

Address: 355 Harlem Rd  
CA 92120

Address: 6160 Mission Gorge Rd, San Diego

West Seneca, NY 14224

Date: 6/1/2023

## 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.

### 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: Tech4Learning limits logical access to customer data to its senior engineering team, including its CTO and VP of Product Development. Data is encrypted at rest, and the Wixie database cluster as well as rotating backups thereof are not accessible via the public Internet. The Wixie Privacy Plan is included as Exhibit E to this document.

- (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 [*check one*] \_\_\_\_\_ will X 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.

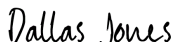
**EXHIBIT D (CONTINUED)****PARENTS BILL OF RIGHTS FOR DATA PRIVACY AND SECURITY**

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:

E3BAC645F84F43E...  
**Signature**Dallas Jones  
**Printed Name**CFO  
**Title**6/1/2023**Date**



## EXHIBIT D (CONTINUED)

### SUPPLEMENTAL INFORMATION

#### ABOUT THE MASTER LICENSE AND SERVICE AGREEMENT BETWEEN ERIE 1 BOCES AND TECH4LEARNING, INC.

Erie 1 BOCES has entered into a Master License and Service Agreement (“MLSA”) with Tech4Learning, Inc. which governs the availability to Participating Educational Agencies of the following Product(s):

Wixie

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: N/A – No subcontractors are used / have access to Protected 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.



## Exhibit E – Privacy Plan

Tech4Learning, Inc. is committed to protecting the privacy of our users.

Wixie complies with the requirements of COPPA, FERPA, and the Privacy Act of 1974.

Wixie has been vetted and certified as a TrustEd App by IMS Global (<https://www.imsglobal.org/activity/trustedapps/seal/supplier>). Part of the certification includes demonstrating compliance with applicable privacy laws (COPPA/FERPA/GDPR).

Wixie supports the requirements placed on institutions that are subject to CIPA.

Wixie is a signatory to the Student Privacy Pledge and abides by the commitments therein (<https://studentprivacypledge.org/privacy-pledge-2-0/>) including compliance with applicable privacy laws.

In general, Wixie contains user accounts that are created by Licensing Organizations. User accounts contain the following Personal Information: The user's name, a unique username for the user, a password for the user if required for the authentication method chosen by the contracting organization, and a grade level if the user is a "Student". The Application does not collect an email address for Students unless it is provided as the unique username.

The Personal Information provided to Wixie is owned by the Licensing Organization and may be changed and deleted at any time by the Licensing Organization.

Wixie automatically gathers usage information, such as the number and duration of log-ins, in order to provide reports to the Licensing Organization so that they may determine the level of usage within the institution.

Wixie supports the efforts of COPPA to ensure the online safety of children. Student accounts in the Application are provided through a qualified school or educational organization. These organizations receive a master account which enables them to create accounts for student users.

Tech4Learning does not use student personally identifiable information for any purpose, commercial or otherwise, other than providing Wixie's services to users.

Wixie meets the following guidelines and agrees to:

NOT collect online contact information without the consent of either a parent or a qualified educational institution. Without prior parental consent, online information will only be used to respond directly to the child's request and will not be used for other purposes without prior parental consent

NOT collect personally identifiable offline contact information without prior parental consent

NOT distribute to third parties any personally identifiable information without prior parental consent

NOT sell to third parties any personally identifiable information

NOT give the ability to publicly post or otherwise distribute personally identifiable contact information without prior parental consent

NOT entice by the prospect of a special game, prize or other activity or to divulge more information than is needed to participate in the activity

If a parent wants to correct, edit, update or delete information about a student, parents work directly with their teacher or school. If needed, Tech4Learning can work with parents to contact the appropriate people for updating and correcting Student information.

In connection with the sale, merger, bankruptcy, sale of assets or reorganization of our company, Tech4Learning will bind the new entity to the promises in our privacy policies and agreements.

As part of the service to contracted educational organizations, Tech4Learning exchanges data with third-parties in the following ways:

Tech4Learning exchanges Personal Information with third-party services to provide single sign-on options for users. These services include Google, Clever, and ClassLink. This exchange is initiated between Tech4Learning and the third-party by the Licensing Organization. The information exchanged with these services is a unique identifier used to confirm the user exists and is authorized in both systems.

Tech4Learning exchanges Personal Information with third-party services such as learning management systems in order to manage coursework and assignments between the two systems. These services include Google Classroom, and services that support the Learning Tools Interoperability protocol from IMS Global. This exchange is initiated between Tech4Learning and the third-party by the Licensing Organization. The information exchanged generally consists of First Name, Last Name, and a unique identifier.

Tech4Learning receives Personal Information from third-party providers in order to provision users in the Application. These services include Clever and ClassLink. This exchange is initiated between Tech4Learning and the third-party by the Licensing Organization. The information Tech4Learning receives includes First Name, Last Name, a unique identifier such as an email address, course assignments and grade level.

Tech4Learning does not disclose any Personal Information to third-parties that are not contracted with the same Licensing Organization.

Tech4Learning uses Google Analytics to collect anonymous information about how Users interact with Wixie. Google Analytics may use cookies to gather information such as the pages visited, operating system used, browser used, and the device's screen resolution. All options for Remarketing and Advertising Reporting have been disabled. We use this information to help

analyze how people use the Application for the purpose of improving the user's experience with the Application. For more information about how Google Analytics uses this information, please refer to its privacy policies made available on its web site.

Wixie does not display any advertising to Users and does not track Users for the purpose of displaying advertising.

Users will be notified by a message within the Application if a new third-party is added to the Wixie for tracking purposes. Any new third-party provider will be held to the same data sharing terms as current providers.

Following a lapse in a subscription, we retain Personal Information for 60 days in order to provide for a seamless reactivation of accounts if the lapse was temporary due to organization budgeting or purchase processing restrictions. After this time, all Personal Information provided is purged from the system. We may maintain anonymized or aggregated data, including usage data, for analytics purposes. The Licensing Organization's account administrator has the capability to delete any or all user accounts for their organization.

