

DATA PRIVACY AGREEMENT (DPA)
FOR TEXAS K-12 INSTITUTIONS

Midway Independent School District

and

Desmos, Inc.

Background and Instructions

History of Agreement- This agreement has been drafted by the Texas Student Privacy Alliance (TXSPA). The Alliance is a collaborative group of Texas school districts that share common concerns around student and data privacy. The Texas K-12 CTO Council is the organization that sponsors the TXSPA and the TXSPA is the Texas affiliate of the national Student Data Privacy Consortium (SDPC). The SDPC works with other state alliances by helping establish common data privacy agreements unique to the jurisdiction of each state. This Texas agreement was drafted specifically for K-12 education institutions and included broad stakeholder input from Texas school districts, statewide associations such as TASB, TASA, and TASBO, and the Texas Education Agency. The purpose of this agreement is to set standards of both practice and expectations around data privacy such that all parties involved have a common understanding of expectations. This agreement also provides a mechanism (Exhibit E- General Offer of Terms) that would allow an Operator to extend the ability of other Texas school districts to be covered under the terms of the agreement should an Operator sign Exhibit E. This mechanism is intended to create efficiencies for both Operators and LEAs and generally enhance privacy practices and expectations for K-12 institutions and for companies providing services to K-12 institutions.

Instructions for Operators: This agreement is intended to be provided to an Operator from a LEA. The Operator should fully read the agreement and is requested to complete the below areas of the agreement. Once the Operator accepts the terms of the agreement, the Operator should wet sign the agreement and return it to the LEA. Once the LEA signs the agreement, the LEA should provide a signed copy of the agreement to the Operator.

Article/Exhibit	Box #	Description
Cover Page	Box # 3	Official Name of Operator
Cover Page	Box # 4	Date Signed by Operator
Recitals	Box #5	Contract Title for Service Agreement
Recitals	Box #6	Date of Service Agreement
Article 7	Boxes #7-10	Operator's designated representative
Signature Page	Boxes #15-19	Authorized Operator's representative signature
Exhibit A	Box #25	Description of services provided
Exhibit B	All Applicable Boxes	<ul style="list-style-type: none">• Operator notates if data is collected to provide the described services.• Defines the schedule of data required for the Operator to provide the services outlined in Exhibit A
Exhibit D	All Applicable Boxes	(Optional Exhibit): Defines deletion or return of data expectations by LEA

Exhibit E	All Applicable Boxes	(Optional Exhibit): Operator may, by signing the Form of General Offer of Privacy Terms (General Offer, attached as <u>Exhibit E</u>), be bound by the terms of this DPA to any other Subscribing LEA who signs the acceptance in said Exhibit.
Exhibit F	Boxes # 25-29	A list of all Subprocessors used by the Operator to perform functions pursuant to the Service Agreement, list security programs and measures, list Operator's security measures

Instructions for LEA and/or Subscribing LEA: This agreement is intended to be provided to an Operator from a LEA. Upon receiving an executed agreement from an Operator, the LEA should fully review the agreement and if agreeable, should have an authorized LEA contact wet sign the agreement. Once signed by both the Operator and LEA, the LEA should send a copy of the signed agreement to the Operator.

Article/Exhibit	Box #	Description
Cover Page	Box # 1	Official Name of LEA
Cover Page	Box #2	Date Signed by LEA
Article 7	Boxes #11-14	LEA's designated representative
Signature Page	Boxes #20-24	Authorized LEA representative's signature
Exhibit D	All Applicable Boxes	(Optional Exhibit): Defines deletion or return of data expectations by LEA
Exhibit E	All Applicable Boxes	(Optional Exhibit) Only to be completed by a Subscribing LEA

This Data Privacy Agreement for Texas K-12 Institutions ("DPA") is entered into by and between Midway Independent School District (hereinafter referred to as "LEA") and Desmos, Inc. (hereinafter referred to as "Operator") on 9/21/2020. The Parties agree to the terms as stated herein.

RECITALS

WHEREAS, the Operator has agreed to provide the Local Education Agency ("LEA") with certain digital educational services ("Services") according to this DPA, and

WHEREAS, in order to provide the Services described in the DPA, the Operator may receive or create and the LEA may provide documents or data that are covered by federal statutes, among them, the Federal Educational Rights and Privacy Act ("FERPA") at 20 U.S.C. 1232g (34 CFR Part 99), Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. 6501-6506, and Protection of Pupil Rights Amendment ("PPRA") 20 U.S.C. 1232h; and

WHEREAS, the documents and data transferred from LEAs and created by the Operator's Services are also subject to state student privacy laws, including Texas Education Code Chapter 32; and

WHEREAS, the Operator may, by signing the "General Offer of Privacy Terms", agree to allow other LEAs in Texas the opportunity to accept and enjoy the benefits of this DPA for the Services described within, without the need to negotiate terms in a separate DPA.

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

ARTICLE I: PURPOSE AND SCOPE

1. **Nature of Services Provided.** The Operator has agreed to provide digital educational services as outlined in Exhibit A and the Agreement.
2. **Purpose of DPA.** For Operator to provide services to the LEA it may become necessary for the LEA to share certain LEA Student Data. This DPA describes the Parties' responsibilities to protect Student Data.
3. **Student Data to Be Provided.** In order for the Operator to perform the Services described in the DPA, LEA shall provide the categories of Student Data described in the Schedule of Data, attached as Exhibit B.
4. **DPA Definitions.** The definitions of terms used in this DPA are found in Exhibit C. In the event of a conflict, definitions used in this DPA shall prevail over terms used in all other writings, including, but not limited to, a service agreement, privacy policies or any terms of service.

ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

1. **Ownership of Student Data.** All Student Data transmitted to the Operator pursuant to the DPA is and will continue to be the property of and under the control of the LEA. The Operator further acknowledges and agrees that all copies of such Student Data transmitted to the Operator, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this DPA in the same manner as the original Student Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to Student Data contemplated per the DPA shall remain the exclusive property of the LEA.
2. **Operator Materials.** Operator retains all right, title and interest in and to any and all of Operator's software, materials, tools, forms, documentation, training and implementation materials and intellectual property ("Operator Materials"). Operator grants to the LEA a personal, nonexclusive license to use the Operator Materials for its own non-commercial, incidental use as set forth in the DPA. Operator represents that it has

all intellectual property rights necessary to enter into and perform its obligations in this DPA, represents to the LEA that the LEA will have use of any intellectual property contemplated by the DPA free and clear of claims of any nature by any third Party including, without limitation, copyright or patent infringement claims, and agrees to indemnify the LEA for any related claims.

3. **Parent Access.** LEA shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Student Data on the student's records, correct erroneous information, and procedures for the transfer of Student-Generated Content to a personal account, consistent with the functionality of services. Operator shall respond in a reasonably timely manner (and no later than 28 days from the date of the request) to the LEA's request for Student Data in a student's records held by the Operator to view or correct as necessary. In the event that a parent of a student or other individual contacts the Operator to review any of the Student Data accessed pursuant to the Services, the Operator shall refer the parent or individual to the LEA, who will follow the necessary and proper procedures regarding the requested information.
4. **Student Data Portability.** Operator shall, at the request of the LEA, make Student Data available including Student-Generated Content in a readily accessible format.
5. **Third Party Request.** Should a Third Party, including law enforcement or a government entity, contact Operator with a request for data held by the Operator pursuant to the Services, the Operator shall immediately, and to the extent legally permitted, redirect the Third Party to request the data directly from the LEA, notify the LEA of the request, and provide a copy of the request to the LEA. Furthermore, if legally permissible, Operator shall promptly notify the LEA of a subpoena compelling disclosure to a Third Party and provide a copy of the subpoena with sufficient time for the LEA to raise objections to the subpoena. The Operator will not use, disclose, compile, transfer, or sell the Student Data and/or any portion thereof to any third party or other entity or allow any other third party or other entity to use, disclose, compile, transfer or sell the Student Data and/or any portion thereof. Notwithstanding any provision of this DPA to the contrary, Operator understands that the LEA is subject to and will comply with the Texas Public Information Act (Chapter 552, Texas Government Code). Operator understands and agrees that information, documentation and other material in connection with the DPA may be subject to public disclosure.
6. **No Unauthorized Use.** Operator shall use Student Data only for the purpose of fulfilling its duties and obligations under the DPA and will not share Student Data with or disclose it to any Third Party without the prior written consent of the LEA, except as required by law or to fulfill its duties and obligations under the Service Agreement.
7. **Subprocessors.** Operator shall either (1) enter into written agreements with all Subprocessors performing functions pursuant to the Service Agreement, including, but not limited to, terms of service, such that the Subprocessors agree to protect Student Data in a manner the same as or better than as provided pursuant to the terms of this DPA, or (2) indemnify and hold harmless the LEA, its officers, agents, and employees from any and all claims, losses, suits, or liability including attorneys' fees for damages or costs resulting from the acts or omissions of its Subprocessors. Operator shall periodically conduct or review compliance monitoring and assessments of Subprocessors to determine their compliance with this DPA. Subprocessors shall agree to the provisions of the DPA regarding governing law, venue, and jurisdiction.

ARTICLE III: DUTIES OF LEA

1. **Provide Data In Compliance With State and Federal Law.** LEA shall provide data for the purposes of the Service Agreement in compliance with FERPA, COPPA, PPRA, Texas Education Code Chapter 32, and all other Texas privacy statutes cited in this DPA as these laws and regulations apply to the contracted services. The LEA shall not be required to provide Data in violation of applicable laws. Operator may not require LEA or users to waive rights under applicable laws in connection with use of the Services.
2. **Consider Operator as School Official.** The Parties agree that Operator is a "school official" under FERPA and has a legitimate educational interest in personally identifiable information from education records. For purposes of the DPA, Operator: (1) provides a service or function for which the LEA would otherwise use employees; (2) is under the direct control of the LEA with respect to the use and maintenance of education records; and (3) is subject to the requirements of FERPA governing the use and redisclosure of personally identifiable information from education records.
3. **Reasonable Precautions.** LEA shall take reasonable precautions to secure usernames, passwords, and any

other means of gaining access to the services and hosted data.

4. **Unauthorized Access Notification.** LEA shall notify Operator promptly of any known unauthorized access. LEA will assist Operator in any efforts by Operator to investigate and respond to any unauthorized access.

ARTICLE IV: DUTIES OF OPERATOR

1. **Privacy Compliance.** Operator may receive Personally Identifiable Information (“PII”) from the District in the course of fulfilling its duties and obligations under the DPA. The Operator shall comply with all applicable State and Federal laws and regulations pertaining to data privacy and security including FERPA, COPPA, PPRA, Texas Education Code Chapter 32, and all other Texas privacy statutes cited in this DPA.
2. **Employee Obligation.** Operator shall require all employees and agents who have access to Student Data to comply with all applicable provisions of this DPA with respect to the data shared under the DPA. Operator agrees to require and maintain an appropriate confidentiality agreement from each employee or agent with access to Student Data pursuant to the DPA.
3. **De-identified Information.** De-identified Information may be used by the Operator only for the purposes of development, product improvement, to demonstrate or market product effectiveness, or research as any other member of the public or party would be able to use de-identified data pursuant to 34 CFR 99.31(b). Operator agrees not to attempt to re-identify De-identified Information and not to transfer De-identified Information to any party unless (a) that party agrees in writing not to attempt re-identification, and (b) prior written notice has been given to LEA who has provided prior written consent for such transfer. Operator shall not copy, reproduce or transmit any De-identified Information or other Student Data obtained under the DPA except as necessary to fulfill the obligations of the DPA.
4. **Access To, Return, and Disposition of Student Data.** Upon written request of LEA, Operator shall dispose of or delete all Student Data obtained under the DPA when it is no longer needed for the purpose for which it was obtained, and transfer said data to LEA or LEA’s designee, where possible pursuant to Exhibit A, within sixty (60) days of receipt of request from LEA, and according to a schedule and procedure as the Parties may reasonably agree. Operator acknowledges LEA’s obligations regarding retention of governmental data, and shall not destroy Student Data except as permitted by LEA. Nothing in the DPA shall authorize Operator to maintain Student Data obtained under the DPA beyond the time period reasonably needed to complete the disposition. Disposition shall include (1) the shredding of any hard copies of any Student Data; (2) Student Data Destruction; or (3) Otherwise modifying the personal information in those records to make it unreadable or indecipherable. Operator shall provide written notification to LEA when the Student Data has been disposed of. The duty to dispose of Student Data shall not extend to data that has been de-identified or placed in a separate Student account, pursuant to the other terms of the DPA. The LEA may employ a “Request for Return or Deletion of Data” Form, a sample of this form is attached as Exhibit “D”. Upon receipt of a request from the LEA, the Operator will immediately provide the LEA with any specified portion of the Student Data within five (5) business days of receipt of said request.
5. **Targeted Advertising Prohibition.** Operator is prohibited from using or selling Student Data to (a) market or advertise to students or families/guardians; (b) inform, influence, or enable marketing, advertising, or other commercial efforts by the Operator; (c) develop a profile of a student, family member/guardian or group, for any commercial purpose other than providing the Service to LEA; or (d) use the Student Data for the development of commercial products or services, other than as necessary to provide the Service to LEA. This section does not prohibit Operator from generating legitimate personalized learning recommendations.
6. **Access to Data.** Operator shall make Student Data in the possession of the Operator available to the LEA within five (5) business days of a request by the LEA.

ARTICLE V: DATA PROVISIONS

1. **Data Security.** The Operator agrees to abide by and maintain adequate data security measures, consistent with industry standards and technology best practices, to protect Student Data from unauthorized disclosure or acquisition by an unauthorized person. The general security duties of Operator are set forth below.

Operator shall further detail its security programs and measures in Exhibit F. These measures shall include, but are not limited to:

- a. **Passwords and Employee Access.** Operator shall secure usernames, passwords, and any other means of gaining access to the Services or to Student Data, at a level consistent with an industry standard agreed upon by LEA (e.g. suggested by Article 4.3 of NIST 800-63-3). Operator shall only provide access to Student Data to employees or subprocessors that are performing the Services. Employees with access to Student Data shall have signed confidentiality agreements regarding said Student Data. All employees with access to Student Data shall pass criminal background checks.
 - b. **Security Protocols.** Both parties agree to maintain security protocols that meet industry best practices in the transfer or transmission of any Student Data, including ensuring that Student Data may only be viewed or accessed by parties legally allowed to do so. Operator shall maintain all Student Data obtained or generated pursuant to the DPA in a secure computer environment.
 - c. **Employee Training.** The Operator shall provide periodic security training to those of its employees who operate or have access to the system.
 - d. **Security Technology.** When the Services are accessed using a supported web browser, Secure Socket Layer (“SSL”) or equivalent technology shall be employed to protect Student Data from unauthorized access. The Service security measures shall include server authentication and data encryption. Operator shall host Student Data pursuant to the DPA in an environment using a firewall that is periodically updated according to industry standards.
 - f. **Security Contact.** Operator shall provide the name and contact information of Operator’s Security Contact on Exhibit F if the contact information is different from the contact information provided in Article VII Section 5. The LEA may direct security concerns or questions to the Security Contact.
 - g. **Periodic Risk Assessment.** Operator shall conduct periodic risk assessments and remediate any identified security and privacy vulnerabilities in a timely manner. Upon request, Operator will provide the LEA an executive summary of the risk assessment or equivalent report and confirmation of remediation.
 - h. **Backups.** Operator agrees to maintain backup copies, backed up at least daily, of Student Data in case of Operator’s system failure or any other unforeseen event resulting in loss of any portion of Student Data.
 - i. **Audits.** Upon receipt of a request from the LEA, and not to exceed one request per year, the LEA may audit the measures outlined in the DPA. The Operator will cooperate fully with the LEA and any local, state, or federal agency with oversight authority/jurisdiction in connection with any audit or investigation of the Operator and/or delivery of Services to students and/or LEA, and shall provide full access to the Operator’s facilities, staff, agents and LEA’s Student Data and all records pertaining to the Operator, LEA and delivery of Services to the Operator. Failure to cooperate shall be deemed a material breach of the DPA. The LEA may request an additional audit if a material concern is identified.
 - j. Operator shall have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of any portion of Student Data, including PII, and agrees to provide LEA, upon request, an executive summary of the written incident response plan.
2. **Data Breach.** When Operator reasonably suspects and/or becomes aware of an unauthorized disclosure or security breach concerning any Student Data covered by this DPA, Operator shall notify the LEA within a reasonable amount of time of the incident, and not exceeding ten (10) days. The Operator shall take immediate steps to limit and mitigate the damage of such security breach to the greatest extent possible. If

the incident involves criminal intent, then the Operator will follow direction from the Law Enforcement Agencies involved in the case.

- a. The security breach notification to the LEA shall be written in plain language, and address the following
 1. A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
 2. A description of the circumstances surrounding the disclosure or breach, including the actual or estimated, time and date of the breach, and whether the notification was delayed as a result of a law enforcement investigation.
- b. Operator agrees to adhere to all requirements in applicable state and federal law with respect to a Student Data breach or disclosure, including any required responsibilities and procedures for notification or mitigation.
- c. In the event of a breach or unauthorized disclosure, the Operator shall cooperate fully with the LEA, including, but not limited to providing appropriate notification to individuals impacted by the breach or disclosure. Operator will reimburse the LEA in full for all costs incurred by the LEA in investigation and remediation of any Security Breach caused in whole or in part by Operator or Operator's subprocessors, including but not limited to, costs of providing notification and providing one year's credit monitoring to affected individuals if PII exposed during the breach could be used to commit financial identity theft.
- d. The LEA may immediately terminate the DPA if the LEA determines the Operator has breached a material term of this DPA.
- e. The Operator's obligations under Section 2 shall survive termination of this DPA until all Student Data has been returned and/or Securely Destroyed.

ARTICLE VI- GENERAL OFFER OF PRIVACY TERMS

1. **General Offer of Privacy Terms.** Operator may, by signing the attached Form of General Offer of Privacy Terms ("General Offer of Privacy Terms", attached as Exhibit E), be bound by the terms of this DPA to any Subscribing LEA who signs the acceptance in said Exhibit.

ARTICLE VII: MISCELLANEOUS

1. **Term.** The Operator shall be bound by this DPA for so long as the Operator maintains any Student Data. Notwithstanding the foregoing, Operator agrees to be bound by the terms and obligations of this DPA for no less than three (3) years.
2. **Termination.** In the event that either party seeks to terminate this DPA, they may do so by mutual written consent.
3. **Effect of Termination Survival.** If the DPA is terminated, the Operator shall dispose of all of LEA's Data pursuant to Article IV, section 4.
4. **Priority of Agreements.** This DPA shall govern the treatment of Student Data in order to comply with the privacy protections, including those found in FERPA and all applicable privacy statutes cited in this DPA. In addition, all LEA users of Operator's Services, including its employees and students, must comply with Operator's Terms of Service. In the event there is conflict between the terms of the DPA and any other bid/RFP, license agreement, terms of service, privacy policy, or other writing, including Operator's Terms of Service, the terms of this DPA shall apply and take precedence. Except as described in this paragraph, all other provisions of the DPA shall remain in effect.
5. **Notice.** All notices or other communication required or permitted to be given hereunder must be in writing and given by personal delivery, facsimile or e-mail transmission (if contact information is provided for the specific mode of delivery), or first-class mail, postage prepaid, sent to the designated representatives before:

The designated representative for the Operator for this Agreement is:

First Name: Eli _____

Last Name: Luberoff _____

Operator's Company Name: Desmos, Inc. _____

Title of Representative: Chief Executive Officer _____

The designated representative for the LEA for this Agreement is:

First Name: Jesse _____

Last Name: Garn _____

LEA's Name: Midway ISD _____

Title of Representative: Executive Director of Technology _____

6. **Entire Agreement.** This DPA and Operator's Terms of Service constitutes the entire agreement of the parties relating to the subject matter and supersedes all prior communications, representations, or agreements, oral or written, by the Parties. This DPA may be amended and the observance of any provision of this DPA may be waived (either generally or in any particular instance and either retroactively or prospectively) only with the signed written consent of both parties. Neither failure nor delay on the part of any party in exercising any right, power, or privilege hereunder shall operate as a waiver of such right, nor shall any single or partial exercise of any such right, power, or privilege preclude any further exercise thereof or the exercise of any other right, power, or privilege.
7. **Severability.** Any provision of this DPA that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this DPA, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be prohibited or unenforceable in such jurisdiction while, at the same time, maintaining the intent of the parties, it shall, as to such jurisdiction, be so narrowly drawn without invalidating the remaining provisions of this DPA or affecting the validity or enforceability of such provision in any other jurisdiction.
8. **Governing Law; Venue and Jurisdiction.** THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. EACH PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS FOR THE COUNTY IN WHICH THIS DPA IS FORMED FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS DPA OR THE TRANSACTIONS CONTEMPLATED HEREBY. NOTWITHSTANDING THE FOREGOING, ANY CLAIM IN CONNECTION WITH THIS DPA MUST FIRST, AND BEFORE TAKING ANY OTHER LEGAL ACTION, BE SUBMITTED TO THE OPERATOR IN THE FORM OF A COMPLAINT (EMAIL TO: PRIVACY@DESMOS.COM), AND LEA MUST GIVE DESMOS REASONABLE TIME TO RESOLVE THE CLAIM.
9. **Authority.** Operator represents that it is authorized to bind to the terms of this DPA, including confidentiality and destruction of Student Data and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Student Data and/or any portion thereof, or may own, lease or control equipment or facilities of any kind where the Student Data and portion thereof is stored, maintained or used in any way.
10. **Waiver.** Waiver by any party to this DPA of any breach of any provision of this DPA or warranty of representation set forth herein shall not be construed as a waiver of any subsequent breach of the same or any other provision. The failure to exercise any right under this DPA shall not operate as a waiver of such right. All rights and remedies provided for in this DPA are cumulative. Nothing in this DPA shall be construed as a waiver or relinquishment of any governmental immunities or defenses on behalf of the LEA, its trustees, officers, employees, and agents as a result of the execution of this DPA or performance of the functions or obligations described herein.
11. **Assignment.** The Parties may not assign their rights, duties, or obligations under this DPA, either in whole or in part, without the prior written consent of the other party except that either party may assign any of its rights and obligations under this DPA without consent in connection with any merger (including without limitation by operation of law), consolidation, reorganization, or sale of all or substantially all of its related assets or similar transaction. This DPA inures to the benefit of and shall be binding on the Parties' permitted assignees, transferees and successors.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this DATA PRIVACY AGREEMENT FOR TEXAS K-12 INSTITUTIONS as of the last day noted below.

Operator's Representative:

BY: 

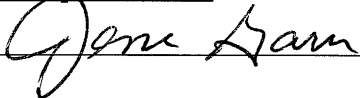
Date: 9/21/2020

Printed Name: Eli Luberoff

Title/Position: Chief Executive Officer

Address for Notice Purposes: privacy@desmos.com, 1488 Howard Street, San Francisco CA 94103

LEA's Representative

BY: 

Date: 9-23-2020

Printed Name: Jesse Garn

Title/Position: Exec. Dir of Technology

Address for Notice Purposes: 800 N. Hewitt Dr., Hewitt, TX 76643

Note: Electronic signature not permitted.

EXHIBIT “A”

DESCRIPTION OF SERVICES

Desmos provides digital math tools -- including, but not limited to, a graphing calculator, scientific calculator, four function calculator, geometry tool, and matrix calculator -- through its website and mobile applications.

In addition, Desmos has classroom activities that teachers can use to lead a class through mathematical topics in a way that is social and creative. Teachers can use activities created by Desmos, can build their own, and can modify activities created by Desmos or other teachers.

Desmos licenses its core technology to textbook publishers, assessment companies, and other organizations that can benefit from our products. Desmos never licenses any data on users to these customers. Desmos also does not work with any 3rd party ad networks, targeted or otherwise, on any of its sites, apps, or services.

Please note that because many features of Desmos are available for free to any user, Desmos can only delete or return data on behalf of an LEA if Desmos knows that the user is under the jurisdiction of the LEA. Only accounts associated with a student's or teacher's official LEA-issued email address are covered by this agreement.

Additionally, please note that because many instances of Student Data require Desmos's technology to be rendered and interpreted, in many cases it will not be possible for Desmos to return the data at the request of the LEA. In such cases, we will notify the LEA that the data cannot be returned and instead delete the data if the LEA requests such deletion in response to our notification.

EXHIBIT “ B”

SCHEDULE OF DATA

Instructions: Operator should identify if LEA data is collected to provide the described services. If LEA data is collected to provide the described services, check the boxes indicating the data type collected. If there is data collected that is not listed, use the “Other” category to list the data collected.

☐

We do not collect LEA Data to provide the described services.

☒

We do collect Student Data to provide the described services.

Category of Data	Elements	Check if used by your system
Application Technology Meta Data	IP Addresses of users, Use of cookies etc.	X
	Other application technology meta data-Please specify:	X Device type, browser model, screen resolution, etc.
Application Use Statistics	Meta data on user interaction with application	X
Assessment	Standardized test scores	
	Observation data	X
	Other assessment data-Please specify:	
Attendance	Student school (daily) attendance data	X
	Student class attendance data	X
Communications	Online communications that are captured (emails, blog entries)	
Conduct	Conduct or behavioral data	

Category of Data	Elements	Check if used by your system
Demographics	Date of Birth	
	Place of Birth	
	Gender	
	Ethnicity or race	
	Language information (native, preferred or primary language spoken by student)	X
	Other demographic information-Please specify:	X We may collect incidental demographic information (e.g. number of pets) as answers to questions in activities. We also might collect student-set accessibility preferences (e.g. large print, reverse contrast, or braille)
Enrollment	Student school enrollment	X
	Student grade level	X
	Homeroom	
	Guidance counselor	
	Specific curriculum	X

Category of Data	Elements	Check if used by your system
	programs	
	Year of graduation	
	Other enrollment information-Please specify:	
Parent/Guardian Contact Information	Address	
	Email	X
	Phone	X
Parent/Guardian ID	Parent ID number (created to link parents to students)	X
Parent/Guardian Name	First and/or Last	X
Schedule	Student scheduled courses	X
	Teacher names	X
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-Please specify:	
Category of Data	Elements	Check if used by your system
Student Contact Information	Address	
	Email	X
	Phone	
Student Identifiers	Local (School district) ID number	X
	State ID number	
	Vendor/App assigned student ID number	X

Category of Data	Elements	Check if used by your system
	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)	X
Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	
Student Survey Responses	Student responses to surveys or questionnaires	X
Student work	Student generated content; writing, pictures etc.	X
	Other student work data -Please specify:	
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	

EXHIBIT “C”

DEFINITIONS

HB 2087: The statutory designation for what is now Texas Education Code Chapter 32 relating to pupil records.

Student Data: Data shall include, but is not limited to, the following: educational records or email, first and last name, home address, telephone number, email address, or other information allowing online contact, discipline records, videos, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security numbers, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information text messages, documents, search activity, photos, voice recordings or geolocation information, metadata, user content, and course content. Student Data also specifically includes all personally identifiable information in education records, directory data, and other non-public information for the purposes of Texas and Federal laws and regulations. Student Data as specified in Exhibit B is confirmed to be collected or processed by the Operator pursuant to the Services. Student Data shall not constitute that information that has been anonymized or de-identified, or anonymous usage data regarding a student’s use of Operator’s services.

De-Identified Information (DII): De-Identified Information is Student Data that has had any Personally Identifiable Information (“PII”) removed or obscured in a way that eliminates the risk of disclosure of the identity of the individual or information about them, and cannot be reasonably re-identified.

Data Destruction: Operator shall certify to the LEA in writing that all copies of the Student Data stored in any manner by Operator have been returned to the LEA and permanently erased or destroyed using industry best practices to assure complete and permanent erasure or destruction. These industry best practices include, but are not limited to, ensuring that all files are completely overwritten and are unrecoverable. Industry best practices do not include simple file deletions or media high level formatting operations.

NIST 800-63-3: Draft National Institute of Standards and Technology (“NIST”) Special Publication 800-63-3 Digital Authentication Guideline.

Personally Identifiable Information (PII): The terms “Personally Identifiable Information” or “PII” shall include, but are not limited to, Student Data, metadata, and user or Student-Generated Content obtained by reason of the use of Operator’s software, website, service, or app, including mobile apps, whether gathered by Operator or provided by LEA or its users, students, or students’ parents/guardians. PII includes Indirect Identifiers, which is any information that, either alone or in aggregate, would allow a reasonable person to be able to identify a student to a reasonable certainty. For purposes of this DPA, Personally Identifiable Information shall include the categories of information listed in the definition of Student Data.

Student-Generated Content: The term “Student-Generated Content” means materials or content created by a student during and for the purpose of education including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, videos, and account information that enables ongoing ownership of pupil content.

Subscribing LEA: A LEA that was not party to the original Services Agreement and who accepts the Operator’s General Offer of Privacy Terms.

Subprocessor: For the purposes of this DPA, the term “Subprocessor” (sometimes referred to as the “Subcontractor”) means a party other than LEA or Operator, who Operator uses for data collection, analytics, storage, or other service to operate and/or improve its software, and who has access to PII.

Targeted Advertising: Targeted advertising means presenting an advertisement to a student where the selection of the advertisement is based on student information, student records or student generated content or inferred over time from the usage of the Operator’s website, online service or mobile application by such student or the retention of such student’s online activities or requests over time.

Texas Student Privacy Alliance: The Texas Student Privacy Alliance (TXSPA) is a collaborative group of Texas school districts that share common concerns around student privacy. The goal of the TXSPA is to set standards of both practice and expectations around student privacy such that all parties involved have a common understanding of

expectations. The Texas K-12 CTO Council is the organization that sponsors TXSPA and the TXSPA is the Texas affiliate of the National Student Privacy Consortium.

EXHIBIT "D"

SAMPLE REQUEST FOR RETURN OR DELETION OF DATA

Instructions: This Exhibit is optional and provided as a sample ONLY. It is intended to provide a LEA an example of what could be used to request a return or deletion of data.

_____ directs _____ to
LEA OPERATOR

dispose of data obtained by Operator pursuant to the terms of the Service Agreement between
return LEA and Operator. The terms of the Disposition are set forth below:

1. Extent of Return or Disposition

☐

Return or Disposition is partial. The categories of data to be disposed of are set forth below or are found in an attachment to this Directive:

☐

Return or Disposition is Complete. Disposition extends to all categories of data.

2. Nature of Return or Disposition

☐

Disposition shall be by destruction or deletion of data.

☐

Return shall be by a transfer of data. The data shall be transferred to the following site as follows:

3. Timing of Return or Disposition

Data shall be returned or disposed of by the following date:

☐

As soon as commercially practicable

☐

By the following agreed upon date:

4. Signatures

Authorized Representative of LEA

Date:

5. Verification of Disposition of Data

Authorized Representative of Operator

Date:

EXHIBIT "E"

GENERAL OFFER OF PRIVACY TERMS

Instructions: This is an optional Exhibit in which the Operator may, by signing this Exhibit, be bound by the terms of this DPA to any other Subscribing LEAs who sign the acceptance in said Exhibit. The originating LEA SHOULD NOT sign this Exhibit, but should make Exhibit E, if signed by an Operator, readily available to other Texas K-12 institutions through the TXSPA web portal. Should a Subscribing LEA, after signing a separate Service Agreement with Operator, want to accept the General Offer of Terms, the Subscribing LEA should counter-sign the Exhibit E and notify the Operator that the General Offer of Terms have been accepted by a Subscribing LEA via email at privacy@desmos.com.

1. Offer of Terms

Operator offers the same privacy protections found in this DPA between it and Midway Independent School District and which is dated 9/21/2020 to any other Subscribing LEA who accepts this General Offer through its signature below. This General Offer shall extend only to privacy protections and Operator's signature shall not necessarily bind Operator to other terms, such as price, term, or schedule of services, or to any other provision not addressed in this DPA. The Operator and the Subscribing LEA may also agree to change the data provided by LEA to the Operator to suit the unique needs of the Subscribing LEA. The Operator may withdraw the General Offer in the event of:

- (1) a material change in the applicable privacy statutes;
- (2) a material change in the services and products listed in the originating DPA;
- (3) the expiration of three years after the date of Operator's signature to this Form.

Operator shall notify the Texas Student Privacy Alliance (TXSPA) in the event of any withdrawal so that this information may be transmitted to the Alliance's users.

Operator's Representative:

BY: 

Date: 9/21/2020

Printed Name: Eli Luberoff

Title/Position: Chief Executive Officer

2. Subscribing LEA:

A Subscribing LEA, by its signature below, accepts the General Offer of Privacy Terms. The Subscribing LEA and Operator shall therefore be bound by the same terms of this DPA. The Subscribing LEA, also by its signature below, agrees to notify Operator that it has accepted this General Offer, and that such General Offer is not effective until Operator has received said notification.

Subscribing LEA's Representative:

BY: 

Date: October 19, 2020

Printed Name: Jacque Fewin

Title/Position: Executive Director of Technology

EXHIBIT “ F”

DATA SECURITY

1. Operator’s Security Contact Information:

_____ [Box 26]
Named Security Contact

_____ [Box 27]
Email of Security Contact

_____ [Box 28]
Phone Number of Security Contact

2. List of Operator’s Subprocessors:

[Box 29]

3. Additional Data Security Measures:

[Box 30]