

Master License and Service Agreement

This Master License and Service Agreement (“Agreement” or “MLSA”) is made and entered into by and between Boom Learning (a dba of Omega Labs Inc. (“Vendor”), having its principal offices at 9805 NE 116th Street, Ste 7198, Kirkland, WA 98034, 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, Boom Learning(a dba of Omega Labs Inc.) has been identified and accepted by Customer as a provider of Boom Cards 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 July 1, 2024. The initial term of this Agreement shall commence on the Effective Date and

continue until 11:59 pm June 30, 2027 (“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.

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.

2. SCOPE OF SERVICES

Vendor will provide the Product(s) 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.

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.

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 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 Licensees shall be the sole owner and custodian of any information or data transmitted to, received, or manipulated by the Product(s), except as otherwise specifically set forth in this Agreement.

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). Confidential Information does not include information which (a) was known to the receiving Party or in the public domain before disclosure; (b) becomes part of the public domain after disclosure by a publication or other means except by a breach of this Agreement by the receiving Party; (c) was received from a third party under no duty or obligation of confidentiality to the disclosing Party; or (d) was independently developed by the receiving Party without reference to Confidential Information. Disclosures of Confidential Information that are required to be disclosed by law or legal process shall not be considered a breach of this Agreement as long as the recipient notifies the disclosing Party, provides it with an opportunity to object and uses reasonable efforts (at the expense of the disclosing Party) to cooperate with the disclosing Party in limiting disclosure to the extent allowed by law.

4.6 Vendor Obligations Under NYS Education Law 2-d. For Student Data, or Teacher and Principal Data, as such terms are defined in New York Education Law Section 2-d, Vendor shall comply with all terms, conditions and obligations as set forth in the Data Sharing and Confidentiality Agreement, 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. 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.

5. REPRESENTATIONS, WARRANTIES AND DISCLAIMERS

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

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

5.2.1 Vendor shall have the right to make such defense by counsel of its choosing and Customer or the other Licensee, as applicable, shall cooperate with said counsel and Vendor therein.

5.2.2 If the Product(s) are held to infringe, or in Vendor's opinion is likely to be held to infringe, any United States Patent or pending applications for Letters Patent, or any Trademark or Copyright, Vendor shall, in addition to its obligations as set forth in paragraphs 5.2 and 5.2.1 above, at its expense, (a) secure the right for Customer or the other Licensee, as applicable, to continue use of the Product(s) or (b) replace or modify the Product(s) to make it non-infringing.

5.2.3 Vendor shall have no obligation with respect to any such claim of infringement based upon modifications of machines or programming made by Customer or any other Licensee without Vendor's approval, or upon their combination, operation, or

use with apparatus, data, or programs not furnished by Vendor by Customer or any other Licensee, without Vendor's approval.

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

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 name of a contact person (hereinafter referred to as the "BOCES Contact") who will have the authority to act on behalf of the BOCES and school district Licensees within their jurisdiction with regards to any questions or issues that may arise during the installation or implementation of the Product(s). Unless directed by that BOCES Contact, the Vendor will have no other contact within the BOCES regardless of previous working relationships.

6. INDEMNIFICATION

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

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, at four (4) virtual site during each year of this Agreement.

8. TECHNICAL SUPPORT SERVICES

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

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

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

8.4.1 Toll Free Number support 833-WOW-BOOM from 12 P.M. to 7 P.M. EST (Eastern Standard 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. RISK OF LOSS OR DAMAGE

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

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

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.

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

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.

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

BOOM LEARNING (A DBA OF OMEGA LABS INC.)

DocuSigned by:
By: Mary Oemig
5748CA27BCFC44C...
Printed Name: Mary Oemig
Title: CEO
Date: 6/21/2024

Erie 1 BOCES

DocuSigned by:
By: James Fregelette
9AEB9EED72B74AB...
Printed Name: James Fregelette
Title: Exec Director
Date: 6/21/2024

EXHIBIT A

Boom Cards by Boom are interactive lessons and activities built by educational professionals. They can be used as digital learning games, instant-feedback quizzes, interactive lessons, and more.

The *Boom* platform includes (a) student player, (b) learner reporting tools, (c) storage for purchased and created *Boom Cards*, and (d) *Boom Cards* creation tools.

Boom Cards can be assigned in ways that do not collect data or in ways that report learner performance data. Schools use *Boom Cards* to support learning and intervention.

EXHIBIT B

Free Training offered through our YouTube channel and our standard publicly available webinars which run throughout the year.

EXHIBIT C

Technical Specification — What You Need To Make Boom Cards Work Print

Modified on: Fri, 17 May, 2024 at 9:56 AM

There are just a few things you must have for Boom Cards to play properly:

- An internet connection.
- A device with a currently supported operating system. For safety and security reasons we do not support use of Boom Cards on operating systems that have reached end-of-life as defined by their manufacturer.

Either

- A browser that runs HTML5 such as Chrome, Safari, Firefox, Chromium Edge (Jan 15, 2020 or later), Chrome on a Chromebook, netbook, laptop or desktop or Android tablet. Silk on the Kindle, Safari on the iPad OR
- One of our free apps available from the [App Store](#), [Google Play](#) or [Kindle Fire](#) and a compatible device (see the respective stores for details).

Allow List for Managed Devices and Networks

If your school or organization's network filters will only allow specified domains, please contact your IT department to allow the following (these also need to be allowed inside your school's LMS system being used for assignments and for browsers):

- Cookies served by <https://wow.boomlearning.com> in your browser cookie settings.
- Authentication for Google and Microsoft users (if your school uses these)
- Access to our Boom Learning apps (if you want to use native apps on your devices)

Your IT department may also need to allow the following domains:

- <https://boom-cards.s3-us-west-2.amazonaws.com/>
- <https://boom.cards>
- *.boomlearning.com

Some users have had issues with Avast (or AVG, a subsidiary of Avast) Security flagging <https://boom-cards.s3-us-west-2.amazonaws.com/> as a phishing URL. That URL is not a phish. That is the URL we use to fetch resources for our product. We are the ones that made the deliberate request to load the resource on the users behalf.

For email networks that require an IP address, please allow this IP: **156.70.2.176**

Compatible devices:

iPad or iPhone — iOS 11 or later. We no longer support iOS 10 and earlier. Use a browser for iOS 10x

Kindle Fire — the app works with devices manufactured in 2014 and later. Use the Silk browser if using older Kindle Fire.

Chromebooks with App and Android Tablets — minimum version 5.1 (Lollipop)

Interactive Whiteboards

Our users have had success with Boom Cards on:

- GetClearTouch panels
- SMARTBoards
- ActivPanel

...and more. So long as the interactive whiteboard can interact with HTML5 browser apps, Boom Cards should work.

Teletherapy platforms

Our users who provide remote services have had success with

- Zoom
- Adobe Connect
- WebEx

Creating Boom Cards

You can only create Boom Cards in a browser, not an app. We find laptops or desktops are best for creating Boom Cards.

EXHIBIT D**Data Sharing and Confidentiality Agreement**

INCLUDING
PARENTS BILL OF RIGHTS FOR DATA SECURITY AND PRIVACY
AND
SUPPLEMENTAL INFORMATION ABOUT THE MLSA

1. Purpose

- (a) This Exhibit supplements the Master License and Service Agreement (“MLSA”) to which it is attached, to ensure that the MLSA conforms to the requirements of New York State Education Law Section 2-d and any implementing Regulations of the Commissioner of Education (collectively referred to as “Section 2-d”). This Exhibit consists of the terms of this Data Sharing and Confidentiality Agreement, a copy of Erie 1 BOCES’ Parents Bill of Rights for Data Security and Privacy signed by the Vendor, and the Supplemental Information about the MLSA that is required to be posted on Erie 1 BOCES’ website.
- (b) To the extent that any terms contained within the MLSA, or any terms contained within any other Exhibits attached to and made a part of the MLSA, conflict with the terms of this Exhibit, the terms of this Exhibit will apply and be given effect. In the event that Vendor has online or written Terms of Service (“TOS”) that would otherwise be applicable to its customers or users of its Product that is the subject of the MLSA, to the extent that any term of the TOS conflicts with the terms of this Exhibit, the terms of this Exhibit will apply and be given effect.

2. Definitions

Any capitalized term used within this Exhibit that is also found in the MLSA will have the same definition as contained within the MLSA.

In addition, as used in this Exhibit:

- (a) "Student Data" means personally identifiable information, as defined in Section 2-d, from student records that Vendor receives from a Participating Educational Agency pursuant to the MLSA.
- (b) “Teacher or Principal Data” means personally identifiable information relating to the annual professional performance reviews of classroom teachers or principals that is confidential and not subject to release under the provisions of New York Education Law Sections 3012-c or 3012-d, that Vendor receives from a Participating Educational Agency pursuant to the MLSA.

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

3. **Confidentiality of Protected Data**

- (a) Vendor acknowledges that the Protected Data it receives pursuant to the MLSA may originate from several Participating Educational Agencies located across New York State, and that this Protected Data belongs to and is owned by the Participating Educational Agency from which it originates.
- (b) Vendor will maintain the confidentiality of all Protected Data it receives in accordance with applicable federal and state law (including but not limited to Section 2-d) and this DSC Agreement, as may be amended by the Parties, and Erie 1 BOCES’ 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, and that Erie 1 BOCES will provide Vendor with a copy of its policy upon request.

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.

<https://wow.boomlearning.com/privacy>

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

- (a) In order to implement all state, federal, and local data security and privacy requirements, including those contained within this Data Sharing and Confidentiality Agreement, consistent with Erie 1 BOCES’ data security and privacy policy, Vendor will: Review its data security and privacy policy and practices to ensure that they are in conformance with all applicable federal, state, and local laws and the terms of this Data Sharing and Confidentiality Agreement. In the event Vendor’s policy and practices are not in conformance, the Vendor will implement commercially reasonable efforts to ensure such compliance.
- (b) As required by the NIST Cybersecurity Framework, in order to protect the security, confidentiality and integrity of the Protected Data that it receives under the MLSA,

- a. Vendor will have the following reasonable administrative, technical, operational, and physical safeguards and practices in place throughout the term of the MLSA:
 - i. Data Security:
 1. Data-at-rest & data-in-transit is encrypted
 2. Data leak protections are implemented
 - ii. Information Protection Processes and Procedures:
 1. Data destruction is performed according to contract and agreements
 2. A plan for vulnerability management is developed and implemented
 - iii. Protective Technology:
 1. Log/audit records are ascertained, implemented, documented, and reviewed according to policy
 2. Network communications are protected
 - iv. Identity Management, Authentication and Access Control:
 1. Credentials and identities are issued, verified, managed, audited, and revoked, as applicable, for authorized dev
 - (c) Vendor will comply with all obligations set forth in Erie 1 BOCES' "Supplemental Information about the MLSA" below.
 - (d) For any of its officers or employees (or officers or employees of any of its subcontractors or assignees) who have access to Protected Data, Vendor has provided or will provide training on the federal and state laws governing confidentiality of such data prior to their receiving access, as follows: Annually, Vendor will require that all of its employees (or officers or employees of any of its subcontractors or assignees) undergo data security and privacy training to ensure that these individuals are aware of and familiar with all applicable data security and privacy laws.
- Vendor shall enter into an agreement--either by signature or click-through acceptance--with all such subprocessors, whereby the terms of the agreement include obligations that will ensure that (a) the Student Data is protected in a manner no less stringent than the manner in which Vendor protects the Student Data, (b) the subprocessor will not sell the Student Data, and (c) the subprocessor may not materially alter the agreement with Vendor unless notice is provided to Vendor.
- (e) Vendor [*check one*] ☒ will ☐ will not utilize sub-contractors for the purpose of fulfilling one or more of its obligations under the MLSA. In the event that Vendor engages any subcontractors, assignees, or other authorized agents to perform its obligations under the MLSA, it will require such subcontractors, assignees, or other authorized agents to execute written agreements as more fully described in Erie 1 BOCES' "Supplemental Information about the MLSA," below.
 - (f) Vendor will manage data security and privacy incidents that implicate Protected Data, including identifying breaches and unauthorized disclosures, and Vendor will provide prompt notification of any breaches or unauthorized disclosures of Protected Data in accordance with Section 6 of this Data Sharing and Confidentiality Agreement.

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

5. **Additional Statutory and Regulatory Obligations**

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

- (a) Limit internal access to education records to those individuals that are determined to have legitimate educational interests within the meaning of Section 2-d and the Family Educational Rights and Privacy Act (FERPA).
- (b) Limit internal access to Protected Data to only those employees or subcontractors that need access in order to assist Vendor in fulfilling one or more of its obligations under the MLSA.
- (c) Not use education records for any purposes other than those explicitly authorized in this Data Sharing and Confidentiality Agreement.
- (d) Not disclose any personally identifiable information to any other party, except for authorized representatives of Vendor using the information to carry out Vendor's obligations under the MLSA, unless:
 - (i) the parent or eligible student has provided prior written consent; or
 - (ii) the disclosure is required by statute or court order and notice of the disclosure is provided to Participating Educational Agency no later than the time of disclosure, unless such notice is expressly prohibited by the statute or court order.
- (e) Maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of personally identifiable student information in its custody;
- (f) Use encryption technology that complies with Section 2-d, as more fully set forth in Erie 1 BOCES' "Supplemental Information about the MLSA," below.
- (g) Provide notification to Erie 1 BOCES (and Participating Educational Agencies, to the extent required by, and in accordance with, Section 6 of this Data Sharing and Confidentiality Agreement) of any breach of security resulting in an unauthorized release of Protected Data by Vendor or its assignees or subcontractors in violation of state or federal law or other obligations relating to data privacy and security contained herein.
- (h) Promptly reimburse Erie 1 BOCES, another BOCES, or a Participating School District for the full cost of notification, in the event they are required under Section 2-d to notify affected parents, students, teachers or principals of a breach or unauthorized release of Protected Data attributed to Vendor or its subcontractors or assignees.

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

- (a) Vendor shall promptly notify Erie 1 BOCES of any breach or unauthorized release of Protected Data in the most expedient way possible and without unreasonable delay, but no more than seven (7) calendar days after Vendor has discovered or been informed of the breach or unauthorized release.
- (b) Vendor will provide such notification to Erie 1 BOCES by contacting Michelle Okal-Frink directly by email at mokal@e1b.org, or by calling (716) 821-7200 (office) or (716) 374-5460 (cell).
- (c) Vendor will cooperate with Erie 1 BOCES and provide as much information as possible directly to Michelle Okal-Frink or her designee about the incident, including but not limited to: a description of the incident, the date of the incident, the date Vendor discovered or was informed of the incident, a description of the types of personally identifiable information involved, an estimate of the number of records affected, the Participating Educational Agencies affected, what the Vendor has done or plans to do to investigate the incident, stop the breach and mitigate any further unauthorized access or release of Protected Data, and contact information for Vendor representatives who can assist affected individuals that may have additional questions.
- (d) Vendor acknowledges that upon initial notification from Vendor, Erie 1 BOCES, as the educational agency with which Vendor contracts, has an obligation under Section 2-d to in turn notify the Chief Privacy Officer in the New York State Education Department ("CPO"). Vendor shall not provide this notification to the CPO directly. In the event the CPO contacts Vendor directly or requests more information from Vendor regarding the incident after having been initially informed of the incident by Erie 1 BOCES, Vendor will promptly inform Michelle Okal-Frink or her designees.
- (e) Vendor will consult directly with Michelle Okal-Frink or her designees prior to providing any further notice of the incident (written or otherwise) directly to any other BOCES or Regional Information Center, or any affected Participating Educational Agency.

7. **Notification of Breach and Unauthorized Release: Erie 1 BOCES**

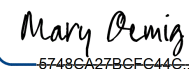
- (a) Erie 1 BOCES shall promptly notify Vendor of any breach or unauthorized release of Protected Data of which it becomes aware in the most expedient way possible and without unreasonable delay, but no more than seven (7) calendar days after ERIE 1 BOCES has discovered or been informed of the breach or unauthorized release.
- (b) ERIE 1 BOCES will provide such notification to Vendor by contacting legal@boomlearning.com.
- (c) Erie 1 BOCES will cooperate with Vendor and provide as much information as possible directly to Vendor's legal and security staff (Chief Security Officer is Mark Claassen) about the incident, including but not limited to: a description of

the incident, the date of the incident, the date Erie 1 BOCES discovered or was informed of the incident, a description of the types of personally identifiable information involved, if known, an estimate of the number of records affected, if known, the Participating Educational Agencies affected, what Erie 1 BOCES has done or plans to do to investigate the incident, and stop the breach and mitigate any further unauthorized access or release of Protected 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

Mary Oemig

Printed Name

CEO

Title

6/21/2024

Date

EXHIBIT D (CONTINUED)

SUPPLEMENTAL INFORMATION

ABOUT THE MASTER LICENSE AND SERVICE AGREEMENT BETWEEN ERIE 1 BOCES AND BOOM LEARNING (A DBA OF OMEGA LABS INC.)

Erie 1 BOCES has entered into a Master License and Service Agreement (“MLSA”) with Boom Learning (a dba of Omega Labs Inc.) (“Boom”) which governs the availability to Participating Educational Agencies of the following Product(s):

Boom Cards

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

Boom Cards

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

Exclusive Purpose for which Protected Data will be Used: The exclusive purpose for which Vendor is being provided access to Protected Data is to provide Participating Educational Agencies with the functionality of the Product(s) listed above. Vendor agrees that it will not use the Protected Data for any other purposes not explicitly authorized in the MLSA. Protected Data received by Vendor, or any of Vendor’s subcontractors, assignees, or other authorized agents, will not be sold, or released or used for any commercial or marketing purposes.

Oversight of Subcontractors: In the event that Vendor engages subcontractors, assignees, or other authorized agents to perform one or more of its obligations under the MLSA (including any hosting service provider), it will require those to whom it discloses Protected Data to execute legally binding agreements acknowledging the obligation under Section 2-d of the New York State Education Law to comply with the same data security and privacy standards required of Vendor under the MLSA and applicable state and federal law. Vendor will ensure that such subcontractors, assignees, or other authorized agents abide by the provisions of these agreements.

Vendor shall ensure that each subprocessor with whom it shares Student Data and/or Teacher or Principal Data are contractually bound by a written agreement that (a) that includes obligations of confidentiality equivalent to, consistent with, and no less protective than those found in this agreement, or (b) are engaged under a contract under which they agree that they have no right of access to Vendor's data stored in the subprocessors' cloud-based services.

Duration of MLSA and Protected Data Upon Expiration:

The MLSA commences on July 1, 2024 and expires on June 30, 2027.

As applicable, upon expiration of the MLSA without renewal, or upon termination of the MLSA prior to expiration, Vendor will securely delete or otherwise destroy any and all Protected Data remaining in the possession of Vendor or its assignees or subcontractors or other authorized persons or entities to whom it has disclosed Protected Data. If requested by Erie 1 BOCES and/or any Participating Educational Agency, Vendor will assist a Participating Educational Agency in exporting all Protected Data previously received back to the Participating Educational Agency for its own use, prior to deletion, in such formats as may be requested by the Participating Educational Agency.

In the event the Master Agreement is assigned to a successor Vendor (to the extent authorized by the Master Agreement), the Vendor will cooperate with Erie 1 BOCES as necessary to transition Protected Data to the successor Vendor prior to deletion.

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

Challenging Accuracy of Protected Data: Parents or eligible students can challenge the accuracy of any Protected Data provided by a Participating Educational Agency to Vendor, by contacting the student's district of residence regarding procedures for requesting amendment of education records under the Family Educational Rights and Privacy Act (FERPA). Teachers or principals may be able to challenge the accuracy of APPR data provided to Vendor by following the appeal process in their employing school district's applicable APPR Plan.

Data Storage and Security Protections: Any Protected Data Vendor receives will be stored on systems maintained by Vendor, or by a subcontractor under the direct control of Vendor, in a secure data center facility located within the United States. The measures that Vendor will take to protect Protected Data include adoption of technologies, safeguards and practices that align with the NIST Cybersecurity Framework and industry best practices including, but not necessarily limited to, disk encryption, file encryption, firewalls, and password protection.

Encryption of Protected Data: Vendor (or, if applicable, its subcontractors) will protect Protected Data in its custody from unauthorized disclosure while in motion or at rest, using a technology or methodology specified by the secretary of the U.S. Department of HHS in guidance issued under Section 13402(H)(2) of P.L. 111-5.