

## SOFTWARE AGREEMENT

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This Agreement, made and entered into on [4/25/2022] (Effective Date), by and between [Bubbamaster, LLC], having offices at [an office at 462 Country Knoll Drive, Endwell, NY 13760] (“Vendor”), and the East Irondequoit Central School District, having an office at 600 Pardee Road, Rochester, New York 14609 (“School District”) (collectively “Parties”) for the term of April 25, 2022-June 30, 2023.

Note the Bubbamaster, LLC owns the How2Review.com website and further H2R is an abbreviated reference to How2Review.

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

**1. License.** Vendor hereby grants to School District, including to all School District’s authorized users, a non-exclusive, non-sublicensable, non-assignable and royalty-free license to access and use the service (the “Services”) solely for School District’s operations in accordance with the terms of this Agreement.

**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”).

a. NOTE: Typically a term of service would be a school year, however, since we are late in the current school year, an extension is included.

**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.

**5. Payment.** The School District shall make a one-time payment of \$5000 for the [License] provided by Vendor in accordance with this Agreement. (or \$30/teacher)

**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, 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.

**Bubbamaster LLC:**

By: \_\_\_\_\_ Name: Gil

Martino \_\_\_\_\_ Title:

CTO, lead developer \_\_\_\_\_ Date:

**School District:**

By: Christine Osadciw

Name: Christine Osadciw

Title: Executive Director of Technology

Date: July 5, 2022

## Addendum A

### DESCRIPTION OF SPECIFICATIONS AND SERVICES

#### Description of Services

Online website ([www.how2review.com](http://www.how2review.com)) provides access to web applications (games) that students can play on their own . These applications help support learning. Teachers can use content and/or create content in these applications. Teachers create classrooms and assign games for their students.

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#### Product Specifications

Online website that provides multiple web applications for students to play games assigned by their teachers. Website 'How2Review' regularly creates new web applications to challenge the students and support the teachers.

How2Review strives to support teachers by offering new applications to help the students learn. The applications follow the Bloom Taxonomy by supporting memorization, understanding, applying, analyzing, evaluation and creating.

We have 2 primary goals:

First, help the students learn more effectively by having them play several types of applications. Eventually, their best learning will be identified and played more frequently.

Second goal is to support teachers, by presenting content in various applications so that the students will engage and learn.

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#### Technical Specifications

Website runs on an instance of Linode, using a mysql database to store the game data, old and new games, classrooms and assignments created by teachers. The student Personally Identifiable Information (PII), email address is used to reset a password after registration. PII (email address) is encrypted in an end to end encryption (E2EE) solution.

How2Review uses the Google Email services in Google Workspace to send emails.

If a student or teacher sends an email to a How2Review.com email address, asking a question or needing support, then we reserve the right to respond, however we don't foresee a reason to initiate correspondence with students or teachers. There is a notification application on How2Review.com in order to present information without sending emails.

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**Addendum B**  
**SCHEDULE OF DATA - See notes at end.**

Category of Data	Elements	Check if used by your system
Application Technology Meta Data	IP Addresses, Use of cookies etc.	Yes
	Other application technology meta data (specify): DNS, SMTP	Yes
Application Use Statistics	Meta data on user interaction with application	Yes
Assessment	Standardized test scores	No
	Observation data	Yes
	Other assessment data (specify): <i>Student Personality Assessments</i>	No
Attendance	Student school (daily) attendance data	No
	Student class attendance data	No
Communications	Online communications that are captured (emails, blog entries)	No
Conduct	Conduct or behavioral data	
Demographics	Date of Birth	No
	Place of Birth	No
	Gender	No
	Ethnicity or race	No
	Language information (native, preferred or primary language spoken by student)	No
	Other demographic information (specify):	No
Enrollment	Student school enrollment	No
	Student grade level	No
	Homeroom	No
	Guidance counselor	No
	Specific curriculum programs	No
	Year of graduation	No
	Other enrollment information (specify):	No
Parent/Guardian Contact Information	Address	No
	Email	No
	Phone	No
Parent/Guardian ID	Parent ID number (created to link parents to students)	No
Parent/Guardian Name	First and/or Last	No
Schedule	Student scheduled courses	No
	Teacher names	No

Special Indicator	English language learner information	No
	Low income status	No
	Medical alerts	No
	Student disability information	No
	Specialized education services (IEP or 504)	No
	Living situations (homeless/foster care)	No
	Other indicator information(specify): <i>First Generation College Student</i>	No
Student Contact Information	Address	No
	Email	Yes
	Phone	No
Student Identifiers	Local (School district) ID number	No
	State ID number	No
	Vendor/App assigned student ID number	Yes
	Student app username	Yes
	Student app passwords	Yes
Student Name	First and/or Last	No
Student In-App Performance	Program/application performance (typing program-student types 60 wpm, reading program-student reads below grade level)	No
Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	No
Student Survey Responses	Student responses to surveys or questionnaires	No
Student work	Student generated content, writing, pictures etc. Other	Yes
	student work data (Please specify):	Yes
Transcript	Student course grades	No
	Student course data	No
	Student course grades/performance scores	No
	Other transcript data (Please specify):	
Transportation	Student bus assignment	No
	Student pick up and/or drop off location	No
	Student bus card ID number	No
	Other transportation data (Please specify):	No
Other	Please list each additional data element used, stored or collected by your application	

## Addendum C

### SCHOOL DISTRICT'S PARENTS' BILL OF RIGHTS

Pursuant to Education Law section 2-d, school districts/BOCES are now required to publish, on their websites, a parents' bill of rights for data privacy and security and to include such information with every contract a school district enters into with a third party contractor where the third party contractor receives student data or teacher or principal data. The following is our District's/BOCES' bill of rights for data privacy and security:

1. A student's personally identifiable information (PII) cannot be sold or released by the East Irondequoit Central School District for any commercial or marketing purposes.
2. Parents have the right to inspect and review the complete contents of their child's education record including any student data stored or maintained by the District/BOCES. This right of inspection is consistent with the requirements of the Family Educational Rights and Privacy Act (FERPA).
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 you 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 the District/BOCES about possible privacy breaches of student data by the District's/BOCES' third party contractors or their employees, officers, or assignees, or with NYSED. Complaints regarding student data breaches should be directed to Data Protection Officer, East Irondequoit Central School District, 600 Pardee Road, Rochester, New York, 14609, Phone: (585) 339-1200, email: [dpo@eastiron.monroe.edu](mailto:dpo@eastiron.monroe.edu). Complaints to NYSED 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 using the form available at the following website <http://www.nysed.gov/data-privacy-security/report-improper-disclosure>.

For purposes of further ensuring confidentiality and security of student data — as well as the security of personally-identifiable teacher or principal data — the Parents' Bill of Rights (above) and the following supplemental information must be included in each contract that a school district or BOCES enters into with a third-party contractor with access to this information:

1. the exclusive purposes for which the student data, or teacher or principal data, will be used;
2. how the third party contractor will ensure that the subcontractors, persons or entities that the third party contractor will share the student data or teacher or principal data with, if any, will abide by data protection and security requirements;
3. when the agreement with the third-party contractor expires and what happens to the student data or teacher or principal data upon expiration of the agreement;
4. if and how a parent, student, eligible student, teacher or principal may challenge the accuracy of the student data or teacher or principal data that is collected; and
5. where the student data or teacher or principal data will be stored (described in such a manner as to protect data security), and the security protections taken to ensure such data will be protected, including whether such data will be encrypted.

This Bill of Rights may be revised from time to time in accordance with further guidance received from the Chief Privacy Officer, the Commissioner of Education and NYSED.



## 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 [Bubbamaster, LLC] (the “Contractor”) are limited to the purposes authorized in the contract between the Contractor and East Irondequoit Central School District (the “School District”) dated [4/25/2022] (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 [a Google Document] 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 [Endwell, NY at Bubbamaster, LLC]. 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.

**AddendumE**

**VENDOR'S DATA SECURITY AND PRIVACY PLAN**

(see attached Third-party Data Security and Privacy Plan Form)

## Notes from Schedule of Data - Addendum B.

### Observation Data:

Data is captured during specific game playing for statistical analysis.

All correct and incorrect answers are captured, with the hope of using this data to help students learn. We capture which type of game is being played.

Emails are used to register, and reset your password. It is foreseeable that a student or teacher may email the How2Review.com team for some unexpected issue, or data request or student challenge of data and a response will be provided via email. No further communication will be done, unless a follow up is necessary. No marketing will be done to students, in any form. Email addresses will not be used to market any content. A new Notification system has been implemented to notify all users of important website information. Notifications by H2R provide at least site information. This is not a 'Chat' system, this is a one way only push of a notification to H2R users.

Application Student ID numbers are created, but are not sent by H2R, are not shared with the students and are not shared with the teachers. This is an internal field that is never displayed on the site.

Student work - there are 2 web applications that require the student to create content online. For example there is a mind map application that students will create a mind map. Secondly there is a 'book' application and the kids will create a chapter in a book by using shapes, colors, pictures and text to show some kind of topic.