

Erie 1 Board of Cooperative Educational Services **EBSCO Information Services, LLC**

DocuSigned by:
By: James Fregelette
Authorized Signature

DocuSigned by:
By: Alex Saltzman
Authorized Signature

Name: James Fregelette

Name: Alex saltzman

Title: Executive Director

Title: Senior VP, Inside Sales

Address: 355 Harlem Rd

Address: EBSCO Information Services, LLC

West Seneca, NY 14224

Date: 5/30/2023

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. In order to streamline procurement, Vendors will maintain a single statewide agreement.

3. **Confidentiality of Protected Data**

- (a) Vendor acknowledges that the Protected Data it receives pursuant to the MLSA may originate from several Participating Educational Agencies located across New York State, and that this Protected Data belongs to and is owned by the Participating Educational Agency from which it originates.
- (b) Vendor will maintain the confidentiality of the Protected Data it receives in accordance with federal and state law (including but not limited to Section 2-d) and Erie 1 BOCES's policy on data security and privacy. Vendor acknowledges that Erie 1 BOCES is obligated under Section 2-d to adopt a policy on data security and privacy.. Erie 1 BOCES will provide Vendor with a copy of its policy. Vendor and Erie 1 BOCES agree to engage in good faith negotiations to modify this Data Sharing Agreement to the extent necessary to ensure Vendor's continued compliance with Section 2-d.

4. **Data Security and Privacy Plan**

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

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

- (a) In order to implement all state, federal, and local data security and privacy requirements, including those contained within this Data Sharing and Confidentiality Agreement, consistent with Erie 1 BOCES' data security and privacy policy, Vendor will: Review its data security and privacy policy and practices to ensure that they are in conformance with all applicable federal, state, and local laws and the terms of this Data Sharing and Confidentiality Agreement. In the event Vendor's policy and practices are not in conformance, the Vendor will implement commercially reasonable efforts to ensure such compliance.
- (b) In order to protect the security, confidentiality and integrity of the Protected Data that it receives under the MLSA, Vendor will have the following reasonable administrative, technical, operational and physical safeguards and practices in place throughout the term of the MLSA:
- Maintain secure firewalls and security rules of the production environment.
 - Use TLS to prevent snooping on site traffic and encryption to secure data at rest.
 - Block bad requests using a web application firewall (WAF) where possible.
 - Use strong passwords to prevent guessing or brute force attacks against privileged credentials.
 - Employ software to monitor security settings and perform periodic security scans of the environment.
 - Minimize collection of personal data (generally limited to email address, first name, and last name and a security question for LearningExpress products that do not include our resume builder functionality.)
 - Ensure that production user data does not leave the Production environment.
 - Maintain an audit log of account events.
 - Alert administrators in the case of unusual events to speed investigation and remediation.
 - Leverage the AWS shared responsibility model, which provides the facilities for security compliance but requires LearningExpress to implement them in a secure fashion. For instance, incoming traffic can be secured down to a single IP address (but this rule needs to be specified).
 - Perform daily backups and deletion of old backups on a frequent basis.
 - Provide ability for site patrons to view, download and delete their account details.
 - Maintain network segregation between production systems and other environments.
 - Patch systems on a regular basis.
- (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.

- (e) Vendor 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**

- (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.


EXHIBIT D (CONTINUED)

PARENTS BILL OF RIGHTS FOR DATA PRIVACY AND SECURITY

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

- (1) A student's personally identifiable information cannot be sold or released for any commercial purposes.
- (2) Parents have the right to inspect and review the complete contents of their child's education record.
- (3) State and federal laws protect the confidentiality of personally identifiable information, and safeguards associated with industry standards and best practices, including but not limited to, encryption, firewalls, and password protection, must be in place when data is stored or transferred.
- (4) A complete list of all student data elements collected by the State is available for public review at <http://www.nysed.gov/data-privacy-security/student-data-inventory>, or by writing to the Office of Information & Reporting Services, New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, New York 12234.
- (5) Parents have the right to have complaints about possible breaches of student data addressed. Complaints should be directed in writing to the Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, New York 12234. Complaints may also be submitted using the form available at the following website <http://www.nysed.gov/data-privacy-security/report-improper-disclosure>.

BY THE VENDOR:

DocuSigned by:


Signature
39BDEFA27AA746B...

Alex Saltzman

Printed Name

senior vp, Inside sales

Title

5/30/2023

Date

EXHIBIT D (CONTINUED)

SUPPLEMENTAL INFORMATION

ABOUT THE MASTER LICENSE AND SERVICE AGREEMENT
BETWEEN
ERIE 1 BOCES AND [*EBSCO INFORMATION SERVICES, LLC.*]

Erie 1 BOCES has entered into a Master License and Service Agreement (“MLSA”) with [*EBSCO Information Services, LLC.*] which governs the availability to Participating Educational Agencies of the following Product(s): *Job and Career Accelerator, Personal Success Center and PrepSTEP for High School*

To meet the needs of the Erie 1 BOCES community, EBSCO is proposing the following LearningExpress (LEX) products, which will help students develop career readiness, as well as critical academic and personal skills. This suite of highly acclaimed eLearning solutions provides interactive tutorials, practice tests, e-books, flashcards and articles for academic skill-building, standardized test preparation, career development and more. Each of these products is hosted on the LEX platform – a responsive, accessible online solution that is available 24/7. With a 99.9% uptime guarantee, students will be able to access these critical learning resources any time, anywhere, and from any device.

PrepSTEP for High Schools provides online access to a unique and extensive collection of academic, college preparation and career-related tutorials, practice tests, articles, e-books and flashcards. It includes tools for academic skill-building, college and career exploration, college admissions test preparation, military exploration and preparation, workplace skills development and more.

PrepSTEP helps high schools expand their student-guided learning tools, support post-secondary needs and provide key supplemental resources for educators. With targeted learning centers that cover key skill areas, such as Career Exploration, Core Computer Skills, Social Studies Skills, English Language Arts Skills, Math and Science Skills, High School Success Skills and Prepare for College, *PrepSTEP* empowers students to:

- ✓ Improve core English, math, science and computer skills
- ✓ Score higher on ACT, SAT and AP exams, as well as career or military exams
- ✓ Search for colleges and explore careers
- ✓ Succeed in high school and beyond

Job & Career Accelerator gives job seekers the most comprehensive collection of job and career resources anywhere. It includes resume and letter builders with targeted samples and tips, millions of job and internship postings, interviewing advice and a personal dashboard to track users' work. In addition, it offers many ways for students to explore occupations based on targeted interest groups, such as:

- ✓ In-Demand Occupations – Discover careers that are projected to have long-term growth and a need for increased workforces, or are being expanded because of new technology, innovation, or economic trends.
- ✓ Green Economy Occupations – Explore careers dedicated to reducing the use of fossil fuels, decreasing pollution and greenhouse gas emissions, increasing the efficiency of energy usage, recycling materials, and developing and adopting renewable sources of energy
- ✓ Military-to-Civilian Occupations – For veterans or those transitioning out of military service, explore civilian occupations that are similar to military jobs.
- ✓ Occupation Groups – Explore multiple related career options by browsing Occupation Groups.

Personal Success Skills helps users acquire the foundational skills they need to succeed in life. Its resources are designed to help build organizational strategies, information literacy skills, financial proficiency and workplace success skills.

Personal Success Skills expands student development beyond the classroom, providing critical information to promote their success not only on the job, but also in general life. With targeted learning centers that cover key skill areas, such as Workplace Success, Organization & Time Management Success, Media Literacy Skills and Personal Finance Skills, *Personal Success Skills* empowers students to:

- ✓ Improve core communication skills and develop professionalism
- ✓ Organize, set goals and maximize efficiency with time management
- ✓ Learn to be a more conscientious online citizen and master tools like social media
- ✓ Understand financial basics like credit and debt, money management, investing, taxes, insurance and more

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 by:

- Maintain access controls to systems and limit permissions to those needed for carrying out the subcontractors role.
- Minimize the amount of personally identifiable information collected.
- Legally require vendors to promise they will not retain any copy of data outside the LEX environment and they will not try to sell any part of our data

Duration of MLSA and Protected Data Upon Expiration:

- The MLSA commences on **July 1, 2023 and expires on June 30, 2026.**
- Upon expiration of the MLSA without renewal, or upon termination of the MLSA prior to expiration, 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.

As part of the final contract, EBSCO would also like to include our license agreement:

EBSCO LICENSE AGREEMENT

LearningExpress

By using the services available at this site or by making the services available to Authorized Users, the Authorized Users and the Licensee agree to comply with the following terms and conditions (the "Agreement"). For purposes of this Agreement, "LearningExpress" is LearningExpress, LLC.; the "Licensee" is the entity or institution that makes available the services offered by LearningExpress; the "Sites" are the Internet websites offered or operated by Licensee from which Authorized Users can obtain access to LearningExpress Services; and the "Authorized User(s)" are employees, students, registered patrons, walk-in patrons, or other persons affiliated with Licensee or otherwise permitted to use Licensee's facilities and authorized by Licensee to access the Services. "Authorized User(s)" do not include alumni of the Licensee. "Services" shall mean LearningExpress products, including PrepSTEP and related products, to which Licensee has purchased access or a subscription. LearningExpress disclaims any liability for the accuracy, completeness or functionality of any material contained herein, referred to, or linked to.

I. LICENSE

A. LearningExpress hereby grants to the Licensee a nontransferable and non-exclusive right to use the Services made available by LearningExpress according to the terms and conditions of this Agreement. The Services made available to Authorized Users are the subject of copyright protection, and the original copyright owner (LearningExpress or its licensors) retains the ownership of the Services and all portions thereof. LearningExpress does not transfer any ownership, and the Licensee and Sites may not reproduce, distribute, display, modify, transfer or transmit, in any form, or by any means, any Service or any portion thereof without the prior written consent of LearningExpress, except as specifically authorized in this Agreement.

B. The Licensee is authorized to provide on-site access through the Sites to the Services to any Authorized User. The Licensee may not post passwords to the Services on any publicly indexed websites. The Licensee and Sites are authorized to provide remote access to the Services only to their patrons as long as security procedures are undertaken that will prevent remote access by institutions, employees at non-subscribing institutions or individuals, that are not parties to this Agreement who are not expressly and specifically granted access by LearningExpress. For the avoidance of doubt, if Licensee provides remote access to individuals on a broader scale than was contemplated at the inception of this Agreement then LearningExpress may hold the Licensee in breach and suspend access to the Services. **Remote access to the Services is permitted to patrons of subscribing institutions accessing from remote locations for personal, non-commercial use. However, remote access to the Services from non-subscribing institutions is not allowed if the purpose of the use is for commercial gain through cost reduction or avoidance for a non-subscribing institution.**

C. Licensee and Authorized Users agree to abide by the Copyright Act of 1976 as well as by any contractual restrictions, copyright restrictions, or other restrictions provided by publishers and specified in the Services. Pursuant to these terms and conditions, the Licensee and Authorized Users may download or print limited copies of citations, abstracts, full text or portions thereof, provided the information is used solely in accordance with copyright law. Licensee and Authorized Users may not publish the information. Licensee and Authorized Users shall not use the Services as a component of or the basis of any other publication prepared for sale and will neither duplicate nor alter the Services or any of the content therein in any manner, nor use same for sale or distribution. Licensee and Authorized Users may create printouts of materials retrieved through the Services via online printing, offline printing, facsimile or electronic mail. All reproduction and distribution of such printouts, and all downloading and electronic storage of materials retrieved through the Services shall be for internal or personal use. Downloading all or parts of the Services in a systematic or regular manner so as to create a collection of materials comprising all or part of the Services is strictly prohibited whether or not such collection is in electronic or print form. Notwithstanding the above restrictions, this paragraph shall not restrict the use of the materials under the doctrine of “fair use” as defined under the laws of the United States. Publishers may impose their own conditions of use applicable only to their content. Such conditions of use shall be displayed on the computer screen displays associated with such content. The Licensee shall take all reasonable precautions to limit the usage of the Services to those specifically authorized by this Agreement.

D. Authorized Sites may be added or deleted from this Agreement as mutually agreed upon by LearningExpress and Licensee.

E. Licensee agrees to comply with the Copyright Act of 1976, and agrees to indemnify LearningExpress against any actions by Licensee that are not consistent with the Copyright Act of 1976.

F. The computer software utilized via LearningExpress Service(s) is protected by copyright law and international treaties. Unauthorized reproduction or distribution of this software, or any portion of it, is not allowed. User shall not reverse engineer, decompile, disassemble, modify, translate, make any attempt to discover the source code of the software, or create derivative works from the software.

G. Licensee agrees not to include any advertising in the Services.

II. LIMITED WARRANTY AND LIMITATION OF LIABILITY

A. LearningExpress and its licensors disclaim all warranties, express or implied, including, but not limited to, warranties of merchantability, noninfringement, or fitness for a particular purpose. Neither LearningExpress nor its licensors assume or authorize any other person to assume for LearningExpress or its licensors any other liability in connection with the licensing of the Services under this Agreement and/or its use thereof by the Licensee and Sites or Authorized Users.

B. THE MAXIMUM LIABILITY OF LearningExpress AND ITS LICENSORS, IF ANY, UNDER THIS AGREEMENT, OR ARISING OUT OF ANY CLAIM RELATED TO THE SERVICES, FOR DIRECT DAMAGES, WHETHER IN CONTRACT, TORT OR OTHERWISE SHALL BE LIMITED TO THE TOTAL AMOUNT OF FEES RECEIVED BY LearningExpress FROM LICENSEE HEREUNDER UP TO THE TIME THE CAUSE OF ACTION GIVING RISE TO

SUCH LIABILITY OCCURRED. IN NO EVENT SHALL LearningExpress OR ITS LICENSORS BE LIABLE TO LICENSEE OR ANY AUTHORIZED USER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES RELATED TO THE USE OF THE SERVICES OR TO THESE TERMS AND CONDITIONS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

C. Licensee is responsible for maintaining a valid license to the third party resources configured to be used via the Services (if applicable). LearningExpress disclaims any responsibility or liability for a Licensee accessing the third party resources without proper authorization.

D. LearningExpress is not responsible if the third party resources accessible via the Services fail to operate properly or if the third party resources accessible via the Services cause issues for the Licensee. While LearningExpress will make best efforts to help troubleshoot problems, Licensee acknowledges that certain aspects of functionality may be dependent on third party resource providers who may need to be contacted directly for resolution.

III. PRICE AND PAYMENT

A. License fees have been agreed upon by LearningExpress and the Licensee, and include all retrospective issues of the Services as well as updates furnished during the term of this Agreement. The Licensee's obligations of payment shall be to LearningExpress or its assignee. Payments are due upon receipt of invoice(s) and will be deemed delinquent if not received within thirty (30) days. Delinquent invoices are subject to interest charges of 12% per annum on the unpaid balance (or the maximum rate allowed by law if such rate is less than 12%). The Licensee will be liable for all costs of collection. Failure or delay in rendering payments due LearningExpress under this Agreement will, at LearningExpress' option, constitute material breach of this Agreement. If changes are made resulting in amendments to the listing of authorized Sites, Services and pricing identified in this Agreement pro rata adjustments of the contracted price will be calculated by LearningExpress and invoiced to the Licensee and/or Sites accordingly as of the date of any such changes. Payment will be due upon receipt of any additional pro rata invoices and will be deemed delinquent if not received within thirty (30) days of the invoice dates.

B. Taxes, if any, are not included in the agreed upon price and may be invoiced separately. Any taxes applicable to the Services under this Agreement, whether or not such taxes are invoiced by LearningExpress, will be the exclusive responsibility of the Licensee and/or Sites.

IV. TERMINATION

A. In the event of a breach of any of its obligations under this Agreement, Licensee shall have the right to remedy the breach within thirty (30) days upon receipt of written notice from LearningExpress. Within the period of such notice, Licensee shall make every reasonable effort and document said effort to remedy such a breach and shall institute any reasonable procedures to prevent future occurrences of such breaches. If the Licensee fails to remedy such a breach within the period of thirty (30) days, LearningExpress may (at its option) terminate this Agreement upon written notice to the Licensee.

B. If LearningExpress becomes aware of a material breach of Licensee's obligations under this Agreement or a breach by Licensee or Authorized Users of the rights of LearningExpress or its licensors or an infringement on the rights of LearningExpress or its licensors, then LearningExpress will notify the

Licensee immediately in writing and shall have the right to temporarily suspend the Licensee's access to the Services. Licensee shall be given the opportunity to remedy the breach or infringement within thirty (30) days following receipt of written notice from LearningExpress. Once the breach or infringement has been remedied or the offending activity halted, LearningExpress shall reinstate access to the Services. If the Licensee does not satisfactorily remedy the offending activity within thirty (30) days, LearningExpress may terminate this Agreement upon written notice to the Licensee.

C. The provisions set forth in Sections I, II and V of this Agreement shall survive the term of this Agreement and shall continue in force into perpetuity.

V. NOTICES OF CLAIMED COPYRIGHT INFRINGEMENT

LearningExpress has appointed an agent to receive notifications of claims of copyright infringement regarding materials available or accessible on, through, or in connection with our services. Any person authorized to act for a copyright owner may notify us of such claims by contacting the following agent: Kim Stam, LearningExpress 10 Estes Street, Ipswich, MA 01938; phone: 978-356-6500; fax: 978-356-5191; email: kstam@ebsco.com. In contacting this agent, the contacting person must provide all relevant information, including the elements of notification set forth in 17 U.S.C. 512.

VI. GENERAL

A. Neither LearningExpress nor its licensors will be liable or deemed to be in default for any delays or failure in performance resulting directly or indirectly from any cause or circumstance beyond its reasonable control, including but not limited to acts of God, war, riot, embargoes, acts of civil or military authority, rain, fire, flood, accidents, earthquake(s), strikes or labor shortages, transportation facilities shortages or failures of equipment, or failures of the Internet.

B. This Agreement and the license granted herein may not be assigned by the Licensee to any third party without written consent of LearningExpress.

C. If any term or condition of this Agreement is found by a court of competent jurisdiction or administrative agency to be invalid or unenforceable, the remaining terms and conditions thereof shall remain in full force and effect so long as a valid Agreement is in effect.

D. If the Licensee and/or Sites use purchase orders in conjunction with this Agreement, then the Licensee and/or Sites agree that the following statement is hereby automatically made part of such purchase orders: "The terms and conditions set forth in the LearningExpress License Agreement are made part of this purchase order and are in lieu of all terms and conditions, express or implied, in this purchase order, including any renewals hereof."

E. This Agreement and our [Privacy Policy](#) represent the entire agreement and understanding of the parties with respect to the subject matter hereof and supersede any and all prior agreements and understandings, written and/or oral. There are no representations, warranties, promises, covenants or undertakings, except as described in this Agreement and our [Privacy Policy](#).

F. LearningExpress grants to the Licensee a non-transferable right to utilize any IP addresses provided by LearningExpress to Licensee to be used with the Services. LearningExpress does not transfer any ownership of the IP addresses it provides to Licensee. In the event of termination of the Licensee's license to the Services, the Licensee's right to utilize such IP addresses will cease.

G. Information We Collect. All information we collect is subject to our [Privacy Policy](#), which is incorporated herein by this reference. By using the Services, you consent to all actions taken by EBSCO with respect to your information in compliance with the [Privacy Policy](#).