

DATA SHARING AND CONFIDENTIALITY AGREEMENT

INCLUDING
PARENTS BILL OF RIGHTS FOR DATA SECURITY AND PRIVACY
AND
SUPPLEMENTAL INFORMATION ABOUT THE
Agreement

1. **Purpose**

(a) This Data Sharing and Confidentiality Agreement (“DSC Agreement”) supplements the Desmos Studio PBC, (“Desmos”) Terms of Service (“Desmos AGREEMENT”), to ensure that the Desmos AGREEMENT conforms to the requirements of New York State Education Law Section 2-d and any implementing Regulations of the Commissioner of Education (collectively referred to as “Section 2-d”). This entire agreement consists of the terms of the Desmos AGREEMENT, the terms of this DSC Agreement, a copy of the Parents Bill of Rights for Data Security and Privacy signed by Desmos, and the Supplemental Information about the Desmos AGREEMENT that is required to be posted on the district website.

(b) To the extent that any terms contained within the Desmos AGREEMENT, or any terms contained within any other agreements attached to and made a part of the Desmos AGREEMENT, conflict with the terms of this DSC Agreement, the terms of this DSC Agreement will apply and be given effect. In the event that Desmos has online or written Terms of Service (“TOS”) that would otherwise be applicable to its customers or users of its Product that is the subject of the Desmos AGREEMENT, to the extent that any term of the TOS 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 Desmos AGREEMENT will have the same definition as contained within this DSC Agreement.

In addition, as used in this Exhibit:

(a) “Student Data” means personally identifiable information, as defined in Section 2-d, from student records that Desmos receives from a Participating Educational Agency pursuant to the DSC Agreement.

(b) “Teacher or Principal Data” means personally identifiable information relating to the annual professional performance reviews of classroom teachers or principals that is confidential and

not subject to release under the provisions of New York Education Law Sections 3012-c or 3012-d, that DESMOS receives from a Participating Educational Agency pursuant to the DESMOS AGREEMENT.

(c) “Protected Data” means Student Data and/or Teacher or Principal Data to the extent applicable to DESMOS Product.

(d) “Participating Educational Agency” means a school district within New York State that purchases certain shared instructional technology services and software through a Cooperative Educational Services Agreement with BOCES, and as a result is licensed to use DESMOS pursuant to the terms of the AGREEMENT.

3. **Confidentiality of Protected Data**

(a) DESMOS acknowledges that the Protected Data it receives pursuant to the Desmos AGREEMENT may originate from several Participating Educational Agencies located across New York State, and that this Protected Data belongs to and is owned by the Participating Educational Agency from which it originates.

(b) DESMOS will maintain the confidentiality of the Protected Data it receives in accordance with federal and state law (including but not limited to Section 2-d) and Green Island UFSD’s policy on data security and privacy. DESMOS acknowledges that the Green Island UFSD is obligated under Section 2-d to adopt a policy on data security and privacy, and has provided the policy to DESMOS.

4. **Data Security and Privacy Plan**

DESMOS agrees that it will protect the confidentiality, privacy and security of the Protected Data received from Participating Educational Agencies in accordance with the Parents Bill of Rights for Data Privacy and Security, a copy of which has been signed by DESMOS and is set forth below.

Additional elements of DESMOS Data Security and Privacy Plan are as follows:

(a) In order to implement all state, federal, and local data security and privacy requirements, including those contained within this Data Sharing and Confidentiality Agreement, consistent with the Green Island UFSD data security and privacy policy, DESMOS will: *maintains a comprehensive information security plan that details the various technical and administrative protections in place throughout different parts of our information systems. These safeguards are regularly evaluated, and Desmos employees with access to user data are trained in their application.*

(b) In order to protect the security, confidentiality and integrity of the Protected Data that it receives under the DESMOS AGREEMENT, DESMOS will have the following reasonable administrative, technical, operational and physical safeguards and practices in place throughout the term of the DESMOS AGREEMENT:

Desmos relies on industry-standard cloud hosting providers for persistent data storage. These stores are configured such that user data is encrypted both at rest and in transit to other parts of the system. Access to personal information requires multi-factor authentication and is limited to those employees who require access in order to perform their normal duties. If users authenticate through Desmos, passwords are transmitted via TLS to a dedicated backend service where they are individually salted and hashed. Database snapshots are regularly recorded, and point-in-time restores are possible.

(c) DESMOS will comply with all obligations set forth in “Supplemental Information about the AGREEMENT” below.

(d) For any of its officers or employees who have access to Protected Data, DESMOS has provided or will provide training on the federal and state laws governing confidentiality of such data prior to their receiving access, as follows: *Training for new employees is conducted at the time of hire, after a background check. Refresher training for existing employees is conducted annually. The most recent training was in October 2023.*

(e) DESMOS[*check one*] will ___ will not utilize sub-contractors for the purpose of fulfilling one or more of its obligations under the DESMOS AGREEMENT. In the event that DESMOS engages any subcontractors, assignees, or other authorized agents to perform its obligations under the GIMKI AGREEMENT, it will require such subcontractors, assignees, or other authorized agents to execute written agreements as more fully described in “Supplemental Information about the DESMOS AGREEMENT,” below.

(f) DESMOS will manage data security and privacy incidents that implicate Protected Data, including identify breaches and unauthorized disclosures, and DESMOS will provide prompt notification of any breaches or unauthorized disclosures of Protected Data in accordance with Section 6 of this Data Sharing and Confidentiality Agreement.

(g) DESMOS will implement procedures for the return, transition, deletion and/or destruction of Protected Data at such time that the AGREEMENT is terminated or expires, as more fully described in “Supplemental Information about the AGREEMENT,” below.

5. **Additional Statutory and Regulatory Obligations**

DESMOS acknowledges that it has the following additional obligations with respect to any Protected Data received from Participating Educational Agencies, and that any failure to fulfill one or more of these statutory or regulatory obligations shall be a breach of the DESMOS AGREEMENT and the terms of this Data Sharing and Confidentiality Agreement:

(a) Limit internal access to education records to those individuals that are determined to have legitimate educational interests within the meaning of Section 2-d and the Family Educational Rights and Privacy Act (FERPA).

(b) Limit internal access to Protected Data to only those employees or subcontractors that

need access in order to assist DESMOS in fulfilling one or more of its obligations under the DESMOS AGREEMENT.

(c) Not use education records for any purposes other than those explicitly authorized in this Data Sharing and Confidentiality Agreement.

(d) Not disclose any personally identifiable information to any other party, except for authorized representatives of DESMOS using the information to carry out DESMOS' obligations under the DESMOS AGREEMENT, unless:

- (i) the parent or eligible student has provided prior written consent; or
- (ii) the disclosure is required by statute or court order and notice of the disclosure is provided to Participating Educational Agency no later than the time of disclosure, unless such notice is expressly prohibited by the statute or court order.

(e) Maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of personally identifiable student information in its custody;

(f) Use encryption technology that complies with Section 2-d, as more fully set forth in BOCES "Supplemental Information about the Desmos AGREEMENT," below.

(g) Provide notification to The Green Island Union Free School District (and Participating Educational Agencies, to the extent required by, and in accordance with, Section 6 of this Data Sharing and Confidentiality Agreement) of any breach of security resulting in an unauthorized release of Protected Data by DESMOS or its assignees or subcontractors in violation of state or federal law or other obligations relating to data privacy and security contained herein.

(h) Promptly reimburse Green Island Union Free School District for the full cost of notification, in the event they are required under Section 2-d to notify affected parents, students, teachers or principals of a breach or unauthorized release of Protected Data attributed to DESMOS or its subcontractors or assignees.

6. **Notification of Breach and Unauthorized Release**

(a) DESMOS shall promptly notify the Green Island Union Free School District of any breach or unauthorized release of Protected Data in the most expedient way possible and without unreasonable delay, but no more than seven (7) calendar days after DESMOS has discovered or been informed of the breach or unauthorized release.

(b) DESMOS will provide such notification to the Green Island Union Free School District by contacting the District Data Privacy Officer, 518-273-1422 or by emailing the Data Protection

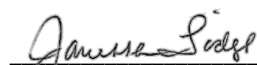
Officer, Daniel Kalbfliesh at dkalbfliesh@greenisland.org .

(c) DESMOS will cooperate with the Green Island Union Free School District and provide as much information as possible directly to the Data Protection Officer or designee about the incident, including but not limited to: a description of the incident, the date of the incident, the date DESMOS discovered or was informed of the incident, a description of the types of personally identifiable information involved, an estimate of the number of records affected, the Participating Educational Agencies affected, what the DESMOS has done or plans to do to investigate the incident, stop the breach and mitigate any further unauthorized access or release of Protected Data, and contact information for DESMOS's representatives who can assist affected individuals that may have additional questions.

(d) DESMOS acknowledges that upon initial notification from DESMOS, Green Island Union Free School District, as the educational agency with which DESMOS contracts, has an obligation under Section 2-d to in turn notify the Chief Privacy Officer in the New York State Education Department ("CPO"). DESMOS shall not provide this notification to the CPO directly. In the event the CPO contacts DESMOS directly or requests more information from DESMOS regarding the incident after having been initially informed of the incident by the Green Island Union Free School District, DESMOS will promptly inform the Data Protection Officer or designees.

(e) DESMOS will consult directly with the Data Protection Officer or designees prior to providing any further notice of the incident (written or otherwise) directly to any other Participating Educational Agency.

BY DESMOS STUDIO PBC:



Signature

Contract Administrator

Title

10/4/2023

Date

PARENTS' BILL OF RIGHTS FOR DATA SECURITY AND PRIVACY

Parents' Bill of Rights for Data Privacy and Security

In accordance with New York State Education Law Section 2-d, the Green Island 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 and legal guardians.

- (1) New York State Education Law Section 2-d and the Family Educational Rights and Privacy Act ("FERPA") protect the confidentiality of personally identifiable information. 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
- (2) A student's personally identifiable information cannot be sold or released for any commercial purposes.
- (3) Personally identifiable information includes, but is not limited to:
 - i. The student's name;
 - ii. The name of the student's parent or other family members;
 - iii. The address of the student or student's family;
 - iv. A personal identifier, such as the student's social security number, student number, or biometric record;
 - v. Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
 - vi. Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
 - vii. Information requested by a person who the District reasonably believes knows the identity of the student to whom the education record relates.
- (4) In accordance with FERPA, Section 2-d and the District's Policies regarding Student Records, parents have the right to inspect and review the complete contents of their child's education record;
 - i. Parents may request to inspect records by submitting a written request to District Privacy Officer. Such request may be made by email.

- ii. Upon receipt of the request, the District shall schedule a time for the parent to review the student's records at the appropriate location within a reasonable amount of time, but in no case longer than 45 calendar days from the date of receipt of the request.
 - iii. Parents may request a copy of their children's complete educational record. The District may charge a reasonable fee to reproduce such records of \$0.25 per page or the cost of any electronic medium required to provide the records.
 - iv. Parents may request correction of their children's educational record by submitting a written request to the District Privacy Officer, which includes: the name of the student; the student ID number; a description of the disputed record; and the requested revision. The District shall respond to the parent within 7 days of the request and advise whether the request has been granted and, if not, the reason(s) for the denial of the request.
- (5) The Green Island Union Free School District has in place numerous safeguards that meet or exceed industry standards and best practices to protect the personally identifiable information of students. These safeguards, include but are not limited to, encryption, firewalls, and password protection, which must be in place when data is stored or transferred.
- (6) New York State, through the New York State Education Department, collects a number of student data elements for authorized uses. 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/2013-14/2013-14SIRSMannual9-18-20140725.pdf>

<http://www.p12.nysed.gov/irs/sirs/documentation/NYSEDstudentData.xlsx>

- (7) 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:

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

For purposes of further ensuring confidentiality and security of student data, as an appendix to the Parents' Bill of Rights each contract an educational agency enters into with a third-party contractor shall include supplemental information as required by law and shall be conspicuously posted on the District's website.

Appendix

As used in this Superintendent's regulation, the following terms shall have the following meanings:

- (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) Chief privacy officer means the chief privacy officer appointed by the commissioner pursuant to [Education Law section 2-d](#).
- (c) Commercial 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.
- (d) Contact or other written agreement means a binding agreement between an educational agency and a third-party, which shall include but not be limited to an agreement created in electronic form and signed with an electronic or digital signature or a click wrap agreement that is used with software licenses, downloaded and/or online applications and transactions for educational technologies and other technologies in which a user must agree to terms and conditions prior to using the product or service.
- (e) disclose or disclosure means 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.
- (f) 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.
- (g) Educational agency means a school district, board of cooperative educational services (BOCES), school, or the department.
- (h) Eligible student means a student who is 18 years or older.
- (i) 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.
- (j) FERPA means the Family Educational Rights and Privacy Act and its implementing regulations, [20 U.S.C. 1232g](#) and [34 C.F.R. Part 99](#), respectively.
- (k) NIST Cybersecurity Framework means the U.S. Department of Commerce National Institute for Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity Version 1.1 which is available at the Office of Counsel, State Education Department, State Education Building, Room 148, 89 Washington Avenue, Albany, New York 12234.
- (l) Parent means a parent, legal guardian, or person in parental relation to a student.
- (m) 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 [Education Law section 3012-c\(10\)](#).

(n) Release shall have the same meaning as disclosure or disclose.

(o) School means any public elementary or secondary school including a charter school, universal pre-kindergarten program authorized pursuant to [Education Law section 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 section 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.

(p) Student means any person attending or seeking to enroll in an educational agency.

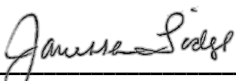
(q) Student data means personally identifiable information from the student records of an educational agency.

(r) 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 [Education Law sections 3012-c](#) and [3012-d](#).

(s) Third-party contractor means any person or entity, other than an educational agency, that receives student data or teacher or principal data from an educational agency pursuant to a contract or other written agreement for purposes of providing services to such educational agency, including but not limited to data management or storage services, conducting studies for or on behalf of such educational agency, or audit or evaluation of publicly funded programs. Such term shall include an educational partnership organization that receives student and/or teacher or principal data from a school district to carry out its responsibilities pursuant to [Education Law section 211-e](#) and is not an educational agency, and a not-for-profit corporation or other nonprofit organization, other than an educational agency.

(t) 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.

BY VENDOR: Desmos Studio PBC



Signature

Contract Administrator

Title

10/4/2023

Date

SUPPLEMENTAL INFORMATION

ABOUT THE AGREEMENT BETWEEN Green Island Union Free School District AND DESMOS

The Green Island UFSD has entered into An Agreement (“AGREEMENT”) with DESMOS STUDIO PBC (“DESMOS”), which governs the availability to Participating Educational Agencies of the following Product(s):

Unlimited access to
DESMOS.com

Pursuant to the AGREEMENT, Participating Educational Agencies may provide to DESMOS, and DESMOS will receive, personally identifiable information about students, or teachers and principals, that is protected by Section 2-d of the New York State Education Law (“Protected Data”).

Exclusive Purpose for which Protected Data will be Used:

The exclusive purpose for which DESMOS is being provided access to Protected Data is to provide Participating Educational Agencies with the functionality of the Product(s) listed above. DESMOS agrees that it will not use the Protected Data for any other purposes not explicitly authorized in the AGREEMENT. Protected Data received by DESMOS, or any of DESMOS’s subcontractors, assignees, or other authorized agents, will not be sold, or released or used for any commercial or marketing purposes.

Oversight of Subcontractors: In the event that DESMOS engages subcontractors, assignees, or other authorized agents to perform one or more of its obligations under the AGREEMENT (including any hosting service provider), it will require those to whom it discloses Protected Data to execute legally binding agreements acknowledging the obligation under Section 2-d of the New York State Education Law to comply with the same data security and privacy standards required of DESMOS under the AGREEMENT and applicable state and federal law. DESMOS will ensure that such subcontractors, assignees, or other authorized agents abide by the provisions of these agreements by: *Desmos will enter into written agreements, including, but not limited to, terms of service, with all subcontractors performing functions on behalf of Desmos whereby subcontractors agree to protect Student Data in a manner consistent with state and federal laws.*

Duration of AGREEMENT and Protected Data Upon Expiration:

- The AGREEMENT commences on September 22, 2023 and expires on June 30, 2024. Upon receipt of a written request DESMOS will securely delete or otherwise destroy any and all Protected Data remaining in the possession of DESMOS or its assignees or subcontractors. If requested by a Participating Educational Agency, DESMOS will assist that entity in exporting all Protected Data previously received for its own use, prior to deletion.
- At Green Island UFSD’s request, DESMOS will cooperate with Green Island UFSD as necessary in order to transition Protected Data to any successor DESMOS prior to deletion.

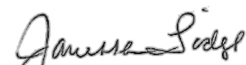
- DESMOS agrees that neither it nor its subcontractors, assignees, or other authorized agents will retain any copy, summary or extract of the Protected Data, or any de-identified Protected Data, on any storage medium whatsoever. Upon request, DESMOS and/or its subcontractors, assignees, or other authorized agents will provide a certification from an appropriate officer that these requirements have been satisfied in full.

Challenging Accuracy of Protected Data: Parents or eligible students can challenge the accuracy of any Protected Data provided by a Participating Educational Agency to Desmos , by contacting the student's district of residence regarding procedures for requesting amendment of education records under the Family Educational Rights and Privacy Act (FERPA). Teachers or principals may be able to challenge the accuracy of APPR data provided to DESMOS by following the appeal process in their employing school district's applicable APPR Plan.

Data Storage and Security Protections: Any Protected Data DESMOS receives will be stored on systems maintained by DESMOS , or by a subcontractor under the direct control of DESMOS , in a secure data center facility located within the United States. The measures that DESMOS will take to protect Protected Data include adoption of technologies, safeguards and practices that align with the NIST Cybersecurity Framework and industry best practices including, but not necessarily limited to, disk encryption, file encryption, firewalls, and password protection.

Encryption of Protected Data: DESMOS (or, if applicable, its subcontractors) will protect Protected Data in its custody from unauthorized disclosure while in motion or at rest, using a technology or methodology specified by the secretary of the U.S. Department of HHS in guidance issued under Section 13402(H)(2) of P.L. 111-5.

BY DESMOS Studio PBC:



Signature

Contract Administrator

Title

10/4/2023

Date