

# Master License and Service Agreement

This Master License and Service Agreement (“Agreement” or “MLSA”) is made and entered into by and between OverDrive, Inc.. (“Vendor”), having its principal offices at One OverDrive Way, Cleveland Ohio 44125, and the Albany-Schoharie-Schenectady-Saratoga BOCES (“Customer”), having its principal offices at 900 Watervliet-Shaker Road, Albany NY 12205. Vendor and Customer sometimes referred to here, individually, as “Party,” and collectively, as the “Parties.”

Boards of Cooperative Educational SERVICES (“BOCES”), including Customer, are municipal corporations organized and existing under Section 1950 of the New York Education Law, and are authorized to provide cooperative educational services to school districts in New York State pursuant to cooperative educational service agreements (“CoSers”) approved by the New York State Education Department.

Customer is authorized to issue requests for proposals, award and enter into contracts for the purchase of instructional software applications that can be made available to school districts as part of applicable approved CoSers, on behalf of itself and other BOCES across New York State that participate in the DREAM Consortium. Through Customer’s procurement process, OverDrive, Inc., has been identified and accepted by Customer as a provider of educational resources, as more fully described herein (the “Product(s)).

As Customer and several other BOCES throughout New York State have expressed an interest in offering the Product(s) to school districts as part of the applicable CoSers, Customer wishes to make the Product(s) available through the DREAM Consortium. Accordingly, the Parties have entered into this Agreement to set forth the terms upon which the Product(s) will be made available by Customer to itself and to other BOCES and school districts through the DREAM Consortium.

## **1. Term and Termination:**

The Effective Date of this Agreement shall be July 1, 2024 and shall continue until June 30, 2025. At the end of the initial one year contract term upon mutual agreement of the Parties, the agreement may be renewed for four (4) additional years, in four (4) consecutive one-year intervals. Customer may terminate the contract for cause upon thirty (30) days written notice, should the Vendor be in default of the contract. Customer reserves the right to terminate the contract immediately if the Vendor fails to meet and complete schedules, and/or otherwise perform in accordance with the scope of services. Breach of contract or default authorized Customer to award to the next lowest respondent or purchase service elsewhere and charge the full increase in cost to the defaulting respondent.

## **2. Scope of Services:**

Acting as an independent contractor, Vendor will provide the Product(s) as more fully described and at the prices stated in **Exhibit A**, attached to this Agreement and incorporated by reference. Any services related to the Product(s) to be provided by Vendor, including but not limited to consulting, educational, hosting, system

administration, training or maintenance and support service (“Services”), shall be as more fully described within this Agreement and at the prices stated in **Exhibit A**, attached to this Agreement and incorporated by reference.

### **3. Grant of License:**

**3.1** The Product(s) are provided under license. Vendor grants to Customer, as a participating BOCES in the DREAM Consortium on behalf of Customer, and to each other BOCES that is a participant in the DREAM Consortium, a non-assignable, non-transferable and non-exclusive license to utilize the Product(s) pursuant to the terms and conditions set forth herein. Vendor further grants to each individual school district that contracts for the Product(s) with BOCES through the DREAM Consortium by a non-assignable, non-transferable and non-exclusive license to utilize the Product(s) pursuant to the terms and conditions set forth herein. For purpose of the licenses granted by Vendor pursuant to this Agreement, Customer, each other BOCES, and each individual school district as described herein may also be referred to individually as a “Licensee” and collectively as “Licensees.” Licensees shall not assign, sublicense or otherwise encumber or transfer the Product(s) without the prior written consent of the Vendor. Nothing herein shall act to transfer any interest in the Product(s) to any Licensee, and title to and ownership of the Product(s) shall at all times remain with the Vendor.

**3.2** Vendor may terminate the license granted to a Licensee under this Agreement if the Licensee fails to comply with any terms and conditions of this Agreement that are specifically applicable to that entity as a Licensee. Within five (5) days of receipt of such termination, the Licensee shall return all materials related to the Product(s) and, to the extent applicable, arrange with Vendor to remove the Product(s) from the computers located at the Licensee’s sites or under the direct control of Licensee.

**3.3** Vendor warrants that it has full power and authority to grant the rights herein described. Vendor’s obligation and liability under this Section 3 shall be to obtain any authorization necessary to make effective the grant of license to Licensees to use the Product(s), in such a manner or method as determined by the Vendor, at the Vendor’s own cost and expense.

### **4. Use of Products, Protection of Application and Confidential Information:**

**4.1** Product(s) shall be utilized only at such licensed sites as shall be designated by Licensees (or utilized in a cloud environment as designated by Licensees) and shall be used solely for the benefit of Licensees. Licensees shall not permit or provide for transfer or reproduction of the Product(s), or any portion thereof, to be placed on a computer not at the Licensee’s designated sites or under the direct control of the Licensee, by physical or electronic means, unless specifically authorized by Vendor and/or as otherwise provided in this Agreement.

**4.2** The Product(s) are protected by copyright law. Vendor hereby confirms that Vendor is the owner of the copyright in the Product(s) described in **Exhibit A**, as well as an authorized source or reseller for the Product(s) in the state of New York. Licensees shall not make or allow others to make copies or reproduction of the

Product(s), or any portion thereof in any form without the prior written consent of Vendor and/or as otherwise provided in this Agreement. The unauthorized copying, distribution or disclosure of the Product(s) is prohibited and shall be considered a material breach of this Agreement.

**4.3** Except as expressly stated herein, no Licensee may alter, modify, or adapt the Product(s), including but not limited to translating, reverse engineering, decompiling, disassembling, or creating derivative works, and may not take any other steps intended to produce a source language state of the Product(s) or any part thereof, without the prior written consent of Vendor.

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

**4.5 Confidential Information.** Each Party will use the same degree of care to protect the other Party's Confidential Information as it uses to protect its own confidential information of like nature, but in no circumstances less than reasonable care. "Confidential Information" for the purposes of this subparagraph means any information that is marked or otherwise indicated as confidential or proprietary, in the case of written materials, or, in the case of information that is disclosed orally or written materials that are not marked, by notifying the other Party of the proprietary and confidential nature of the information, such notification to be done orally, by email or written correspondence, or via other means of communication as might be appropriate. Notwithstanding the foregoing, (a) Confidential Information of Vendor shall include the Software and (b) the Confidential Information of Customer shall include personally identifiable information regarding its and other Licensees' end users provided in connection with the Product(s). Confidential Information does not include information which (a) was known to the receiving Party or in the public domain before disclosure; (b) becomes part of the public domain after disclosure by a publication or other means except by a breach of this Agreement by the receiving Party; (c) was received from a third party under no duty or obligation of confidentiality to the disclosing Party; or (d) was independently developed by the receiving Party without reference to Confidential Information. Disclosures of Confidential Information that are required to be disclosed by law or legal process shall not be considered a breach of this Agreement as long as the recipient notifies the disclosing Party, provides it with an opportunity to object and uses reasonable efforts (at the expense of the disclosing Party) to cooperate with the disclosing Party in limiting disclosure to the extent allowed by law.

**4.6 Vendor Obligations Under NYS Education Law 2-d.** For Student Data or Teacher and Principal Data, as such terms are defined in New York Education Law Section 2-d, Vendor shall comply with all terms, conditions and obligations as set forth in Education Law 2-d and Part 121 of the Commissioner's Regulations (8 NYCRR 121). The Vendor shall also complete a Data Privacy Agreement and the NIST review questionnaire during the risk review and contract review process. In the event that Vendor receives, stores or maintains Student Data, or Teacher and Principal Data

provided to it by a Licensee, whether as a cloud provider or otherwise, the Vendor assumes all risks and obligations in the event of a breach of security of such data. Vendor shall not subcontract or assign its obligation to store or maintain Student State or Teacher and Principal Data provided to it pursuant to this Agreement to a third-party cloud provider unless granted specific prior written permission from Customer.

**4.7 Notification of Breach and Unauthorized Disclosure.** Vendor shall promptly notify Albany-Schoharie-Schenectady-Saratoga BOCES of any actual or potential breach or unauthorized disclosure of Confidential Information possibly affecting any Participating Educational Agency under this Agreement in the most expedient way possible and without unreasonable delay, but no more than seven (7) calendar days after Vendor has discovered or been notified of the actual or potential breach or unauthorized disclosure. Vendor will provide such notification to Albany-Schoharie-Schenectady-Saratoga BOCES by contacting the Library and Arts Program Manager directly by email at [annesley.gersztoff@neric.org](mailto:annesley.gersztoff@neric.org), and by calling (518) 464-5102.

**4.7.1** Vendor will cooperate with Albany-Schoharie-Schenectady-Saratoga BOCES to provide as much information as possible directly to the Library and Arts Program Director or her designees about the incident, including but not limited to: a description of the incident; the date of the incident; the date Vendor discovered or was notified of the incident and any associated timelines for rectification; 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 disclosure of Confidential Data; and contact information for Vendor representatives who can assist affected individuals that may have additional questions. Same information will be provided in the most expedient way possible and without unreasonable delay.

**4.7.2** Vendor acknowledges that, upon initial notification from Vendor, Albany-Schoharie-Schenectady-Saratoga BOCES, as the educational agency with which the Vendor contracts, has an obligation to notify the Chief Privacy Officer in the New York State Education Department (“CPO”) under NYS Education Law §2-d (6)(a). Vendor shall not provide notification to the CPO directly. In the event the CPO contacts Vendor directly after having been initially informed of the incident by Albany-Schoharie-Schenectady-Saratoga BOCES, Vendor will promptly inform Annesley Gersztoff or her designees.

**4.7.3** Vendor will consult directly with the Library and Arts Program Director or her designees prior to providing any further notice of the incident, written or otherwise, directly to any other BOCES, Regional Information Center, and/or any affected Participating Educational Agency. All written communication to other BOCES, Regional Information Centers, and/or Participating Educational Agencies regarding the incident must receive approval by Albany-Schoharie-Schenectady-Saratoga BOCES prior to distribution.

## **5. Representations, Warranties and Disclaimers:**

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

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

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

**5.2.2** If the Product(s) are held to infringe, or in Vendor's opinion is likely to be held to infringe, any United States Patent or pending applications for Letters Patent, or any Trademark or Copyright, Vendor shall, in addition to its obligations as set forth in paragraph 5.2 and 5.2.1 above, at its expense., (a) secure the right for Customer or the other Licensee, as applicable, to continue use of the Product(s) or (b) replace or modify the Product(s) to make it non-infringing. If commercially reasonable efforts to perform the foregoing are unsuccessful, Customer or the other Licensee, as applicable, shall be entitled to a pro-rata refund of fees paid by the Customer or the Licensee to Vendor pursuant to this Agreement, calculated as of the date Customer or the Licensee, as applicable, was prohibited from using the Product(s).

**5.2.3** Vendor shall have no obligation with respect to any such claim of infringement based upon modifications of machines or programming made by Customer or any other Licensee without Vendor approval, or upon their combination, operation, or use with apparatus, data, or programs not furnished by Vendor by Customer or any other Licensee, without Vendor's approval.

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

event that Vendor is unable to correct such non-conformance, Vendor will provide Customer or the other Licensee, as applicable, with replacement or repair of defective Product(s), re-performance of Services, or a pro-rata refund of fees paid pursuant to this Agreement, calculated as of the date of commencement of any period of non-conformance.

**5.4** Remedies available to Customer or any other Licensee for damage or loss to the Product(s) shall be the repair or replacement of the Product(s) or a pro-rata refund of fees paid pursuant to this Agreement, calculated as of the date of commencement of the damage or loss. Vendor shall have no liability or responsibility for damage or loss to the Product(s) caused by any alteration or modification by a Licensee not authorized by Vendor, or for damage or loss arising out of the malfunction of Licensee's equipment or other software not supplied by Vendor.

**5.5 Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, VENDOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY WITH RESPECT TO THE PRODUCT(S) AND SERVICES, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. VENDOR DOES NOT WARRANT THAT THE PRODUCT(S) WILL PERFORM OR OPERATE UNINTERRUPTED OR ERROR-FREE, OR THAT THE FUNCTIONS CONTAINED IN THE PRODUCT(S) WILL MEET ANY LICENSEE'S PARTICULAR REQUIREMENTS OR PURPOSE.

**5.6 Customer Representations and Warranties.** Customer hereby represents and warrants to Vendor:

**5.6.1** That all BOCES that are participating in the DREAM Consortium, including Customer, have agreed to be bound by the terms of this Agreement and perform their specific obligations as participating BOCES herein.

**5.6.2** That all BOCES that are participating in the DREAM Consortium, including Customer, will take steps to ensure that BOCES and school district Licensees within their jurisdiction use their best efforts to make staff available for training in how to utilize the Product(s) as requested by Vendor.

## **6. Indemnification:**

To the fullest extent permitted by law, the Vendor agrees to hold harmless, indemnify and defend the Albany-Schoharie-Schenectady-Saratoga Board of Cooperative Educational Services, all its employees/representatives, and all participating school districts, from and against all claims, damages, losses and expenses (including, without limitations, legal expenses on a solicitor and client basis) arising out of, or in consequence of, any and all acts, omissions, or negligence of the Vendor. Further, the Vendor agrees to hold harmless, indemnify and defend the BOCES, all its employees/representatives, and all participating school districts from and against all suits, actions and proceedings by whomsoever made, brought, or prosecuted, and in any manner based upon arising out of, related to, occasioned by, or attributable to the infringement or contribution to the infringement of any intellectual or industrial property right, by the articles, methods, processes, or act employed by, or plans, drawings,

specifications or other written data provided by the Vendor or its employees in concert with providing services.

## **7. Fees and Payment:**

**7.1 License Fees.** In consideration of the licenses granted to all Licensees as described herein, and the Services to be performed by Vendor, Customer agrees that each participating BOCES (including Customer) shall pay Vendor the applicable fees set forth in **Exhibit A** on behalf of each Licensee within its jurisdiction that participates in the applicable CoSers during any fiscal year within the Initial Term of this Agreement or any Renewal Term.

**7.2 Pricing.** The fees set forth in **Exhibit A** shall be applicable during the period July 1, 2024 through June 30, 2025 (the first fiscal year within the Initial Term of this Agreement). Vendor will provide to Customer proposed new pricing for each succeeding fiscal year within the Initial Term of this Agreement (or each succeeding fiscal year within any Renewal Term) by November 1 of each fiscal year by notification to the Library and Arts Program Manager or by certified letter addressed to 900 Watervliet-Shaker Rd., Albany NY 12205. The Library and Arts Program Manager will work with the Vendor to evaluate and accept pricing to be applicable during each succeeding fiscal year. The Parties shall revise **Exhibit A** as needed to reflect any new prices as mutually agreed. If no notification is received by November 1 of any fiscal year, the fees established for the then current fiscal year will remain in effect for the subsequent fiscal year.

**7.3 Quotes.** Quotes applicable to any BOCES or school district Licensees based in the fees set forth in **Exhibit A** shall be provided to each BOCES Contact (including Customer's) or his/her designee. The Vendor will not provide quotes directly to any school district Licensees. Each participating BOCES (including Customer) will issue a purchase order to Vendor on behalf of each Licensee within its jurisdiction that wishes to participate in the applicable CoSers.

**7.4 Invoices.** When invoicing Albany-Schoharie-Schenectady-Saratoga BOCES Customer, Vendor shall send invoices addressed to 900 Watervliet-Shaker Road, Albany NY 12205 (Attention: Annesley Gersztovff); any other invoices shall be sent by Vendor to the other participating BOCES initiating the request. Vendor shall contact the BOCES contact at each other participating BOCES to receive the proper invoicing address. Payment shall be made by each participating BOCES (including Customer) within forty-five (45) days of either completion of the activation of the Product(s) at the site of a Licensee, or the implementation meeting for service.

**7.5. Withdrawal.** Vendor acknowledges that due to the nature of BOCES services, individual Licensees may from time to time, during the Initial Term of this Agreement or any Renewal Term, withdraw from or choose not to renew their participation in the applicable BOCES service for a subsequent fiscal year. Each participating BOCES (including Customer) shall provide written notification to Vendor of any such withdrawal or non-renewal by any Licensee within its jurisdiction no later than thirty (30) days prior to its effective date (typically July 1<sup>st</sup>), without penalty. Upon

receipt of notification, Vendor shall securely delete or otherwise destroy any and all Protected Data received from that Licensee remaining in the possession of Vendor or any of its subcontractors or other authorized persons or entities to whom it has disclosed the Protected Data; if requested by the Licensee, Vendor will assist in exporting all Protected Data previously received back to the Licensee prior to deletion. Vendor will provide Customer and the Licensee with written certification from an appropriate officer that these requirements have been satisfied in full. For purposes of this subsection 7.5, "Protected Data" shall include, but not be limited to, Personally Identifiable Information and Personal/Private Information as defined by New York State Education Law §2-d, New York State General Business Law §899-aa, and New York State Technology Law §202, and any other information provided by BOCES identified at the time of disclosure as protected. Notwithstanding the non-renewal or withdrawal of any Licensee, the terms of this Agreement shall continue in full force and effect with respect to Customer and any other remaining BOCES or school district Licensees.

## **8. Implementation Assistance Services and Training Support:**

**8.1 Training.** Upon request, Vendor will provide initial training, at no cost, to Customer's staff and the staff of each participating BOCES so that they are able to turn key and train school district Licensees using BOCES accounts or Product(s) provided to the BOCES at no cost. The Vendor will provide training remotely to the BOCES staff as outlined in **Exhibit B**, attached and incorporated herein by reference.

**8.2 Use of Training Materials.** Customer, all other participating BOCES, and all school district Licensees may use the entire Vendor provided training materials, on an ongoing basis, at no cost. Customer, all other participating BOCES, and all Licensee school districts may modify the Documentation for use solely within the Licensee school districts that have purchased the Product(s) pursuant to this Agreement.

**8.3 Training Logins and Sites.** The Vendor will provide Customer and all other participating BOCES the Product(s) or application logins and demo sites, at no cost, for utilizing the Product(s) while training Licensee school districts. The Vendor will provide administrative logins to Customer and all other participating BOCES for each Licensee school district in order for Customer and all other participating BOCES, as owners of the equipment/licenses, to manage and maintain accounts as required by the State Department of Education.

## **9. Technical Support Services:**

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

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

**9.3** All requests for assistance to Vendor by Customer, any other participating BOCES, and/or any school district Licensee to resolve problems which cause the



software to become “inoperative” will be acknowledged by Vendor by phone or email within twenty-four (24) hours during Vendor’s normal support hours. For less severe problems, Vendor must acknowledge the request for assistance by phone within forty-eight (48) hours.

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

**9.4.1** Toll Free Number support [\_\_(216) 573-6886 (phone)\_\_] from [8:00] A.M. to [4:00] P. M. EST (Eastern Standard Time) or support@overdrive.com

**9.4.2** Bug Correction – Vendor shall use its best efforts to correct any software bugs in the Product(s). Customer, any other participating BOCES, and any school district Licensee shall allow Vendor in each instance the opportunity to make repeated efforts within a reasonable time to correct any such bugs.

**9.4.3** Training, free of charge, for technical staff of Customer and/or any other participating BOCES to install or upgrade any equipment. This training can be provided via webinar.

## **10. Applicable Law:**

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New York without regard to that State’s choice-of-law provisions. In the event a dispute arises between the Parties in connection with this Agreement, the Parties shall use good faith efforts to resolve such dispute by negotiation. In the event the Parties are unable to resolve such dispute by negotiation, the matter shall be reviewed in any court of competent jurisdiction located in the County of Albany, State of New York and the Parties hereby agree to submit to personal jurisdiction in any such court.

## **11. Force Majeure:**

Notwithstanding anything to the contrary contained herein, neither Party shall have any liability to the other Party for any default or delay in performance of its obligations hereunder to the extent attributable to unforeseen events beyond the reasonable control of the Party. Such events shall include but not be limited to, natural disasters or “acts of God;” war; acts of public enemies; terrorism; flood; government action; orders of regulations; fire; civil disturbance or unrest; work stoppage or strike; unusually severe weather conditions; disease, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restriction (each, a “Force Majeure” event). Vendor’s performance of some or all of its obligations hereunder may also cease at any time upon mutual written agreement between the Parties. Any warranty period affected by a Force Majeure event shall be extended for a period equal to the duration of such Force Majeure event.

## **12. Consent to Breach Not Waiver:**

No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent to breach shall be in writing and signed by the Party granting the waiver or consent. If either Party grants a waiver or consent to a breach of a term or provision of this Agreement, such waiver or consent shall not constitute or be construed as a waiver of or consent to any other or further breach of that

term or provision or any other different or subsequent breach of any other term or provision.

**13. Severability:**

If any term, clause or provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed severed from the Agreement.

**14. Risk of Loss or Damage:**

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

Vendor assumes all risks for injuries to or death of its employees and for damage to its tangible property, excluding damage to data, while on the premises of, or traveling to or from, facilities of Customer, any other participating BOCES, and/or any school district Licensee. Vendor shall provide assistance to recover or resolve any damaged data to the reasonable satisfaction of Customer, any other participating BOCES, and/or any school district Licensee. Vendor will be required to procure and maintain at its own expense, the following insurance coverage:

(a) **General Liability Insurance:** A policy or policies or comprehensive all-risk insurance with limits of not less than:

| Liability For:  | Limit Per Occurrence/Aggregate |
|-----------------|--------------------------------|
| Property Damage | \$1,000,000/ \$2,000,000       |
| Bodily Injury   | \$1,000,000/ \$2,000,000       |
| Personal Injury | \$1,000,000/ \$2,000,000       |

Customer shall be named as an additional insured on all liability.

**15. Amendment:**

This Agreement may be amended by Customer and Vendor provided that any such changes or modifications shall be in writing signed by the parties hereto.

**16. Headings:**

The Headings of the paragraphs and sections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part hereof.

**17. Notices:**

Except as otherwise provided in this Agreement, all notices required hereunder shall be in writing and sent by certified mail, return receipt requested to the Party at the address written above, or such other address as noticed to the other Party.

**18. Conflict of Interest:**

Vendor represents and warrants that Vendor presently has no interest and shall not acquire any interest, direct or indirect that would conflict in any manner or degree with the performance of Vendor's obligations under this Agreement. Vendor further

represents and warrants that it has not employed nor retained any person or company, other than a bona fide employee working solely for Vendor or the Vendor's bona fide agent, to solicit or secure any agreement with any other participating BOCES or any school district Licensee. Further, Vendor represents that Vendor has not paid, given, or agreed to pay or give any company or person, other than a bona fide employee working solely for Vendor or the Vendor's bona fide agent, any fee, commission, percentage, brokerage fee, gift, contribution, or any other consideration contingent upon or resulting from the award or making of any agreement with any other participating BOCES or any school district Licensee. Upon discovery of a breach or violation of the provisions of this paragraph, Customer shall have the right to terminate this Agreement in accordance with subsection 1.3, however, it may do so immediately and without providing Vendor the opportunity to cure such breach or violation.

**19. Employment Practices:**

Vendor warrants that there shall be no discrimination against any employee who is employed in the work covered by the Agreement, or against any applicant for such employment, because of race, religion, color, sex, age or national origin. This shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, recruitment advertising, lay-off, termination, rates of pay or other tools of compensation, and selection for training, including apprenticeship. Vendor shall insert similar provisions in any authorized subcontracts for the performance of Services covered by this Agreement.

**20. Executory Clause:**

This Agreement shall be deemed executory only to the extent of monies appropriated and available to Customer or any other BOCES or school district Licensee for the purpose of this Agreement, and no liability on account thereof shall be incurred by Customer or any other BOCES or school district Licensee beyond the amount of such monies. The Agreement is not a general obligation of Customer or any other BOCES or school district Licensee. Neither the full faith and credit nor the taxing power of any school district Licensee is pledged to the payment of any amount due or to become due under this Agreement. It is understood that neither this Agreement nor any representation by any public employee or officer creates any legal or moral obligation to appropriate or to make monies available from the purpose of this Agreement.

**21. Non-Assignment:**

This Agreement shall be binding on the Parties and on their successors and assigns. Vendor is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement or any amendment thereto, or its power to perform the obligations required by this Agreement to any other person or corporation without the previous consent, in writing, of Customer; and any attempts to assign the Agreement without Customer's prior written consent are null and void. Notwithstanding the foregoing, without securing prior such consent, either party may upon written notice to the other party assign this Agreement and its rights and obligations to any successor of such first party by way of merger, consolidation, or the acquisition of substantially all of such first party's business and relating assets, so long as such successor is authorized to do business in the State of New York and has not been previously deemed non-responsible with respect to any contracts or other competitive bidding with BOCES. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective heirs, legal representatives,

successors, and permitted assigns.

**22. Entire Understanding:**

This Agreement and the terms and conditions set forth in the Request for Proposal, **Exhibit C**, and all other Exhibits attached hereto constitute the entire

understanding between Customer and Vendor. Should any term or condition set forth herein conflict with the Exhibit C, the terms herein shall control.

**In Witness Whereof**, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the dates set forth below.

05/28/2024  
Date \_\_\_\_\_

BOCES  
By \_\_\_\_\_  
*John T. Phelan Jr.*  
42061F0222B70222FCB20C108B07063 contractworks.

Board Authorized Signature

3/1/2024  
Date \_\_\_\_\_

Vendor  
By \_\_\_\_\_  
DocuSigned by:  
*Erica Lazzaro*  
49E30FE889B34A9...

Name: Erica Lazzaro

Title: Executive Vice President & General Counsel

Exhibit A



## OverDrive's Marketplace Catalog Information

Dear DREAM Consortium:

OverDrive offers Sora, its student reading app. Sora was designed around the modern student reading experience. It empowers students to discover and enjoy ebooks and audiobooks from their school, for both leisure and class-assigned reading.

Inspired by educator and student feedback, Sora was created to excite kids about reading and remove distractions to promote a focus on learning. Features include:

- Easy to use, one tap to get inside a book
- The largest catalog of ebooks and audiobooks...made even larger by access to your public library through Sora
- Teachers can assign titles and track individual student reading progress
- Exportable notes, highlights for collaborative learning
- Personalized with book recommendations and learning tools like dyslexic font, enlarged text, Read-Alongs and audiobooks
- Badges and achievements to engage students
- Same experience on all devices
- Direct support for readers provided by OverDrive

You can learn more at <https://www.overdrive.com/discoverSORA>.

To populate your school/district's digital content collection, OverDrive offers ebooks and audiobooks for purchase through OverDrive Marketplace (<http://marketplace.overdrive.com>). OverDrive Marketplace catalog contains millions of titles of ebooks, audiobooks, comics, and magazines. Selections may be made by title or via convenient lists by grade, reading level, and subject. In addition to millions of digital titles available, OverDrive also offers access to learning resources through Sora Extras. Sora Extras are available for purchase in Marketplace under the SHOP tab. Please note that Sora is covered under OverDrive's Ed Law 2D contracts with DREAM schools. OverDrive's Sora Extras user authentication process is compliant with Ed Law 2D.

Please note that there are no minimum criteria or thresholds for system-wide purchasing, and all training is available at no additional cost.

Preview access to OverDrive Marketplace is available upon request.

Sincerely,  
The OverDrive Education Team

**Exhibit B****Training**

- a) Proposer agrees, upon request, to provide initial training, at no cost, to Capital Region BOCES staff and the staff of each DREAM Consortium member (BOCES/ SLS), so that they are able to turn key and train school district Licensees using BOCES accounts or Product(s) provided to the BOCES at no cost.

☒ **Acknowledged and Accepted**

☐ **Exception/Deviation Noted (Provide Details Below)**

- b) Identify the options and related costs for training for schools and districts.  
Training is included at no cost, and can be provided both virtually and on site, in person. Training is available on-demand in the OverDrive Resource Center (<https://resources.overdrive.com/>) which include brief how-to videos, tutorials, and in-depth webinars. Training is provided by OverDrive's professional staff training team. In-person training can be provided on topics related to Sora, administrative purchasing and tools in Marketplace, and using Sora in the library and classroom.

Most partners complete 2-4 hours of live, interactive training. OverDrive can add more refresher or deeper-dive learning opportunities as needed. These can be live or self-paced learning sessions through how-to videos and/or eLearning modules. Additionally, all OverDrive partners have a dedicated Product Support Specialist assigned to their account, available directly via email or phone. There is also an Account Manager assigned to each account who is available by email or phone.

Sora features and use are well documented online via <http://help.soraapp.com/> and the [Sora YouTube channel](#). School staff use our [Resource Center](#) to learn how other schools use digital books, get book list recommendations and download assets they can use with kids.

- c) Identify any training that is deemed mandatory for an initial subscription purchase. (Note: Related costs of mandatory training must be detailed in the Product and Pricing Proposal. All training is voluntary and provided at no cost to to the school.

- d) All training will be coordinated through the individual DREAM Consortium member BOCES/ SLS.

☒ **Acknowledged and Accepted**

☐ **Exception/Deviation Noted (Provide Details Below)**

- e) **Use of Training Materials:** Proposer agrees that Capital Region BOCES, all DREAM Consortium members (BOCES/ SLS), and all school district Licensees may use the entire vendor-provided training materials, on an ongoing basis, at no cost.

☒ **Acknowledged and Accepted**

☐ **Exception/Deviation Noted (Provide Details Below)**

Capital Region BOCES, all other participating BOCES, and all Licensee school districts may modify the Documentation for use solely within the Licensee school districts that have purchased the Product(s) pursuant to this Agreement.

☒ **Acknowledged and Accepted**

☐ **Exception/Deviation Noted (Provide Details Below)**

- f) **Training Logins and Sites:** Proposer agrees to provide Capital Region BOCES and all DREAM Consortium members (BOCES/ SLS) the Product(s) or application logins and demo sites, at no cost, for utilizing the Product(s) while supporting Licensee school districts.

☒ **Acknowledged and Accepted**

☐ **Exception/Deviation Noted (Provide Details Below)**

Proposer will provide administrative logins to Capital Region BOCES and all other DREAM Consortium members (BOCES/ SLS) for each Licensee school district, in order for Capital Region BOCES and all other DREAM Consortium members (BOCES/ SLS), as owners of the equipment/licenses, to manage and maintain accounts as required by the State Department of Education.

☒ **Acknowledged and Accepted**

☐ **Exception/Deviation Noted (Provide Details Below)**

# Exhibit C

## **RESPONSE TO SCOPE OF SERVICES**

### **1. Product Information**

*Excerpted from RFP Response*

#### **1. Access**

a) How is online product access provided? Check all that apply:

- ☐ IP address authentication
- ☒ Username and password
- ☒ Unique user URL

b) Access information must be sent to the corresponding BOCES/ SLS no later than two weeks after receipt of the purchase order, when applicable. If Single Sign On (SSO) access is being used, this information shall be communicated with the BOCES. Any documentations pertaining to username/password sent to the individual school or district must also be sent to the corresponding BOCES/ SLS.

- ☒ **Acknowledged and Accepted**
- ☐ **Exception/Deviation Noted (Provide Details Below)**

c) Free remote patron access by unique username and password must be provided.

- ☒ **Acknowledged and Accepted**
- ☐ **Exception/Deviation Noted (Provide Details Below)**

d) The BOCES/ SLS offices will receive a complimentary account for training and administration purposes.

- ☒ **Acknowledged and Accepted**
- ☐ **Exception/Deviation Noted (Provide Details Below)**



1. **Statistics:** Instructions to access individual subscription statistics for both in-house and remote usage will be provided to each site and the corresponding BOCES/ SLS office upon request

☒ **Acknowledged and Accepted**

☐ **Exception/Deviation Noted (Provide Details Below)**

## 1. **Training**

- a) Proposer agrees, upon request, to provide initial training, at no cost, to Capital Region BOCES staff and the staff of each DREAM Consortium member (BOCES/ SLS), so that they are able to turn key and train school district Licensees using BOCES accounts or Product(s) provided to the BOCES at no cost.

☒ **Acknowledged and Accepted**

☐ **Exception/Deviation Noted (Provide Details Below)**

- b) Identify the options and related costs for training for schools and districts.  
Training is included at no cost, and can be provided both virtually and on site, in person. Training is available on-demand in the OverDrive Resource Center (<https://resources.overdrive.com/>) which include brief how-to videos, tutorials, and in-depth webinars. Training is provided by OverDrive's professional staff training team. In-person training can be provided on topics related to Sora, administrative purchasing and tools in Marketplace, and using Sora in the library and classroom.

Most partners complete 2-4 hours of live, interactive training. OverDrive can add more refresher or deeper-dive learning opportunities as needed. These can be live or self-paced learning sessions through how-to videos and/or eLearning modules. Additionally, all OverDrive partners have a dedicated Product Support Specialist assigned to their account, available directly via email or phone. There is also an Account Manager assigned to each account who is available by email or phone.

Sora features and use are well documented online via <http://help.soraapp.com/> and the [Sora YouTube channel](#). School staff use our [Resource Center](#) to learn how other schools use digital books, get book list recommendations and download assets they can use with kids.

- c) Identify any training that is deemed mandatory for an initial subscription purchase. (Note: Related costs of mandatory training must be detailed in the Product and Pricing Proposal. All training is voluntary and provided at no cost to the school.

- d) All training will be coordinated through the individual DREAM Consortium member BOCES/ SLS.

☒ **Acknowledged and Accepted**

☐ **Exception/Deviation Noted (Provide Details Below)**

- e) **Use of Training Materials:** Proposer agrees that Capital Region BOCES, all DREAM Consortium members (BOCES/ SLS), and all school district Licensees may use the entire vendor-provided training materials, on an ongoing basis, at no cost.

☒ **Acknowledged and Accepted**

☐ **Exception/Deviation Noted (Provide Details Below)**

Capital Region BOCES, all other participating BOCES, and all Licensee school districts may modify the Documentation for use solely within the Licensee school districts that have purchased the Product(s) pursuant to this Agreement.

☒ **Acknowledged and Accepted**

☐ **Exception/Deviation Noted (Provide Details Below)**

- f) **Training Logins and Sites:** Proposer agrees to provide Capital Region BOCES and all DREAM Consortium members (BOCES/ SLS) the Product(s) or application logins and demo sites, at no cost, for utilizing the Product(s) while supporting Licensee school districts.

☒ **Acknowledged and Accepted**

☐ **Exception/Deviation Noted (Provide Details Below)**

Proposer will provide administrative logins to Capital Region BOCES and all other DREAM Consortium members (BOCES/ SLS) for each Licensee school district, in order for Capital Region BOCES and all other DREAM Consortium members (BOCES/ SLS), as owners of the equipment/licenses, to manage and maintain accounts as required by the State Department of Education.

☒ **Acknowledged and Accepted**

☐ **Exception/Deviation Noted (Provide Details Below)**

## 2. Technical Support Services

- a) Proposer will provide technical support and updates, including assistance and consultation by phone or email to assist Capital Region BOCES, any other DREAM Consortium members (BOCES/ SLS), or any school district Licensee in resolving problems with the use of the Product(s), at no charge.

☒ **Acknowledged and Accepted**

☐ **Exception/Deviation Noted (Provide Details Below)**

- b) Vendor will provide support for discontinued Product(s) for at least (1) year following notification to Capital Region BOCES, any other DREAM Consortium members (BOCES/ SLS), or school district Licensee of discontinuation.

☒ **Acknowledged and Accepted**

☐ **Exception/Deviation Noted (Provide Details Below)**

- c) All requests for assistance to the Vendor by Capital Region BOCES, any other DREAM Consortium members (BOCES/ SLS), or any school district Licensee, to resolve problems which cause the software to become “inoperative” will be acknowledged by Vendor by phone or email within twenty-four (24) hours during Vendor’s normal support hours. For less severe problems, Vendor must acknowledge the request for assistance by phone within forty-eight (48) hours.

☒ **Acknowledged and Accepted**

☐ **Exception/Deviation Noted (Provide Details Below)**

- d) Proposer will provide a toll-free phone number for Capital Region BOCES, any other DREAM Consortium members (BOCES/ SLS), or any school district Licensee to access technical support services.

Support services are provided 24/7 by emailing [support@overdrive.com](mailto:support@overdrive.com). Additionally, each of our school partners has a dedicated team of OverDrive employees to provide assistance and help. This includes a Product Support Specialist, who is available to assist with any technical questions or concerns that may arise.

☐ **Acknowledged and Accepted**

☒ **Exception/Deviation Noted (Provide Details Below)**

- e) Vendor will use its best efforts to correct any software bugs in the Product(s). Capital Region BOCES, any other DREAM Consortium members (BOCES/ SLS), or any school district Licensee shall allow Vendor in each instance the opportunity to make repeated efforts within a reasonable time to correct any such bugs.

☒ **Acknowledged and Accepted**

☐ **Exception/Deviation Noted (Provide Details Below)**

- f) Vendor will provide training, free of charge, for technical staff of Capital Region BOCES, any other DREAM Consortium members (BOCES/ SLS), to install or upgrade any equipment. This training may be provided via webinar.

☒ **Acknowledged and Accepted**

☐ **Exception/Deviation Noted (Provide Details Below)**

### **3. Pricing Terms and Requirements**

- a) The offered pricing structure guarantees that all DREAM purchases are sold at pricing which is the lowest, or equal to the otherwise lowest pricing which is currently charged in New York State, for every resource title offered during the school year. DREAM participants receive the vendor's most advantageous pricing available at all times.

Contracted DREAM pricing will not increase during the applicable school year.

Once contract has been awarded, if vendor offers decreased pricing to other entities, the same price reductions will be provided to DREAM participants.

☒ **Acknowledged and Accepted**

☐ **Exception/Deviation Noted (Provide Details Below)**

- b) Except as otherwise provided in paragraphs g) and h) of this section, Vendor will conduct price negotiations only with the Capital Region BOCES on behalf of the DREAM Consortium, and not with individual school districts participating in this program.

☒ **Acknowledged and Accepted**

☐ **Exception/Deviation Noted (Provide Details Below)**

- c) Subscriptions will be for a one-year term commencing on a date to be determined by the individual BOCES/ SLS.

☒ **Acknowledged and Accepted**

☐ **Exception/Deviation Noted (Provide Details Below)**

- d) Vendor will quote DREAM pricing to DREAM SLS members only. Inquiries from individual New York State librarians or school districts, non-member BOCES or their Regional Information Centers (“RIC”), will be directed to the appropriate local BOCES/ SLSs for DREAM Consortium pricing.

☒ **Acknowledged and Accepted**

☐ **Exception/Deviation Noted (Provide Details Below)**

- e) Prorated subscriptions will be offered, if requested, at the awarded DREAM Consortium pricing. The prorated price will be calculated by dividing the annual subscription price of the product by 12 to determine a monthly rate.

☒ **Acknowledged and Accepted**

☐ **Exception/Deviation Noted (Provide Details Below)**

- f) Purchase orders will be issued directly to awarded vendors from individual BOCES/ SLSs, reflecting DREAM pricing. All invoices and/or renewal notices will be sent directly to the individual BOCES/SLS offices issuing the purchase order, not to the individual schools/districts.

☒ **Acknowledged and Accepted**

☐ **Exception/Deviation Noted (Provide Details Below)**

- g) If a School Library Systems has grandfathered pricing or legacy pricing in place, upon the agreement between the vendor and the School Library System, pre-existing pricing may be used in lieu of the proposed pricing. All other elements of the Contract shall remain in effect.

☒ **Acknowledged and Accepted**

☐ **Exception/Deviation Noted (Provide Details Below)**

- h) Members of the DREAM Consortium may negotiate regional discounted volume pricing in cases when School Library Systems purchase products for use by their entire region or for use by all participants in a specific CoSer within their geographic region. Upon the agreement between the vendor and the School Library System, regional pricing may be established for use by the SLS. All other elements of the Contract shall remain in effect.

☒ **Acknowledged and Accepted**

☐ **Exception/Deviation Noted (Provide Details Below)**

- i) Product Additions: New products developed or released between the time of proposal submission and renewal of an awarded contract may be subject to addition to the contract award by amendment to the agreement, contingent upon legal review and approval and acceptance by Capital Region BOCES.

☒ **Acknowledged and Accepted**

☐ **Exception/Deviation Noted (Provide Details Below)**

