

SOFTWARE VENDOR AGREEMENT

This Agreement, made and entered into 11/9/2020(Effective Date), by and between Blooket LLC, having offices at 409 South Ridge Avenue ("Vendor"), and the Fabius-Pompey Central School District, having an office at 211 Mill Street, Fabius, New York 13063 ("School District") (collectively "Parties").

In consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

- 1. Services.** Vendor shall perform the services set forth in this Agreement, as described in Addendum A (the "Services"). Vendor shall provide the Services at the School District location or on a remote basis, as agreed to by the Parties. Vendor warrants that the Services provided hereunder will be performed in a good and workmanlike manner.]
- 2. Data Accessed by Vendor.** Vendor shall identify categories of all data accessed by Vendor or its subcontractors as part of this Agreement as set forth in Addendum B.
- 3. Term of Services.** This Agreement begins on the Effective Date and will continue for a period of one (1) year unless terminated pursuant to Section 4 below (the "Term").
- 4. Termination.** This Agreement may be terminated as follows:

 - (a) By the School District upon thirty (30) days prior written notice to Vendor;
 - (b) By the School District immediately in the event of breach by the Vendor; and
 - (c) By either Party upon written mutual agreement.
 - (d) By Vendor upon thirty (30) days prior written notice.
- 5. Payment.** The School District shall not pay any fee for the Services provided by Vendor in accordance with this Agreement for the free sections of the Services provided by Vendor. The School District agrees to pay for all Premium Services provided by Vendor upon use of the services by the District.
- 6. Protection of Confidential Data.** Vendor shall provide its Services in a manner which protects Student Data (as defined by 8 NYCRR §121.1(q)) and Teacher or Principal Data (as defined by 8 NYCRR §121.1(r)) (hereinafter "Confidential Data") in accordance with the

requirements articulated under Federal, State and local laws and regulations, including but not limited to the foregoing:

- (a) Vendor will adopt technologies, safeguards and practices that align with the NIST Cybersecurity Framework.
- (b) Vendor will comply with the School District Data Security and Privacy Policy, Education Law § 2-d, and 8 NYCRR §121.
- (c) Vendor will limit internal access to personally identifiable information to only those employees or subcontractors that need access to provide the contracted services.
- (d) Vendor will not use the personally identifiable information for any purpose not explicitly authorized in this Agreement.
- (e) Vendor will not disclose any personally identifiable information to any other party without the prior written consent of the parent or eligible student, unless otherwise authorized pursuant to applicable law.
- (f) Vendor will maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of personally identifiable information in its custody.
- (g) Vendor will use encryption to protect personally identifiable information in its custody while in motion or at rest.
- (h) Vendor will not sell personally identifiable information nor use or disclose it for any marketing or commercial purpose or facilitate its use or disclosure by any other party for any marketing or commercial purpose or permit another party to do so.
- (i) In the event Vendor engages a subcontractor to perform its contractual obligations, the data protection obligations imposed on the Vendor shall apply to the subcontractor.

7. **Data Breach.** In the event that Confidential Data is accessed or obtained by an unauthorized individual, Vendor shall provide notification to the School District without unreasonable delay and not more than seven (7) calendar days after the discovery of such breach. Vendor shall follow the following process:

- (a) The security breach notification shall be titled "Notice of Data Breach", shall be clear, concise, use language that is plain and easy to understand, and to the extent available, shall include: a brief description of the breach or unauthorized release; the dates of the incident and the date of discovery; a description of the types of Confidential Data affected; an estimate of the number of records affected; a brief description of the Vendors investigation or plan to investigate; and contact information for

representatives who can assist the School District with additional questions.

- (b) The Vendor shall also prepare a statement for parents and eligible students which provides information under the following categories: "What Happened," "What Information Was Involved," "What We Are Doing," "What You Can Do," and "For More Information."
- (c) Where a breach or unauthorized release of Confidential Data is attributed to Vendor, and/or a subcontractor or affiliate of Vendor, Vendor shall pay for or promptly reimburse the School District for the cost of notification to parents and eligible students of the breach.
- (d) Vendor shall cooperate with the School District and law enforcement to protect the integrity of investigations into the breach or unauthorized release of Confidential Data.
- (e) Vendor further acknowledges and agrees to have a written incident response plan that is consistent with industry standards and Federal and State laws for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of Confidential Data or any portion thereof. Upon request, Vendor shall provide a copy of said written incident response plan to the School District.

8. Indemnification. Vendor shall at all times (both during and after the Term of this Agreement), indemnify, defend and hold harmless the School District, its agents, employees, and students (collectively for purposes of this Section, "the School District"), from and against any and all settlements, losses, damages, costs, not including counsel fees, and all other expenses relating to or arising from (a) Vendor's failure to comply with the terms of this Agreement; and/or (b) the negligent operations, acts or omissions of the Vendor.

9. Compliance with Laws. Vendor, its employees and representatives shall at all times comply with all applicable Federal, State and local laws, rules and regulations.

10. Independent Relationship. It is expressly intended by the Parties hereto, and Vendor hereby specifically warrants, represents and agrees, that Vendor and the School District are independent entities. The Parties intend that this Agreement is strictly between two independent entities and does not create an employer/employee relationship for any purpose. Vendor shall perform the duties contemplated by this Agreement as an independent entity, to whom no benefits shall accrue except for those benefits expressly set forth in this Agreement.

11. Assignment. This Agreement is binding upon the Parties and their respective successors and assigns, but Vendor's obligations under this Agreement are not assignable without the prior written consent of the School District. Any assignment without the School District's consent shall be null and void.

12. Governing Law. This Agreement and any Services provided hereunder shall be governed by the laws of the State of New York both as to interpretation and performance, without regard to its choice of law requirements.

13. Waiver. No delay or omission of the School District to exercise any right hereunder shall be construed as a waiver of any such right and the School District reserves the right to exercise any such right from time to time, as often as may be deemed expedient.

14. Addendums. The following Addendums are attached hereto and incorporated herein:

- Addendum A: Description of Specifications and Services
- Addendum B: Schedule of Data
- Addendum C: School District's Parents' Bill of Rights
- Addendum D: Parents' Bill of Rights – Supplemental Information Addendum
- Addendum E: Vendor's Data Security and Privacy Plan

15. Severability. Should any part of this Agreement for any reason be declared by any court of competent jurisdiction to be invalid, such decision shall not affect the validity of any remaining portion, which remaining portion shall continue in full force and effect as if this Agreement had been executed with the invalid portion hereof eliminated, it being the intention of the Parties that they would have executed the remaining portion of this Agreement without including any such part, parts or portions which may for any reason be hereafter declared invalid.

16. Entire Agreement. This Agreement and its Addendums constitute the entire Agreement between the Parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. It shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the Parties.

IN WITNESS WHEREOF, the Parties have signed this Agreement intending to be legally bound.

Blooket LLC

By: _____

Name: Gregory D. Stewart, Esq.

Title: Managing Member

Date: _____

11-9-2020

Fabius-Pompey Central School District

By: _____

Name: _____

Title: _____

Date: _____

Chantal M. Corbin

Chantal M Corbin

Data Protection Officer

11/09/2020

Addendum A

DESCRIPTION OF SPECIFICATIONS AND SERVICES

Description of Services

Vendor shall allow the School District to have access to Blooket.com pursuant to the terms and conditions of the website and subject to the privacy agreement of the site. The free features may be accessed by the School District without payment.

Product Specifications

Blooket.com is website directed to students above the age of 13 for the use of teachers and students to play games which are intended to include content provided by teachers in the form of questions or quiz sets. The School District may consent to allowing students under the age of 13 to participate in games as an agent of the parents pursuant to FCC guidance.

Technical Specifications

The way it works is that a teacher/host picks a question set and a unique game mode. Then, we generate a code that players can use to join the game on their own devices. After the game starts, players will answer questions to help them win. That's where the fun starts, because we offer a variety of games to keep students engaged and excited!

Addendum B

SCHEDULE OF DATA

Category of Data	Elements	Check if used by your system
Application Technology Meta Data	IP Addresses, Use of cookies etc.	X
	Other application technology meta data (specify):	
Application Use Statistics	Meta data on user interaction with application	X
Assessment	Standardized test scores	
	Observation data	
	Other assessment data (specify): <i>Student Personality Assessments</i>	
Attendance	Student school (daily) attendance data	
	Student class attendance data	
Communications	Online communications that are captured (emails, blog entries)	
Conduct	Conduct or behavioral data	
Demographics	Date of Birth	
	Place of Birth	
	Gender	
	Ethnicity or race	
	Language information (native, preferred or primary language spoken by student)	
	Other demographic information (specify):	
Enrollment	Student school enrollment	
	Student grade level	
	Homeroom	
	Guidance counselor	
	Specific curriculum programs	
	Year of graduation	
	Other enrollment information (specify):	
Parent/Guardian Contact Information	Address	
	Email	
	Phone	
Parent/Guardian ID	Parent ID number (created to link parents to students)	
Parent/Guardian Name	First and/or Last	

Schedule	Student scheduled courses	
	Teacher names	
Special Indicator	English language learner information	
	Low income status	
	Medical alerts	
	Student disability information	
	Specialized education services (IEP or 504)	
	Living situations (homeless/foster care)	
	Other indicator information(specify): <i>First Generation College Student</i>	
Student Contact Information	Address	
	Email	X
	Phone	
Student Identifiers	Local (School district) ID number	
	State ID number	
	Vendor/App assigned student ID number	X
	Student app username	X
	Student app passwords	X
Student Name	First and/or Last	
Student In-App Performance	Program/application performance (typing program-student types 60 wpm, reading program-student reads below grade level)	X
Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	
Student Survey Responses	Student responses to surveys or questionnaires	X
Student work	Student generated content, writing, pictures etc.	X
	Other student work data (Please specify):	
Transcript	Student course grades	
	Student course data	
	Student course grades/performance scores	
	Other transcript data (Please specify):	
Transportation	Student bus assignment	
	Student pick up and/or drop off location	

	Student bus card ID number	
	Other transportation data (Please specify):	
Other	Please list each additional data element used, stored or collected by your application	

Addendum C

FABIUS-POMPEY CENTRAL SCHOOL DISTRICT PARENTS' BILL OF RIGHTS FOR DATA PRIVACY AND SECURITY

The Fabius-Pompey School District is committed to ensuring student privacy in accordance with local, state and federal regulations and district policies. To this end and pursuant to U.S. Department of Education regulations, the district is providing the following Parents' Bill of Rights for Data Privacy and Security:

- A student's personally identifiable information (PII) cannot be sold or released for any commercial purposes.
- Parents have the right to inspect and review the complete contents of their child's education record.
- 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.
- A complete list of all student data elements collected by the state will be available for public review both online and via regular mail from the New York State Department of Education (SED). The website and mailing address will be listed here when the information is made available by SED.
- Parents have the right to have complaints about possible breaches of student data addressed. Complaints should be directed in writing to:

Chantal Corbin, Data Protection Officer
Fabius-Pompey CSD
1211 Mill St.
Fabius, NY
(315) 683-5301
ccorbin@fabsiupompey.org

And to:

Chief Privacy Officer
New York State Education Department
89 Washington Avenue
Albany, NY 12234
cpo@mail.nysed.gov

Addendum D

PARENTS' BILL OF RIGHTS – SUPPLEMENTAL INFORMATION ADDENDUM

1. **EXCLUSIVE PURPOSES FOR DATA USE:** The exclusive purposes for which “student data” or “teacher or principal data” (as those terms are defined in Education Law Section 2-d and collectively referred to as the “Confidential Data”) will be used by Bloocket LLC (the “Contractor”) are limited to the purposes authorized in the contract between the Contractor and Fabius-Pompey Central School District (the “School District”) dated 11/9/2020 (the “Contract”).
2. **SUBCONTRACTOR OVERSIGHT DETAILS:** The Contractor will ensure that any subcontractors, or other authorized persons or entities to whom the Contractor will disclose the Confidential Data, if any, are contractually required to abide by all applicable data protection and security requirements, including but not limited to, those outlined in applicable State and Federal laws and regulations (e.g., Family Educational Rights and Privacy Act (“FERPA”); Education Law § 2-d; 8 NYCRR §121).
3. **CONTRACT PRACTICES:** The Contract commences and expires on the dates set forth in the Contract, unless earlier terminated or renewed pursuant to the terms of the Contract. On or before the date the Contract expires, protected data will be exported to the School District in electronic format and/or destroyed by the Contractor as directed by the School District.
4. **DATA ACCURACY/CORRECTION PRACTICES:** A parent or eligible student can challenge the accuracy of any “education record”, as that term is defined in the FERPA, stored by the School District in a Contractor’s product and/or service by following the School District’s procedure for requesting the amendment of education records under the FERPA. Teachers and principals may be able to challenge the accuracy of APPR data stored by School District in Contractor’s product and/or service by following the appeal procedure in the School District’s APPR Plan. Unless otherwise required above or by other applicable law, challenges to the accuracy of the Confidential Data shall not be permitted.
5. **SECURITY PRACTICES:** Confidential Data provided to Contractor by the School District will be stored 409 South Ridge Avenue. The measures that Contractor takes to protect Confidential Data will align with the NIST Cybersecurity Framework, including but not necessarily limited to, disk encryption, file encryption, firewalls, and password protection.
6. **ENCRYPTION PRACTICES:** The Contractor will apply encryption to the Confidential

Data while in motion and at rest at least to the extent required by Education Law Section 2-d and other applicable law.

Addendum E

VENDOR'S DATA SECURITY AND PRIVACY PLAN

Blooket LLC incorporates by reference into this agreement the data security and privacy plan outlined on the Blooket.com website <https://www.blooket.com/privacy>.

