SOFTWARE AGREEMENT

This Agreement, made and entered into 3/15/2022] (Effective Date), by and between [Breakout EDU], having offices at [PO Box 280 - 696 Old Bethpage Road Old Bethpage, NY 11804] ("Vendor"), and the East Rochester Union Free School District, having an office at 222 Woodbine Avenue, East Rochester, NY 14445 ("School District") (collectively "Parties") for the term of July 1, 2021-June 30, 2022.

In consideration of the mutual promises and covenants contained herein, the Parties agree as follows: Please choose one under number one, "Services" or "License".

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.

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").

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 $__________ for the [Services/License] provided by Vendor in accordance with this Agreement.

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.

Vendor:

By: Mark L. Hammons

Name: Mark Hammons

Title: COO

Date: 3/15/2022

School District:

By: ______________________________

Name: ____________________________

Title: ______________________________

Date: ______________________________

Addendum A

DESCRIPTION OF SPECIFICATIONS AND SERVICES

Description of Services

____Breakout EDU offers Educational games to reinforce content standards as well as their 4C and SEL skills.

Product Specifications

___Breakout EDU focuses on learning through a games based lens. Our product usings the Breakout EDU kit as digital subscription to obtain access to the game library.

Technical Specifications

______An up to date web browser. ____

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): game play data	X
Application Use Statistics	Meta data on user interaction with application	X
Assessment	Standardized test scores	
	Observation data	
	Other assessment data (specify): *Student Personality Assessments*	
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	

Category of Data	Elements	Check if used by your system
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): *First Generation College Student*	
Student Contact Information	Address	
	Email	
	Phone	
Student Identifiers	Local (School district) ID number	
	State ID number	
	Vendor/App assigned student ID number	
	Student app username	X
	Student app passwords	X
Student Name	First and/or Last	X
Student In-App Performance	Program/application performance (typing program-student types 60 wpm, reading program-student reads below grade level)	
Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	
Student Survey Responses	Student responses to surveys or questionnaires	
Student work	Student generated content, writing, pictures etc.	X
	Other student work data (Please specify): game based materials	
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	

Category of Data	Elements	Check if used by your system
	Other transportation data (Please specify):	
Other	Please list each additional data element used, stored or collected by your application	

Addendum C

SCHOOL DISTRICT'S PARENTS' BILL OF RIGHTS

In accordance with Education Law Section 2-d, the East Rochester Union Free School District hereby sets forth the following Parents' Bill of Rights for Data Privacy and Security, which is applicable to all students and their parents/legal guardians.

1. A student's personally identifiable information cannot be sold or released for any commercial purposes;

2. In accordance with FERPA, Section 2-d and Board Policy 7240 Student Records: Access and Challenge, parents have the right to inspect and review the complete contents of their child's education record;

3. The District has the following safeguards in place to protect student data, including personally identifiable information stored or transferred by the District:

   a. All databases that have student information are protected by a secure password and login. These logins are monitored and kept up to date;

   b. Student information is only accessible by those that are deemed warranted of having the information.

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 submit complaints about possible breaches of student data or teacher or principal APPR data. Any such complaint must be submitted, in writing, to:

East Rochester Union Free School District

Senior Director of Instructional Technology

200 Woodbine Avenue

East Rochester, NY 14445

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 [Breakout EDU] (the "Contractor") are limited to the purposes authorized in the contract between the Contractor and East Rochester Union Free School District (the "School District") dated 3/15/2022 (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 3/15/2022 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 [**AWS Servers, Oregon.**]. 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

All employees are background checked and have signed confidentiality agreements.

Data will be used for account sign up and log in. Student data created on the BreakoutEDU platform is visible to teachers and school admins for account management and platform progress.

All systems have extensive monitoring in place. BreakoutEDU developers get notified of any and all breaches or downtime. Internal developers are trained to respond and resolve issues in minimal time.

"At Rest:

All data is stored on secure AWS RDS instances and S3 buckets. Passwords are stored using MD5 and all tokens are stored using AES-256-CBC.

There is no way of accessing the data without the encrypted key."

"In Motion:

All data sent over internal APIs using HTTPS. It is decrypted on the application back-end and is only sent when authorized via token."

Data Encryption

"Data is encrypted via SSL in transit.

- teacher password => bicrypt

- student password => md5

- game key => custom key generate

- application key => AES-256-CBC

- existing user invitation url (school_id , confirmation_code) => AES-256-CBC

- new user invitation url (confirmation_code) => AES-256-CBC

- reset password => AES-256-CBC

- form_token => AES-256-CBC

- remember_token => AES-256-CBC

The application key is used by the Illuminate encrypter service and should be set to a random 32 character string. There is no way of accessing the data without the encrypted key. The data is decrypted on the application back-end and is only sent when authorized via token."