

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.

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
- b. See Exhibit E for Vendor's Data Security and Privacy Plan and the following link for Vendor's Privacy Policy: <https://apertureed.com/privacy-policy/>.
- (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 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)

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:

DocuSigned by:

A40A883A712D4EE...
Signature

Kelly Hays

Printed Name

VP of Sales & Marketing

Title

5/28/2024

Date

EXHIBIT D (CONTINUED)

SUPPLEMENTAL INFORMATION

ABOUT THE MASTER LICENSE AND SERVICE AGREEMENT

BETWEEN

ERIE 1 BOCES AND APERTURE EDUCATION, LLC

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

DESSA System

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

DESSA System

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: We enter into a Data Sharing Agreement with subcontractors to ensure that they comply with the MLSA.

Duration of MLSA and Protected Data Upon Expiration:

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

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

Aperture Education, LLC Data Security and Privacy Plan

This Data Security and Privacy Plan (this "Plan") has been implemented and will be maintained by APERTURE in compliance with all applicable laws, including the New York Education Law §2-d and regulations promulgated thereunder.

APERTURE will undertake industry standard practices, including physical controls, firewalls, and password protection, to protect the privacy and security of Client Data received under this Agreement, including compliance with the requirements of National Institute for Standards and Technology (NIST) Framework for Improving Critical Infrastructure Cybersecurity Version 1.1. Physical controls include change control, physical access controls that prevent removal of Client Data from the production data center, physical security controls, and a hardware destruction process that follows NIST SP 800-88.

APERTURE shall inform Client in the event that any student data ("**Student Data**") it stores or maintains pursuant to this Agreement, including such data as may be stored or maintained by a third party cloud provider on APERTURE's behalf, is requested by law enforcement authorities or otherwise sought by subpoena or court order.

APERTURE will keep confidential all Student Data to which it has access in the performance of this Agreement. In addition to the above requirements, for Student Data:

- 1) APERTURE shall maintain the confidentiality of the Student Data in accordance with applicable state and federal law.
- 2) APERTURE shall implement all state, federal and local data security and privacy contract requirements during the term of this Agreement, as follows:

APERTURE has designated a privacy officer responsible for information security governance and maintains privacy policies and practices that support compliance with FERPA. Client Data will be housed in United States based Microsoft Azure data centers that maintain their own rigorous industry standard certifications and compliance offerings.

- 3) APERTURE'S data security and privacy Plan includes the Parents Bill of Rights for data privacy and security (a copy of which is attached hereto and incorporated into this Agreement).
- 4) APERTURE agrees that any of its officers or employees, and any officers or employees of any subcontractor or assignee of APERTURE, who will have access to Student Data, have received or will receive training on the federal and state law governing confidentiality of such data prior to receiving the data or access to the data.
- 5) The exclusive purposes for which APERTURE is being provided access to the Client Data is: Providing products and services related to the hosting of Client Data.

- 6) APERTURE will ensure that it will only share Client Data with additional third parties if those third parties are contractually bound to observe equally stringent obligations to maintain data privacy and security as required by APERTURE pursuant to this Plan.
- 7) In the event that a parent or eligible student wishes to challenge the accuracy of any Student Data that is maintained by APERTURE, that challenge may be processed through the procedures provided by Client for amendment of education records under the Family Educational Rights and Privacy Act (FERPA). APERTURE will be notified by Client of the outcome of any such challenges and immediately correct any inaccurate data it or its subcontractors or assignees maintain.
- 8) APERTURE acknowledges that it has the following additional obligations under NYS Education Law 2-d with respect to any Student Data received from Client, and agrees that any failure to fulfill one or more of these statutory obligations shall be deemed a breach of this Agreement, as well as subject APERTURE to various penalties under Section 2-d, including but not limited to civil penalties:
 - a. To limit internal access to education records and Student Data to those individuals that are determined to have legitimate educational interests within the meaning of Section 2-d and FERPA; *e.g.*, the individual needs access to the Student Data in order to fulfill his or her responsibilities in performing the Services;
 - b. To not use education records or Student Data for any purpose(s) other than those explicitly authorized in this Agreement;
 - c. To not disclose any personally identifiable information to any other party who is not an authorized representative of APERTURE using the information to carry out APERTURE's obligations under this Agreement, 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 Client prior to the time of disclosure, unless such notice is expressly prohibited by the statute or court order;
 - d. To maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of personally identifiable student information in its custody;
 - e. To use encryption technology and other suitable means to protect data while in its custody while in motion or at rest.
 - f. To notify Client of any breach of security resulting in an unauthorized release of such data by APERTURE or its subcontractors or assignees in violation of applicable state or federal law, the Parents Bill of Rights for student data privacy and security, and obligations relating to data privacy and security within this Agreement in the most expedient way possible and without unreasonable delay.

- g. To return, delete or destroy Client Data when this Agreement terminates or expires as specified in this Agreement and/or APERTURE's privacy policy.
- h. The parties acknowledge that an Addendum to this Agreement may be necessary to ensure compliance with Section 2- d following the promulgation of applicable regulations and/or the issuance of further guidance by the New York State Education Department subsequent to the execution of the Agreement. The parties agree to act in good faith to take such additional steps to amend this Agreement as may be necessary at that time.