-Finger Lakes BOCES/EduTech School District's purchased license to GoGuardian Offering(s). As of the last date on the signature line below ("Effective Date"), WayneFinger Lakes BOCES/EduTech and Liminex, Inc. doing business as GoGuardian ("GoGuardian" or "Contractor") on behalf of itself and its affiliates, which may include Pear Deck, Inc. ("Pear Deck") and/or Snapwiz Inc. dba Edulastic ("Edulastic") agree as follows:

1. **Definitions.** Capitalized terms shall have the meanings ascribed to such terms in the Terms, unless otherwise explicitly defined below:
 - a. "**Commercial or Marketing Purpose**" means the sale of Student Data; or its use or disclosure for purposes of receiving remuneration, whether directly or indirectly; the use of Student Data for advertising purposes, or to develop, improve or market products or services to students.
 - b. "**Encryption**" means methods of rendering Personally Identifiable Information unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified or permitted by the Secretary of the United States department of health and human services in guidance issued under Section 13402(H)(2) of Public Law 111-5.
 - c. "**New York Education Law Section 2-d**" means Section 2-d of Article I of Title I of New York Consolidated Laws, Education Law, together with its implementing regulations in Part 121 of the Regulations of the New York Commissioner of Education.
 - d. "**Personally Identifiable Information**", as applied to Student Data, means Personally Identifiable Information as defined in section 99.3 of Title 34 of the Code of 3 Federal Regulations implementing the Family Educational Rights and Privacy Act, 20 U.S.C 1232g ("**FERPA**"), and as applied to Teacher and Principal Data, means Personally Identifiable Information as such term is defined in Education Law §3012-c(10). Personally Identifiable Information does not include Deidentified Information.
 - e. "**Teacher or Principal Data**" means Personally Identifiable Information from the records of an educational agency relating to the annual professional performance reviews of classroom teachers or principals that is confidential and not subject to release under the provisions of Education Law §§3012-c and 3012-d.
 - f. "**Student Data**" means Personally Identifiable Information from the student records of an educational agency.
2. **Data Collection Transparency and Restrictions.**

- ix. where it engages a subcontractor to perform its contractual obligations, the data protection obligations imposed on Contractor by state and federal law and contract shall apply to the subcontractor; and
- x. cooperate with educational agencies and law enforcement to protect the integrity of investigations into the breach or unauthorized release of personally identifiable information.

4. Bill of Rights for Data Privacy and Security.

- a. Contractor acknowledges that, pursuant to New York Education Law Section 2-d, (i) School must publish on your website a parents bill of rights for data privacy and security that includes the supplemental information described in Section 4(b) (“**Supplemental Information**”) concerning Contractor (“**Bill of Rights**”), and (ii) Contractor’s contract with School must include a copy of such Bill of Rights.
- b. Supplemental Information for a third party contractor includes:
 - i. the exclusive purposes for which the Student Data or Teacher or Principal data will be used by the third-party contractor, as defined in the contract;
 - ii. how the third-party contractor will ensure that the subcontractors, or other authorized persons or entities to whom the third-party contractor will disclose the Student Data or Teacher or Principal Data, if any, will abide by all applicable data protection and security requirements, including but not limited to those outlined in applicable state and federal laws and regulations (e.g., FERPA; New York Education Law Section 2-d);
 - iii. the duration of the contract, including the contract’s expiration date and a description of what will happen to the Student Data or Teacher or Principal Data upon expiration of the contract or other written agreement (e.g., whether, when and in what format it will be returned to the educational agency, and/or whether, when and how the data will be destroyed);
 - iv. if and how a parent, student, eligible student, teacher or principal may challenge the accuracy of the Student Data or Teacher or Principal Data that is collected;
 - v. where the Student Data or Teacher or Principal Data will be stored, described in such a manner as to protect data security, and the security protections taken to ensure such data will be protected and data security and privacy risks mitigated; and
 - vi. address how the data will be protected using Encryption while in motion and at rest.
- b. In compliance with New York Education Law Section 2-d, Contractor’s Supplemental Information is set forth in Schedule 1 to this Rider.


The bill of rights and supplemental information may be redacted to the extent necessary to safeguard the privacy and/or security of the educational agency’s data and/or technology infrastructure.

- c. A copy of the Bill of Rights is attached hereto as Schedule 2 to this Rider.

5. Data Security and Privacy Plan.

Signed and Agreed:

**For and on behalf of Wayne-Finger Lakes Board
of Cooperative Educational Services/EduTech
("School")**

Signature: 
Name: Kelli Eckdahl
Dated: 7/12/22

**For and on behalf of Liminex, Inc. dba
GoGuardian, Pear Deck, Inc. and Snapwiz Inc.
dba Edulastic ("Contractor")**

Signature: _____
Name: _____
Dated: _____

- **if and how a parent, student, eligible student, teacher or principal may challenge the accuracy of the Student Data or Teacher or Principal Data that is collected;**

Please see Product Privacy Policy listing for how a student may challenge the accuracy of Student Data (and, to the extent that GoGuardian or Edulastic maintains any Teacher or Principal Data to the extent that GoGuardian or Edulastic maintains such data how a teacher or principal may challenge the accuracy of Teacher or Principal Data).

For Pear Deck specifically, a student may challenge the accuracy of Student Data (and, to the extent that Edulastic maintains any Teacher or Principal Data to the extent that Edulastic maintains such data how a teacher or principal may challenge the accuracy of Teacher or Principal Data) by contacting his/her teacher or school administrator, as applicable, at the School who may, in turn, determine how to proceed with the request and make any resulting changes within the Edulastic Services.

- **where the Student Data or Teacher or Principal Data will be stored, described in such a manner as to protect data security, and the security protections taken to ensure such data will be protected and data security and privacy risks mitigated; and**
 - Student Data (and, to the extent that Contractor maintains any Teacher or Principal Data, any Teacher or Principal Data) will be stored in industry-leading databases.
- **address how the data will be protected using Encryption while in motion and at rest.**
 - Student Data (and, to the extent that Contractor maintains any Teacher or Principal Data, any Teacher or Principal Data) will be protected using encryption in motion via SSL and at rest.

CONTRACTOR CONFIDENTIAL INFORMATION

Schedule 3

Contractor's Data Privacy and Security Plan

- **Contractor will implement applicable state, federal, and local data security and privacy requirements during the Term, consistent with School's data security and privacy policy.**
- **Contractor has administrative, operational and technical safeguards designed to protect Personally Identifiable Information that it receives during the Term, including:**
 - **Administrative Safeguards:** Data breach response plan, change management systems, security and privacy awareness training, employee background checks
 - For Pear Deck only: **Administrative Safeguards:** Change management systems, security and privacy awareness training, employee background checks
 - **Operational Safeguards:** Office security guards, key cards, office surveillance
 - For Pear Deck only: **Operational Safeguards:** Procedures designed to maintain security; Risk assessment
 - **Technical Safeguards:** access controls to Personally Identifiable Information, encryption in motion between endpoints via SSL and at rest of Personally Identifiable Information, authentication of desktops and laptops, penetration testing
- **Contractor provided its Supplemental Information for the Bill of Rights in Schedule 1. Please see Schedule 1 for Supplemental Information for the Bill of Rights.**
- **Contractor provides training to employees who access Student Data** (and, to the extent that Contractor maintains any Teacher or Principal Data, any Teacher or Principal Data) **under the Terms on the federal and state laws governing confidentiality of such data in the onboarding process for new employees and on an annual basis for existing employees.**
- **Contractor will use subcontractors to help operate some of the Services such as a database provider. Contractor will take steps designed to ensure that the subcontractors, or other authorized persons or entities to which Contractor will disclose Student Data** (and, to the extent that Contractor maintains any such data, any Teacher or Principal Data) **will abide by data security and privacy requirements, including by:**
 - Conducting diligence and evaluating the security practices of subcontractors that can access Student Data (and, to the extent that Contractor maintains any such data, any Teacher or Principal Data)
 - Requesting verification of compliance with security and privacy standards aligned with state and federal law