

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 Learning Ally Inc., 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 Learning Ally Inc. 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 Learning Ally Inc. 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 Learning Ally Inc. 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 Learning Ally Inc.’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 Learning Ally Inc.’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 Learning Ally Inc.’s Product pursuant to the MLSA to support its own educational programs or operations.

3. **Confidentiality of Protected Data**

- (a) Learning Ally Inc. 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) Learning Ally Inc. 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. Learning Ally Inc. 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 Learning Ally Inc. with a copy of its policy. Learning Ally Inc. and Erie 1 BOCES agree to engage in good faith negotiations to modify this Data Sharing Agreement to the extent necessary to ensure Learning Ally Inc.’s continued compliance with Section 2-d.

4. **Data Security and Privacy Plan**

Learning Ally Inc. 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 Learning Ally Inc. and is set forth below.

Additional elements of Learning Ally Inc.’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, Learning Ally Inc. 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 Learning Ally Inc.’s policy and practices are not in conformance, the Learning Ally Inc. 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, Learning Ally Inc. will have the following reasonable

administrative, technical, operational and physical safeguards and practices in place throughout the term of the MLSA:

Learning Ally has implemented an Information Security Management System based upon the NIST CSF, ISO 27001:2022, as well as other industry best practices and guidance. These requirements will assist in the creation, implementation, and maintenance/continuous improvement of effective safeguards for the protection of systems and information assets that are stored, maintained, and transmitted by Learning Ally. The safeguards help ensure the confidentiality, integrity, and availability of confidential information against reasonably anticipated threats or hazards. Additionally, the ISMS will provide enterprise-wide governance, assessment of, and reporting on the posture of information security controls and compliance activities to help ensure that activities meet all relevant legislative, regulatory, and contractual requirements.

[Insert here – also provide a copy of Data Security and Privacy Plan]

- (c) Learning Ally Inc. 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, Learning Ally Inc. 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, Learning Ally Inc. 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) Learning Ally Inc. [*check one*] X will will not utilize sub-contractors for the purpose of fulfilling one or more of its obligations under the MLSA. In the event that Learning Ally Inc. 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) Learning Ally Inc. will manage data security and privacy incidents that implicate Protected Data, including identifying breaches and unauthorized disclosures, and Learning Ally Inc. 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) Learning Ally Inc. 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**

Learning Ally Inc. 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 Learning Ally Inc. 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 Learning Ally Inc. using the information to carry out Learning Ally Inc.'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 Learning Ally Inc. 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 Learning Ally Inc. or its subcontractors or assignees.

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

- (a) Learning Ally Inc. 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 Learning Ally Inc. has discovered or been informed of the breach or unauthorized release.

- (b) Learning Ally Inc. 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) Learning Ally Inc. 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 Learning Ally Inc. 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 Learning Ally Inc. 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 Learning Ally Inc. representatives who can assist affected individuals that may have additional questions.
- (d) Learning Ally Inc. acknowledges that upon initial notification from Learning Ally Inc., Erie 1 BOCES, as the educational agency with which Learning Ally Inc. contracts, has an obligation under Section 2-d to in turn notify the Chief Privacy Officer in the New York State Education Department ("CPO"). Learning Ally Inc. shall not provide this notification to the CPO directly. In the event the CPO contacts Learning Ally Inc. directly or requests more information from Learning Ally Inc. regarding the incident after having been initially informed of the incident by Erie 1 BOCES, Learning Ally Inc. will promptly inform Michelle Okal-Frink or her designees.
- (e) Learning Ally Inc. 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>.

LEARNING ALLY INC.:

DocuSigned by:

**Signature**

Timothy wilson

Printed Name

CFO

Title

5/9/2023

Date

EXHIBIT D (CONTINUED)

SUPPLEMENTAL INFORMATION

 ABOUT THE MASTER LICENSE AND SERVICE AGREEMENT
 BETWEEN
 ERIE 1 BOCES AND [*LEARNING ALLY INC.*]

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

Audiobook Solution *from Learning Ally Inc.*

Pursuant to the MLSA, Participating Educational Agencies may provide to Learning Ally Inc., and Learning Ally Inc. 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 Learning Ally Inc. is being provided access to Protected Data is to provide Participating Educational Agencies with the functionality of the Product(s) listed above. Learning Ally Inc. agrees that it will not use the Protected Data for any other purposes not explicitly authorized in the MLSA. Protected Data received by Learning Ally Inc., or any of Learning Ally Inc.’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 Learning Ally Inc. 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 Learning Ally Inc. under the MLSA and applicable state and federal law. Learning Ally Inc. will ensure that such subcontractors, assignees, or other authorized agents abide by the provisions of these agreements by:

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, Learning Ally Inc. will securely delete or otherwise destroy any and all Protected Data remaining in the possession of Learning Ally Inc. 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, Learning Ally Inc. 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 Learning Ally Inc. (to the extent authorized by the Master Agreement), the Learning Ally Inc. will cooperate with Erie 1 BOCES as necessary to transition Protected Data to the successor Learning Ally Inc. prior to deletion.
- Neither Learning Ally Inc. 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, Learning Ally Inc. 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 Learning Ally Inc., 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 Learning Ally Inc. by following the appeal process in their employing school district's applicable APPR Plan.

Data Storage and Security Protections: Any Protected Data Learning Ally Inc. receives will be stored on systems maintained by Learning Ally Inc., or by a subcontractor under the direct control of Learning Ally Inc., in a secure data center facility located within the United States. The measures that Learning Ally Inc. 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: Learning Ally Inc. (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.

