

DATA SHARING AND CONFIDENTIALITY AGREEMENT

INCLUDING
BILL OF RIGHTS FOR DATA SECURITY AND PRIVACY
AND
SUPPLEMENTAL INFORMATION ABOUT A CONTRACT
BETWEEN Institute of Education Sciences AND Onondaga- Cortland- Madison BOCES

This Data Sharing and Confidentiality Agreement ("DSC Agreement" or "Agreement") is made and entered into January 10, 2025 by and between Gimkit, Inc. ("Vendor"), having its principal offices at 2716 3rd Ave N, Seattle, WA 98109 and the Board of Cooperative Educational Services for Onondaga - Cortland - Madison Board of Cooperative Educational Services ("BOCES") with offices located at 110 Elwood Davis Road, Syracuse, New York and a mailing address of PO BOX 4754, Syracuse, New York 13220 (collectively referred to as the "Parties").

I. **Purpose and Term**

- (a) Vendor acknowledges that in order for it to provide services and/or products to BOCES and/or its customers it must enter into this agreement and comply with the requirements of New York State Education Law Section 2-d and Part 121 of the Regulations of the NYS Commissioner of Education (collectively referred to as "Section 2-d").
- (b) By affixing their signatures to this DSC Agreement below, BOCES and Vendor agree that the term of this DSC Agreement shall commence as of the date of mutual execution of this DSC Agreement by the Parties, and shall for a term until the date of June 30, 2026. Vendor shall comply with all terms, conditions and obligations as set forth in this DSC Agreement, including those set forth in BOCES' Bill of Rights for Data Security and Privacy and the Supplemental Information, and any Participating Educational Agency's (as defined below) Bill of Rights that is substantially similar to BOCES, about a Contract between Vendor and BOCES, throughout the duration of the Term of this DSC Agreement, and this DSC Agreement shall supersede and take the place of any DSC Agreement entered into, or any similar data sharing and confidentiality language previously agreed to by the Parties (within the Contract or otherwise), prior to the date of mutual execution of this DSC Agreement.
- (c) To the extent that any terms contained within the Contract, or any terms contained within any other agreements or exhibits attached to and made a part of the Contract, conflict with the terms of this DSC Agreement, the terms of this DSC Agreement will apply and be given effect. In the event that Vendor has online or written Privacy Policies or Terms of Service (collectively, "TOS") that would otherwise be applicable to its customers or users of its Product that is the subject of the

Contract, to the extent that any term of the TOS (in effect as of the date of commencement of the Contract, and/or as subsequently amended) conflicts with the terms of this DSC Agreement, the terms of this DSC Agreement will apply and be given effect.

2. **Definitions**

Any capitalized term used within this DSC Agreement that is also found in the Contract, if any, will have the same definition as contained within the Contract.

In addition, as used in this DSC Agreement:

- a. "Breach" means the unauthorized acquisition, access, use, or disclosure of student data and/or teacher or principal data by or to a person not authorized to acquire, access, use, or receive the student data and/or teacher or principal data.
- b. "Commercial Purpose" or "Marketing Purpose" means the sale of student data; or its use or disclosure for purposes of receiving remuneration, whether directly or indirectly; the use of student data for advertising purposes, or to develop, improve or market products or services to students.
- c. "Disclose" or "Disclosure" means to permit access to, or the release, transfer, or other communication of Personally Identifiable Information (as defined below) by any means, including oral, written, or electronic, whether intended or unintended.
- d. "Education Records" means an education record as defined in the Family Educational Rights and Privacy Act and its implementing regulations, 20 U.S.C. 1232g and 34 C.F.R. Part 99, respectively.
- e. "Eligible Student" means a student who is eighteen years or older.
- f. "Encryption" means methods of rendering Personally Identifiable information unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified or permitted by the Secretary of the United States department of health and human services in guidance issued under Section 13402(H)(2) of Public Law 111-5.
- g. "Parent" means a parent, legal guardian, or person in parental relation to a student.
- h. "Personally Identifiable Information," as applied to student data, means personally identifiable information as defined in section 99.3 of Title 34 of the Code of Federal Regulations implementing the Family Educational Rights and Privacy Act, 20 U.S.C 1232g, and as applied to teacher and principal data, means personally identifiable information as such term is defined in N.Y. Education Law §3012-c (10).
- i. "Release" shall have the same meaning as Disclosure or Disclose.
- J. "Student" means any person attending or seeking to enroll in an educational agency.

- k. "Student data" means Personally Identifiable Information from the student records of an educational agency. For purposes of this DSC Agreement, "student data" includes information made accessible to Vendor by OCM BOCES, OCM BOCES officers, OCM BOCES employees, OCM BOCES agents, OCM BOCES students, and/or the officers employees, agents, and/or students of educational agencies with whom OCM BOCES contracts.
 - l. "Teacher or principal data" means personally identifiable information from the records of an educational agency relating to the annual professional performance reviews of classroom teachers or principals that is confidential and not subject to release under the provisions of N.Y. Education Law §§ 3012-c and 3012-d. For purposes of this DSC Agreement, "student data" includes information made accessible to Vendor by OCM BOCES, OCM BOCES officers OCM BOCES employees, OCM BOCES agents, OCM BOCES students, and/or the officers, employees, agents, and/or students of educational agencies that contract with OCM BOCES in order to access Vendor's services.
 - m. "Unauthorized Disclosure" or "Unauthorized Release" means any disclosure or release not permitted by federal or State statute or regulation, any lawful contract or written agreement, or that does not respond to a lawful order of a court or tribunal or other lawful order.
3. Vendor agrees that the security, confidentiality, and integrity of student data and/or teacher or principal data shall be maintained in accordance with:
- a. Applicable state and federal laws that protect the confidentiality of Personally Identifiable Information;
 - b. The terms and conditions of this Agreement, including but not limited to the OCM BOCES Parents Bill of Rights for Data Security and Privacy and the Supplemental Information to Parents Bill or Rights for Data Privacy and Security, attached hereto as Exhibit A and incorporated by reference; and
 - c. Applicable OCM BOCES policies, which can be accessed on the OCM BOCES website at: <https://go.boarddocs.com/ny/ocmboces/Board.nsf/Public>.
4. Vendor may use subcontractors in fulfilling its responsibilities to OCM BOCES, its employees or agents, and/or educational agencies which contract with OCM BOCES for the provision of Vendor's services; however, as a condition precedent to assigning subcontractors to provide services hereunder, Vendor shall ensure any such subcontractors providing services have executed an agreement with Vendor that holds them to substantially similar terms and conditions as contained in this Agreement.
5. Vendor agrees that it will disclose student data and/or teacher or principal data only to those officers or employees who need access to provide the contracted services. Vendor further agrees that any of its officers or employees who have access to Personally Identifiable Information will receive training on the federal and state laws governing confidentiality of such data prior to receiving access to that data which shall include but not be limited to security awareness training to all staff on topics, including Personally Identifiable Information and requirements under New York State law. Training shall be conducted on an annual, new hire basis with monthly micro-learning engagements.

6. The exclusive purpose for which Vendor is to provide online formative assessment tool for students. Vendor does not monitor or use customer content for any reason other than as part of providing our services.

7. Student data and/or teacher or principal data received by Vendor shall not be disclosed, sold or used for a Commercial or Marketing Purpose.

8. Upon expiration or termination of this agreement or the underlying Contract without a successor agreement in place, Vendor shall assist OCM BOCES and any educational agencies that contracts with OCM BOCES for the provision of Vendor's services in exporting any and all student data and/or teacher or principal data previously received by Vendor back to OCM BOCES or the educational agency that generated the student data and/or principal data. Vendor shall thereafter securely delete or otherwise destroy any and all student data and/or teacher or principal data remaining in the possession of Vendor or its assignees or subcontractors (including all hard copies, archived copies, electronic versions or electronic imaging of hard copies of such data) as well as any and all student data and/or teacher or principal data maintained on behalf of Vendor in secure data center facilities. Vendor shall ensure that no copy, summary, or extract of the student data and/or teacher or principal data or any related work papers are retained on any storage medium whatsoever by Vendor, its subcontractors or assignees, or the aforementioned secure data center facilities. Any and all measures related to the extraction, transmission, deletion, or destruction of student data and/or teacher or principal data will be completed within 30 days of the expiration/termination of this DSC Agreement between OCM BOCES and Vendor, and will be accomplished utilizing an approved method of confidential destruction, including, shredding, burning or certified/witnessed destruction of physical materials and verified erasure of magnetic media using approved methods of electronic file destruction. To the extent that Vendor may continue to be in possession of any de-identified data (i.e., data that has had all direct and indirect identifiers removed), they agree not to attempt to re-identify de-identified data and not to transfer de-identified data to any party. Upon request, Vendor and/or its subcontractors or assignees will provide a certification to OCM BOCES from an appropriate officer that the requirements of this paragraph have been satisfied in full.

9. In the event that a parent, student, or eligible student wishes to challenge the accuracy of student data concerning that student or eligible student, that challenge shall be processed through the procedures provided by OCM BOCES or the educational agency that generated the student data for amendment of education records under the Family Educational Rights and Privacy Act (FERPA). In the event that a teacher or principal wishes to challenge the accuracy of the teacher or principal data that is collected, he or she may do so consistent with applicable provisions of 8 N.Y.C.R.R. Part 30 and the applicable educational agency's Annual Professional Performance Review Plan.

10. Student data and/or teacher or principal data transferred to Vendor will be stored in electronic format on systems maintained by Vendor in a secure data center facility located in the United States, or a data facility maintained by a Board of Cooperative Educational Services. In order to protect the privacy and security of student data and/or teacher or principal data stored in that manner, Vendor will take measures aligned with industry best practices and the NIST Cybersecurity Framework Version 1.1. Such measures shall include, but are not necessarily be limited to disk encryption, file encryption, firewalls, and password protection.

11. Vendor acknowledges that it has the following obligations with respect to any student data and/or teacher or principal data provided by OCM BOCES and/or the educational agencies which contract with OCM BOCES for the provision of Vendor's services, and any failure to fulfill one of these obligations set forth in New York State Education Law § 2-d and/or 8 N.Y.C.R.R. Part 121 shall also constitute a breach of its agreement with OCM BOCES:
- a. Limit internal access to education records to those individuals that are determined to have legitimate educational reasons within the meaning of § 2-d and the Family Educational Rights and Privacy Act;
 - b. Not use, sell, disclose or facilitate the use of Personally Identifiable Information, education records/and or student data for any purpose (including for a Commercial or a Marketing Purpose) other than those explicitly authorized in this Agreement;
 - c. Not disclose any Personally Identifiable Information to any other party who is not an authorized representative of Vendor using the information to carry out Vendor's obligations under this DSC Agreement unless (i) that other party has the prior written consent of the parent or eligible student, or (ii) the disclosure is required by statute or court order, and notice of the disclosure is provided to the source of the information no later than the time of disclosure, unless such notice is expressly prohibited by the statute or court order;
 - d. Maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of Personally Identifiable Information in its custody;
 - e. Use encryption technology to protect data while in motion or in its custody from unauthorized disclosure using a technology or methodology specified by the secretary of the U.S. Department of HHS in guidance issued under P.L. 111-5, Section 13402(H)(2);
 - f. Notify OCM BOCES, and any educational agency that contracts with OCM BOCES for Vendor's services, of any breach of security resulting in an unauthorized release of student data by Vendor or its assignees in violation of state or federal law, or of contractual obligations relating to data privacy and security, in the most expedient way possible and without unreasonable delay, but not more than seven (7) calendar days after discovery of the breach;
 - g. Where a breach or unauthorized release of Personally Identifiable Information is attributable to Vendor, Vendor will pay or reimburse OCM BOCES and/or any educational agencies which contract with OCM BOCES for the provision of Vendor's services for the cost of any notifications OCM BOCES and/or such other educational agencies is/are required to make by applicable law, rule, or regulation; and
 - h. Vendor will cooperate with OCM BOCES, any educational agency that contracts with OCM BOCES for Vendor's services, and law enforcement to protect the integrity of investigations into the breach or unauthorized release of Personally Identifiable Information.

12. In the event of a data security and privacy incident implicating the Personally Identifiable Information of students, teachers, and/or principals of OCM BOCES or educational agencies which contract with OCM BOCES for the provision of Vendor's services:

- a. Vendor has an Incident Response Policy that is established to require the creation and maintenance of a structured Incident Response Plan to guide its response to security events, incidents, and breaches of the security of Vendor's services or corporate IT infrastructure.

Security incidents are reported and monitored by Vendor. Notification of 24 hours is provided when a data breach is confirmed.

- b. Vendor will notify OCM BOCES, and any educational agency that contracts with OCM BOCES for Vendor's services, of any such incident in accordance with Education Law § 2-d, N.Y.C.R.R. Part 121, and paragraph 11(f), above.

13. This DSC Agreement together with the signed Parents Bill of Rights for Data Privacy and the Security and Supplemental Information to Parents Bill or Rights for Data Privacy and Security, constitutes the entire understanding of the Parties with respect to the subject matter thereof. The terms of this DSC Agreement, together with the signed Parents Bill of Rights for Data Privacy and the Security and Supplemental Information to Parents Bill or Rights for Data Privacy and Security, shall supersede any conflicting provisions of Vendor's terms of service or privacy policy.


14. If any provision of this DSC Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision to this DSC Agreement is invalid or unenforceable, but that by limiting such provision it would become valid or enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

15. This DSC Agreement shall be governed by the laws of the State of New York. The Parties hereto agree that exclusive venue for any litigation, action or proceeding arising from or relating to this DSC Agreement shall lie in the state and federal courts located in Onondaga County, New York, and the Parties expressly waive any right to contest such venue for any reason whatsoever.

Each signatory to this Agreement represents and warrants that they are duly authorized and have the legal capacity to execute and deliver this Agreement. The Parties have executed this DSC Agreement as of the date first written below.

VENDOR:

OCMBOCES

By: 

By: 

Date: 2/26/2025

Date: 01 / 11 / 2025

EXHIBIT A: PARENTS BILL OF RIGHTS FOR DATA PRIVACY AND SECURITY

This Exhibit A is part and parcel to the Data Privacy and Security Agreement dated January 10, 2025 by and between Gimkit, Inc. ("Vendor") and the Onondaga Cortland Madison Board of Cooperative Educational Services ("OCM BOCES").

OCM BOCES is committed to protecting the privacy and security of student, teacher, and principal data. In accordance with New York Education Law § 2-d, OCM BOCES wishes to inform the community of the following:

- I. A student's Personally Identifiable Information (PII) cannot be sold or released for any commercial or marketing purposes.
2. Parents have the right to inspect and review the complete contents of their child's education record. This right of inspection is consistent with the requirements of the Family Educational Rights and Privacy Act (FERPA). In addition to the right of inspection of the educational record, Education Law §2-d provides a specific right for parents to inspect or receive copies of any data in the student's educational record.
3. State and federal laws protect the confidentiality of PII, 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.p12.nysed.gov/irs/sirs/documentation/NYSEDstudentData.xlsx>, or parents may obtain a copy of this list by writing to the Office of Information & Reporting Services, New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, NY 12234.
5. Parents have the right to file complaints with OCM BOCES/CNYRIC about possible privacy breaches of student data by OCM BOCES/CNYRICs third-party contractors or their employees, officers, or assignees, or with NYSED. Complaints regarding student data breaches should be directed to: OCM BOCES, PO Box 4754, Syracuse, NY 13221. Phone: 315-433-2600; e-mail: jbufano@ocmboces.org.
5. Complaints to NYSED should be directed in writing to the Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany NY 12234, email: CPO@mail.nysed.gov.


Supplemental Information to Parents Bill or Rights for Data Privacy and Security:

1. The exclusive purpose for which Vendor is to provide online formative assessment tool for students. Vendor does not monitor or use customer content for any reason other than as part of providing our services.
2. Student data and/or teacher or principal data received by Vendor, or by any assignee of Vendor, will not be sold or used for marketing purposes.
3. Vendor agrees that any of its officers or employees who have access to Personally Identifiable Information will receive training on the federal and state law governing confidentiality of such data prior to receiving access to that data which shall include but not be limited to security awareness training to all staff on topics, including Personally Identifiable Information and requirements under New York State law. Training shall be conducted on an annual, new hire basis with monthly micro-learning engagements.
4. The Agreement between Vendor and OCM BOCES expires on December 10, 2025 unless terminated by the Parties in accordance with the terms of the Agreement. Upon expiration or termination of the agreement, without a successor agreement in place, Vendor will assist OCM BOCES in exporting any and all student data and/or teacher or principal data previously received by Vendor back to OCM BOCES. Vendor will thereafter securely delete any and all student data and/or teacher or principal data remaining in its possession (including all hard copies, archived copies, electronic versions or electronic imaging of hard copies of such data), as well as any and all student data and/or teacher or principal data maintained on its behalf of in secure data center facilities. Vendor will ensure that no copy, summary, or extract of the student data and/or teacher or principal data, or any related work papers, are retained on any storage medium whatsoever by Vendor or the aforementioned secure data center facilities. Any and all measures related to the extraction, transmission, deletion, or destruction of student data and/or teacher or principal data will be completed within thirty (30) days of the expiration of the agreement between OCM BOCES and Vendor. To the extent that Vendor may continue to be in possession of any de-identified data (i.e., data that has had all direct and indirect identifiers removed), they/it will not attempt to re-identify de-identified data and will not transfer de- identified data to any party.
5. In the event that a parent, student, or eligible student wishes to challenge the accuracy of student data concerning that student or eligible student, that challenge shall be processed through the procedures provided by the OCM BOCES for amendment of education records under the Family Educational Rights and Privacy Act (FERPA). In the event that a teacher or principal wishes to challenge the accuracy of the teacher or principal data that is collected, he or she may do so consistent with applicable

provisions of 8 N.Y.C.R.R. Part 30 and the applicable educational agency's Annual Professional Performance Review Plan.

6. Student data and/or teacher or principal data transferred to Vendor will be stored in electronic format on systems maintained by Vendor in a secure data center facility, or a data facility maintained by a board of cooperative educational services, in the United States. In order to protect the privacy and security of student data and/or teacher or principal data stored in that manner, Vendor will take measures aligned with industry best practices and the NIST Cybersecurity Framework Version 1.1. Such measures include, but are not necessarily limited to disk encryption, file encryption, firewalls, and password protection.
7. Any student data and/or teacher or principal data possessed by Vendor will be protected using encryption technology while in motion, in its custody and at rest.

Acknowledged and agreed to by Vendor:

Signature:  _____
Name: Jeffrey Osborn
Title: Co-Founder
Date: 2/26/2025

Title	Gimkit Inc
File name	file
Document ID	1200df1dc1044b986d9b5ce5d5fc8ddf0ebc075e
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01 / 11 / 2025

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SIGNED

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The document has been completed.