NEW YORK STATE MODEL DATA PRIVACY AGREEMENT FOR EDUCATIONAL AGENCIES

Cheektowaga-Sloan Union Free School District

and

Blooket LLC

This Data Privacy Agreement ("DPA") is by and between the Cheektowaga-Sloan Union Free School District ("EA"), an Educational Agency, and Blooket LLC ("Contractor"), collectively, the "Parties".

ARTICLE I: DEFINITIONS

As used in this DPA, the following terms shall have the following meanings:

1. **Breach:** The unauthorized acquisition, access, use, or disclosure of Personally Identifiable Information in a manner not permitted by State and federal laws, rules and regulations, or in a manner which compromises its security or privacy, or by or to a person not authorized to acquire, access, use, or receive it, or a Breach of Contractor's security that leads to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personally Identifiable Information.

2. **Commercial or Marketing Purpose:** means the sale, use or disclosure of Personally Identifiable Information for purposes of receiving remuneration, whether directly or indirectly; the sale, use, or disclosure of Personally Identifiable Information for advertising purposes; or the sale, use or disclosure of Personally Identifiable Information to develop, improve or market products or services to students.

3. **Disclose:** To permit access to, or the release, transfer, or other communication of personally identifiable information by any means, including oral, written or electronic, whether intended or unintended.

4. **Education Record:** 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.

5. **Educational Agency:** As defined in Education Law 2-d, a school district, board of cooperative educational services, school, charter school, or the New York State Education Department.

6. **Eligible Student:** A student who is eighteen years of age or older.

7. **Encrypt or Encryption:** As defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Security Rule at 45 CFR 164.304, means the use of an algorithmic process to transform Personally Identifiable Information into an unusable, unreadable, or indecipherable

form in which there is a low probability of assigning meaning without use of a confidential process or key.

8. **NIST Cybersecurity Framework**: The U.S. Department of Commerce National Institute for Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity Version 1.1.

9. **Parent:** A parent, legal guardian or person in parental relation to the Student.

10. **Personally Identifiable Information (PII):** 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 Teacher or Principal APPR Data, as defined below.

11. **Release:** Shall have the same meaning as Disclose.

12. **School:** Any public elementary or secondary school including a charter school, universal pre-kindergarten program authorized pursuant to Education Law § 3602-e, an approved provider of preschool special education, any other publicly funded pre-kindergarten program, a school serving children in a special act school district as defined in Education Law § 4001, an approved private school for the education of students with disabilities, a State-supported school subject to the provisions of Article 85 of the Education Law, or a State-operated school subject to the provisions of Articles 87 or 88 of the Education Law.

13. **Student:** Any person attending or seeking to enroll in an Educational Agency.

14. **Student Data:** 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.

15. **Subcontractor:** Contractor's non-employee agents, consultants and/or subcontractors engaged in the provision of services pursuant to the Service Agreement.

16. **Teacher or Principal APPR Data**: 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 Education Law §§ 3012-c and 3012-d.

ARTICLE II: PRIVACY AND SECURITY OF PII

1. **Compliance with Law.**

   In order for Contractor to provide certain services ("Services") to the EA pursuant to a contract dated [Insert Date] ("Service Agreement"); Contractor may receive PII regulated by several New York and federal laws and regulations, among them, the Family Educational Rights and Privacy Act ("FERPA") at 12 U.S.C. 1232g (34 CFR Part 99); Children's Online Privacy Protection Act ("COPPA") at 15 U.S.C. 6501-6502 (16 CFR Part 312); Protection of Pupil Rights Amendment ("PPRA") at 20 U.S.C. 1232h (34 CFR Part 98); the Individuals with Disabilities Education Act ("IDEA") at 20 U.S.C. 1400 et

seq. (34 CFR Part 300); New York Education Law Section 2-d; and the Commissioner of Education's Regulations at 8 NYCRR Part 121. The Parties enter this DPA to address the requirements of New York law. Contractor agrees to maintain the confidentiality and security of PII in accordance with applicable New York, federal and local laws, rules and regulations. The parties agree that this agreement only applies to express written agreements between the parties entered into by representatives with the express authority to bind the parties in contract and not to agreements or subscriptions entered into by third parties.

2. **Authorized Use.**
Contractor has no property or licensing rights or claims of ownership to PII, and Contractor must not use PII for any purpose other than to provide the Services set forth in the Service Agreement. Neither the Services provided nor the manner in which such Services are provided shall violate New York law.

3. **Data Security and Privacy Plan**.
Contractor shall adopt and maintain administrative, technical and physical safeguards, measures and controls to manage privacy and security risks and protect PII in a manner that complies with New York State, federal and local laws and regulations and the EA's policies. Education Law Section 2-d requires that Contractor provide the EA with a Data Privacy and Security Plan that outlines such safeguards, measures and controls including how the Contractor will implement all applicable state, federal and local data security and privacy requirements. Contractor's Data Security and Privacy Plan is attached to this DPA as Exhibit C.

4. **EA's Data Security and Privacy Policy**
State law and regulation requires the EA to adopt a data security and privacy policy that complies with Part 121 of the Regulations of the Commissioner of Education and aligns with the NIST Cyber Security Framework. Contractor shall comply with the EA's data security and privacy policy and other applicable policies.

5. **Right of Review and Audit.**
Upon request by the EA, Contractor shall provide the EA with copies of its policies and related procedures that pertain to the protection of PII. It may be made available in a form that does not violate Contractor's own information security policies, confidentiality obligations, and applicable laws. In addition, Contractor may be required to undergo an audit of its privacy and security safeguards, measures and controls as it pertains to alignment with the requirements of New York State laws and regulations, the EA's policies applicable to Contractor, and alignment with the NIST Cybersecurity Framework performed by an independent third party at EA's expense, and provide the audit report to the EA. Contractor may provide the EA with a recent industry standard independent audit report or certificate

on Contractor's privacy and security practices as an alternative to undergoing an audit. The parties agree that such audit would be subject to all restrictions on data privacy afforded to other users of Contractor's services pursuant to contractual obligations, legal obligations on privacy protected by FERPA, COPPA, SOPIPA, state privacy laws, other relevant federal privacy laws, and international privacy laws.

6. **Contractor's Employees and Subcontractors.**
    (a)   Contractor shall only disclose PII to Contractor's employees and subcontractors who need to know the PII in order to provide the Services and the disclosure of PII shall be limited to the extent necessary to provide such Services. Contractor shall ensure that all such employees and subcontractors comply with the terms of this DPA.
    (b)   Contractor must ensure that each subcontractor performing functions pursuant to the Service Agreement where the subcontractor will receive or have access to PII is contractually bound by a written agreement that includes confidentiality and data security obligations equivalent to, consistent with, and no less protective than, those found in this DPA.
    (c)   Contractor shall examine the data security and privacy measures of its subcontractors prior to utilizing the subcontractor. If at any point a subcontractor fails to materially comply with the requirements of this DPA, Contractor shall: notify the EA and remove such subcontractor's access to PII; and, as applicable, retrieve all PII received or stored by such subcontractor and/or ensure that PII has been securely deleted and destroyed in accordance with this DPA. In the event there is an incident in which the subcontractor compromises PII, Contractor shall follow the Data Breach reporting requirements set forth herein.
    (d)   Contractor shall take full responsibility for the acts and omissions of its employees and subcontractors.
    (e)   Contractor must not disclose PII to any other party unless such disclosure is required by statute, court order or subpoena, and the Contractor makes a reasonable effort to notify the EA of the court order or subpoena in advance of compliance but in any case, provides notice to the EA no later than the time the PII is disclosed, unless such disclosure to the EA is expressly prohibited by the statute, court order or subpoena.

7. **Training.**
    Contactor shall ensure that all its employees and Subcontractors who have access to PII have received or will receive training on the federal and state laws governing confidentiality of such data prior to receiving access.

8. Termination

The obligations of this DPA shall continue and shall not terminate for as long as the Contractor or its sub-contractors retain PII or retain access to PII.

9.   Data Return and Destruction of Data.

(a) Protecting PII from unauthorized access and disclosure is of the utmost importance to the District, and the Contractor agrees that it is prohibited from retaining PII or continued access to PII or any copy, summary or extract of PII, on any storage medium (including, without limitation, in secure data centers and/or cloud-based facilities) whatsoever beyond the period of providing Services to the District and upon notice from District to Contractor which specifies the data which was provided to Contractor pursuant to the express underlying agreement between the parties, unless such retention is expressly authorized for a prescribed period by the Service Agreement or other written agreement between the Parties, expressly requested by the District for purposes of facilitating the transfer of PII to the District or expressly required by law. As applicable, upon expiration or termination of the Service Agreement, the Contractor will transfer PII, in a format agreed to by the Parties to the District.

(b) If applicable, once the transfer of PII has been accomplished in accordance with the District's written election to do so and upon notice as prescribed above, the Contractor agrees to return or destroy all PII when the purpose that necessitated its receipt by the Contractor has been completed. Thereafter, with regard to all PII (including without limitation, all hard copies, archived copies, electronic versions, or electronic imaging of hard copies) as well as any and all PII maintained on behalf of the Contractor in a secure data center and/or in cloud-based facilities that remain in the possession of the Contractor or its Subcontractors, the Contractor will ensure that PII is securely deleted and/or destroyed in a manner that does not allow it to be retrieved or retrievable, read or reconstructed. Hard copy media must be shredded or destroyed such that PII cannot be read or otherwise reconstructed, and electronic media must be cleared, purged, or destroyed such that the PII cannot be retrieved. Only the destruction of paper PII, and not redaction, will satisfy the requirements for data destruction. Redaction is specifically excluded as a means of data destruction.

(c) The Contractor will provide the District with a written certification of the secure deletion and/or destruction of PII held by the Contractor or Subcontractors.

(d) To the extent that the Contractor and/or its Subcontractors continue to be in possession of any de-identified data (*i.e.,* data that has had all direct and indirect identifiers removed), the Contractor agrees not to attempt to re-identify de-identified data and not to transfer de-identified data to any party. Contractor shall have the right to retain all data which has been deidentified. Contractor may retain data for legal purposes.

9. Commercial or Marketing Use Prohibition.

Contractor agrees that it will not sell PII or use or disclose PII for a Commercial or Marketing Purpose.

10. Encryption.

Contractor shall use industry standard security measures including encryption protocols that comply with New York law and regulations to preserve and protect PII. Contractor must encrypt PII at rest and in transit in accordance with applicable New York laws and regulations.

11. Breach.

(a)   Contractor shall promptly notify the EA of any Breach of PII without unreasonable delay no later than seven (7) business days after discovery of the Breach. Notifications required pursuant to this section must be in writing, given by personal delivery, e-mail transmission (if contact information is provided for the specific mode of delivery), or by registered or certified, and must to the extent available, include a description of the Breach which includes the date of the incident and the date of discovery; the types of PII affected and the number of records affected; a description of Contractor's investigation; and the contact information for representatives who can assist the EA. Notifications required by this section must be sent to the EA's District Superintendent or other head administrator with a copy to the Data Protection Office. Violations of the requirement to notify the EA may be subject to a civil penalty pursuant to Education Law Section 2-d. The Breach of certain PII protected by Education Law Section 2-d may subject the Contractor to additional penalties. The parties agree that such penalties shall be limited to the amount paid to contractor for the purchase of services.

(b)   Notifications required under this paragraph must be provided to the EA at the following address:
Name: Brian Zybala

Title: Data Protection Officer, Director of Data and Technology

Address: 166 Halstead Avenue

City, State, Zip: Sloan, NY, 14212

Email: bzybala@cheektowagasloan.org

12. Cooperation with Investigations.

Contractor agrees that it will cooperate with the EA and law enforcement, where necessary, in any investigations into a Breach. Any costs incidental to the required cooperation or participation of the Contractor or its' Authorized Users, as related to such investigations, will be the sole responsibility of the Contractor if such Breach is attributable to Contractor or its Subcontractors.

13. Notification to Individuals.

Where a Breach of PII occurs that is attributable to Contractor, Contractor shall pay for or promptly reimburse the EA for the full cost of the EA's notification to Parents, Eligible Students, teachers, and/or principals, in accordance with Education Law Section 2-d and 8 NYCRR Part 121. The parties agree that such reimbursement and all indemnification including costs and fees under this Agreement or applicable statutes shall be limited to the amount paid to Contractor for the purchase of services by the district.

14. Termination.

The confidentiality and data security obligations of the Contractor under this DPA shall survive any termination of this DPA but shall terminate upon Contractor's certifying that it has destroyed all PII.

ARTICLE III: PARENT AND ELIGIBLE STUDENT PROVISIONS

1. Parent and Eligible Student Access.

Education Law Section 2-d and FERPA provide Parents and Eligible Students the right to inspect and review their child's or the Eligible Student's Student Data stored or maintained by the EA. To the extent Student Data is held by Contractor pursuant to the Service Agreement, Contractor shall respond within thirty (30) calendar days to the EA's requests for access to Student Data so the EA can facilitate such review by a Parent or Eligible Student, and facilitate corrections, as necessary. If a Parent or Eligible Student contacts Contractor directly to review any of the Student Data held by Contractor pursuant to the Service Agreement, Contractor shall promptly notify the EA and refer the Parent or Eligible Student to the EA.

2. Bill of Rights for Data Privacy and Security.

As required by Education Law Section 2-d, the Parents Bill of Rights for Data Privacy and Security and the supplemental information for the Service Agreement are included as Exhibit A and Exhibit B, respectively, and incorporated into this DPA. Contractor shall complete and

sign Exhibit B and append it to this DPA. Pursuant to Education Law Section 2-d, the EA is required to post the completed Exhibit B on its website.

ARTICLE IV: MISCELLANEOUS

1. **Priority of Agreements and Precedence.**

   In the event of a conflict between and among the terms and conditions of this DPA, including all Exhibits attached hereto and incorporated herein and the Service Agreement, the terms and conditions of this DPA shall govern and prevail, shall survive the termination of the Service Agreement in the manner set forth herein, and shall supersede all prior communications, representations, or agreements, oral or written, by the Parties relating thereto.

2. **Execution.**

   This DPA may be executed in one or more counterparts, all of which shall be considered one and the same document, as if all parties had executed a single original document, and may be executed utilizing an electronic signature and/ or electronic transmittal, and each signature thereto shall be and constitute an original signature, as if all parties had executed a single original document.

EDUCATIONAL AGENCY	CONTRACTOR
BY: _(signature)_ *signature*	BY: _(signature)_
Brian Zybala	Gregory D. Stewart
Data Protection Officer, Director of Data & Technology	**Managing Member**
Date: 09/15/2023	Date: September 15, 2023

PARENTS' BILL OF RIGHTS FOR DATA PRIVACY AND SECURITY

The Cheektowaga-Sloan Union Free School Client is committed to protecting the privacy and security of student data and teacher and principal data. In accordance with New York Education Law Section 2-d and its implementing regulations, the Client informs the school community of the following:

1. A student's personally identifiable information cannot be sold or released for any commercial purposes.
2. Parents have the right to inspect and review the complete contents of their child's education records.
3. State and federal laws protect the confidentiality of personally identifiable information, and safeguards associated with industry standards and best practices, including but not limited to encryption, firewalls, and password protection, must be in place when data is stored or transferred.
4. A complete list of all student data elements collected by New York State is available for public review at the following website http://www.nysed.gov/student-data-privacy/student-data-inventory or by writing to the Office of Information and Reporting Services, New York State Education Department, Room 865 EBA, 89 Washington Avenue, Albany, New York 12234.

Parents have the right to have complaints about possible breaches of student data addressed. Complaints should be directed in writing to Privacy Complaint, Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, New York 12234. Complaints may also be submitted u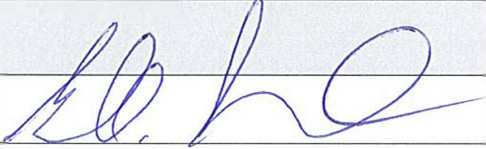sing the form available at the following website http://www.nysed.gov/student-data-privacy/form/report-improper-disclosure.

CONTRACTOR	
[Signature]	
[Printed Name]	Gregory D. Stewart
[Title]	Managing Member
Date:	September 15, 2023

EXHIBIT B

Pursuant to Education Law § 2-d and Section 121.3 of the Commissioner's Regulations, the Educational Agency (EA) is required to post information to its website about its contracts with third-party contractors that will receive Personally Identifiable Information (PII).

Name of Contractor	Blooket LLC
Description of the purpose(s) for which Contractor will receive/access PII	Blooket collects personal information from users in order to provide the Service. The personal information of students and teachers is collected and used for the following purposes: • To create the necessary accounts to use the Service. • To assess the quality of the Service. • To conduct product research and development. • To secure and safeguard personal information. • To access premium features, if applicable. • To comply with applicable laws or respond to valid legal process, including from law enforcement or government agencies, to investigate or participate in civil discovery, litigation, or other adversarial legal proceedings, and to enforce or investigate potential violations of our Terms of Service or policies.
Type of PII that Contractor will receive/access	Check all that apply: ☑ Student PII ☐ APPR Data
Contract Term	Contract Start Date Pending Contract End Date Pending
Subcontractor Written Agreement Requirement	Contractor will not utilize subcontractors without a written contract that requires the subcontractors to adhere to, at a minimum, materially similar data protection obligations imposed on the contractor by state and federal laws and regulations, and the Contract. (check applicable option) ☐ Contractor will not utilize subcontractors. ☑ Contractor will utilize subcontractors.

Data Transition and Secure Destruction	Upon expiration or termination of the Service Agreement, the Contractor will, as directed by the District in writing: • Upon notice from the District specifying the data which was shared with Contractor pursuant to the express underlying agreement between the parties, Contractor will Securely transfer data which contains personally identifiable information to District, or a successor contractor at the District's option and written discretion, in a format agreed to by the parties. • After notice and transfer, securely delete and destroy such data by taking actions that render data written on physical (e.g., hard copy) or electronic media unrecoverable by both ordinary and extraordinary means. Contractor may retain data which been deidentified. Contractor may return data for legal purposes.
Challenges to Data Accuracy	Parents, teachers or principals who seek to challenge the accuracy of PII will do so by contacting the EA. If a correction to data is deemed necessary, the EA will notify Contractor. Contractor agrees to facilitate such corrections within 21 days of receiving the EA's written request.
Secure Storage and Data Security	Please describe where PII will be stored and the protections taken to ensure PII will be protected: (check all that apply) ☑ Using a cloud or infrastructure owned and hosted by a third party. ☐ Using Contractor owned and hosted solution ☐ Other: Cloud storage encrypted in motion and at rest. Protected by firewalls and passwords. Please describe how data security and privacy risks will be mitigated in a manner that does not compromise the security of the data: Cloud storage encrypted in motion and at rest. Protected by firewalls and passwords.
Encryption	Data will be encrypted while in motion and at rest.

CONTRACTOR	
[Signature]	
[Printed Name]	Click or tap here to enter text.
[Title]	Click or tap here to enter text.
Date:	Click or tap to enter a date.