

**MAINE STUDENT DATA PRIVACY AGREEMENT**  
**Version 1.0**

**Lewiston Public Schools**

**and**

**Desmos, Inc.**

**Date:** January 6, 2020

This Maine Student Data Privacy Agreement ("DPA") is entered into by and between the Lewiston Public Schools (hereinafter referred to as "School Unit") and Desmos, Inc. (hereinafter referred to as "Provider") on the date provided on the preceding page. The Parties agree to the terms as stated herein.

## RECITALS

**WHEREAS**, the Provider has agreed to provide the School Unit with certain digital educational services ("Services"); and

**WHEREAS**, in order to provide the Services described in the DPA, the Provider may receive or create, and the School Unit may provide, documents or data that are covered by several federal statutes, among them, the Federal Educational Rights and Privacy Act ("FERPA") at 20 U.S.C. §1232g et. seq. (34 CFR Part 99), Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. §§6501-6506; Protection of Pupil Rights Amendment ("PPRA") 20 U.S.C. §1232h et. seq.; and Individuals with Disabilities Education Act ("IDEA") 20 U.S.C. § 1400 et. seq. (34 CFR Part 300); and

**WHEREAS**, the documents and data transferred from School Units and created by the Provider's Services are also subject to several state student privacy laws, including Maine's dissemination of student records law 20-A M.R.S. §6001; Maine Student Information Privacy Act 20-A M.R.S. §951 et. seq. ("MSIPA"); and Maine Unified Special Education Regulations ("MUSER") Maine Dep't of Edu. Rule Ch. 101; and

**WHEREAS**, this Agreement complies with Maine laws, and federal law; and

**WHEREAS**, the Parties wish to enter into this DPA to ensure that the Service conforms to the requirements of the privacy laws referred to above and to establish implementing procedures and duties; and

**WHEREAS**, the Provider may, by signing the "General Offer of Privacy Terms", agrees to allow other school units in Maine the opportunity to accept and enjoy the benefits of this DPA for the Services described herein, 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. Purpose of DPA.** The purpose of this DPA is to describe the duties and responsibilities to protect student data transmitted to Provider from the School Unit pursuant to the DPA, including compliance with all applicable federal and state privacy statutes, including FERPA, PPRA, COPPA, IDEA, MSIPA, and MUSER and other applicable Maine laws, all as may be amended from time to time. In performing these Services, the Provider shall be considered a School Official with a legitimate educational interest, and performing services otherwise provided by the School Unit. Provider shall be under the direct control and supervision of the School Unit with respect to the use and maintenance of information shared with Provider by School Unit pursuant to this DPA.

2. **Nature of Services Provided.** The Provider has agreed to provide the following digital educational services outlined in Exhibit "A" hereto:
3. **Student Data to Be Provided.** In order to perform the Services described herein, School Unit shall provide the categories of data described below or as indicated in the Schedule of Data, attached hereto as Exhibit "B":
4. **DPA Definitions.** The definition of terms used in this DPA is 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, privacy policies or any terms of service..

## **ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS**

1. **Student Data Property of School Unit.** All Student Data transmitted to the Provider pursuant to the DPA is and will continue to be the property of and under the control of the School Unit. The Provider further acknowledges and agrees that all copies of such Student Data transmitted to the Provider, 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 shall remain the exclusive property of the School Unit. For the purposes of FERPA, the Provider shall be considered a School Official, under the control and direction of the School Unit as it pertains to the use of Student Data notwithstanding the above. Provider may transfer pupil-generated content to a separate account, according to the procedures set forth below.
2. **Parent Access.** School Unit shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Student Data on the pupil's records, correct erroneous information, and procedures for the transfer of pupil-generated content to a personal account, consistent with the functionality of services. Provider shall respond in a reasonably timely manner (and no later than 30 days from the date of the request for Student Data related to regular education students; and without unnecessary delay for Student Data related to special education students and, for such requests made in anticipation of an IEP meeting, due process hearing, or resolution session, without unnecessary delay and before any such meeting, due process hearing, or resolution session and, in either case, in no event more than 30 days from the date of the request) to the School Unit's request for Student Data in a pupil's records held by the Provider to view or correct as necessary. In the event that a parent of a pupil or other individual contacts the Provider to review any of the Student Data accessed pursuant to the Services, the Provider shall refer the parent or individual to the School Unit, who will follow the necessary and proper procedures regarding the requested information.

3. **Separate Account.** Provider shall, at the request of the School Unit, transfer pupil-generated content to a separate student account.
4. **Third Party Request.** Should a Third Party, including law enforcement and government entities, contact Provider with a request for data held by the Provider pursuant to the Services, the Provider shall redirect the Third Party to request the data directly from the School Unit. Provider shall notify the School Unit in advance of a compelled disclosure to a Third Party. The Provider will not use, disclose, compile, transfer, and/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.
5. **No Unauthorized Use.** Provider shall not use Student Data for any purpose other than as explicitly specified in the DPA. Any use of Student Data shall comply with the terms of this DPA
6. **Subprocessors.** Provider shall enter into written agreements with all Subprocessors performing functions pursuant to the Service Agreement, including, but not limited to, terms of service, whereby the Subprocessors agree to protect Student Data in a manner consistent with the terms of this DPA.

### ARTICLE III: DUTIES OF SCHOOL UNIT

1. **Provide Data In Compliance With FERPA.** School Unit shall provide data for the purposes of the providing the Services in compliance with FERPA, COPPA, PPRA, IDEA, MSIPA, and MUSER and all other Maine privacy statutes and regulations referenced or identified in this DPA.
2. **Annual Notification of Rights.** If the School Unit has a policy of disclosing education records under 34 CFR § 99.31 (a) (1), School Unit shall include a specification of criteria for determining who constitutes a “school official” and what constitutes a “legitimate educational interest” in its annual notification of rights, and determine whether Provider qualifies as a “school official.”
3. **Reasonable Precautions.** School Unit 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.** School Unit shall notify Provider promptly of any known or suspected unauthorized access. School Unit will assist Provider in any efforts by Provider to investigate and respond to any unauthorized access.

### ARTICLE IV: DUTIES OF PROVIDER

1. **Privacy Compliance.** The Provider shall comply with all applicable state and federal laws and regulations pertaining to data privacy and security, including FERPA, COPPA, PPRA, IDEA, MSIPA, MUSER and all other Maine privacy statutes and regulations identified in this DPA.

2. **Authorized Use.** The data shared pursuant to the DPA, including persistent unique identifiers, shall be used for no purpose other than the Services stated herein and/or otherwise authorized under the statutes referred to in subsection (1), above. Provider also acknowledges and agrees that it shall not make any re-disclosure of any Student Data or any portion thereof, including without limitation, meta data, user content or other non-public information and/or personally identifiable information contained in the Student Data, other than as necessary to provide the Services, without the express written consent of the School Unit. This section does not prohibit Contractor from using personally identifiable information for the improvement or development of services provided under this Agreement.
3. **Employee Obligation.** Provider 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. Provider agrees to require and maintain an appropriate confidentiality agreement from each employee or agent with access to Student Data pursuant to the DPA.
4. **No Disclosure.** De-identified information may be used by the Provider for the purposes of development, research, and improvement of educational sites, services, or applications, as any other member of the public or party would be able to use de-identified data pursuant to 34 CFR 99.31(b). Provider agrees not to attempt to re-identify de-identified Student Data and not to transfer de-identified Student Data to any party unless (a) that party agrees in writing not to attempt re-identification, and (b) prior written notice has been given to School Unit, who has provided prior written consent for such transfer. Provider shall not copy, reproduce or transmit any data obtained under the DPA and/or any portion thereof, except as necessary to fulfill the obligations herein.
5. **Disposition of Data.** Provider 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 within sixty (60) days of the Provider's receipt of written request from the School Unit and according to a schedule and procedure as the Parties may reasonably agree. Nothing in the DPA authorizes Provider to maintain Student Data obtained under the Service Agreement beyond the time period reasonably needed to complete the disposition. Disposition shall include: (1) shredding any and all hard copies of any Student Data; and (2) erasing or otherwise modifying the records to make them unreadable and indecipherable. Provider shall provide written notification to School Unit when the Student Data has been disposed of or deleted. The duty to dispose of or delete 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 School Unit may employ a "Directive for Disposition of Data" Form, a copy of which is attached hereto as Exhibit "D". Upon receipt of a request from the School Unit, the Provider will immediately provide the School Unit with any specified portion of the Student Data within three (3) calendar days of receipt of said request.
6. **Advertising Prohibition.** Without limiting any other provision in this DPA, Provider is specifically prohibited from using, disclosing, 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 a Provider; (c) develop a profile of a student, family member/guardian or group, for any commercial purpose other than providing the Service(s) to School Unit; or (d) use

the Student Data for the development of commercial products or services, other than as necessary to provide the Service(s) to School Unit.

## ARTICLE V: DATA PROVISIONS

1. **Data Security.** The Provider agrees to abide by and maintain commercially reasonable 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 Provider are set forth below. Provider may further detail its security programs and measures in Exhibit "F" hereto. These measures shall include, but are not limited to:
  - a. **Passwords and Employee Access.** Provider shall secure usernames, passwords, and any other means of gaining access to the Services or to Student Data, at a level suggested by Article 4.3 of NIST 800-63-3. Provider shall only provide access to Student Data to employees or contractors that are performing the Services. Employees and contractors with access to Student Data shall have agreed to maintain the confidentiality of said Student Data in accordance with all federal and state law confidentiality requirements. All employees with access to Student Records shall pass criminal background checks.
  - b. **Destruction of Data.** Provider shall destroy or delete all Student Data obtained under the DPA when it is no longer needed for the purpose for which it was obtained in accordance with Article IV, section 5.
  - c. **Security Protocols.** Both parties agree to maintain security protocols that meet industry best practices in the transfer or transmission of any data, including ensuring that data may only be viewed or accessed by parties legally allowed to do so. Provider shall maintain all data obtained or generated pursuant to the DPA in a secure computer environment and not copy, reproduce, or transmit data obtained pursuant to the DPA, except as necessary to fulfill the purpose of data requests by School Unit.
  - d. **Employee Training.** The Provider shall provide periodic security training to those of its employees who operate or have access to the system. Further, Provider shall provide School Unit with contact information of an employee who School Unit may contact if there are any security concerns or questions.
  - e. **Security Technology.** When the service is accessed using a supported web browser, Secure Socket Layer ("SSL") or equivalent technology shall be employed to protect data from unauthorized access. The service security measures shall include server authentication and data encryption. Provider shall host data in an environment using a firewall that is periodically updated according to industry standards.

- f. **Security Coordinator.** Provider shall provide the name and contact information of Provider's Security Coordinator for the Student Data received.
  - g. **Subprocessors Bound.** Provider shall enter into written agreements, including, but not limited to, terms of service, whereby Subprocessors agree to secure and protect Student Data in a manner consistent with the terms of this Article V. Provider shall periodically conduct or review compliance monitoring and assessments of Subprocessors to determine their compliance with this Article.
  - h. **Periodic Risk Assessment.** Provider further acknowledges and agrees to conduct periodic risk assessments and remediate any identified security and privacy vulnerabilities in a timely manner. Upon request from School Unit, not more than once annually, Provider shall provide School Unit with records evidencing completion of such periodic risk assessments and documenting any identified security and privacy vulnerabilities as well as the remedial measures taken to correct them.
  - i. **Backups.** Provider agrees to maintain backup copies, backed up at least daily, of Student Data in case of Provider's system failure or any other unforeseen event resulting in loss of Student Data or any portion thereof.
  - j. **Audits.** Upon receipt of a request from the School Unit, not more than once annually, the Provider will allow the School Unit to audit the security and privacy measures that are in place to ensure protection of the Student Record or any portion thereof. The Provider will cooperate fully with the School Unit and any local, state, or federal agency with oversight authority/jurisdiction in connection with any audit or investigation of the Provider and/or delivery of Services to students and/or School Unit, and shall provide full access to the Provider's facilities, staff, agents and School Unit's Student Data and all records pertaining to the Provider, School Unit and delivery of Services to the Provider. Failure to cooperate shall be deemed a material breach of the Agreement.
2. **Data Breach.** In the event that Student Data is accessed or obtained by an unauthorized individual, Provider shall provide notification to School Unit within a reasonable amount of time of the incident. Provider shall follow the following process for such notification:
- a. The security breach notification shall be written in plain language, shall be titled "Notice of Data Breach," and shall present the information described herein under the following headings: "What Happened," "What Information Was Involved," "What We Are Doing," "What You Can Do," and "For More Information." Additional information may be provided as a supplement to the notice.
  - b. The security breach notification described above in section 2(a) shall include, at a minimum, the following information:
    - i. The name and contact information of the reporting School Unit subject to this section.

- ii. A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
  - iii. If the information is possible to determine at the time the notice is provided, then either (1) the date of the breach, (2) the estimated date of the breach, or (3) the date range within which the breach occurred. The notification shall also include the date of the notice.
  - iv. Whether the notification was delayed as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided.
  - v. A general description of the breach incident, if that information is possible to determine at the time the notice is provided.
- c. At School Unit's discretion, the security breach notification may also include any of the following:
- i. Information about what the agency has done to protect individuals whose information has been breached.
  - ii. Advice on steps that the person whose information has been breached may take to protect himself or herself.
- d. Provider agrees to adhere to all requirements in applicable state and in federal law with respect to a data breach related to the Student Data, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.
- e. Provider further acknowledges and agrees to 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 Student Data or any portion thereof, including personally identifiable information and agrees to provide School Unit, upon request, with a copy of said written incident response plan.
- f. At the request of the School Unit, Provider shall assist the School Unit in notifying the affected parent, legal guardian or eligible pupil of the unauthorized access, which shall include the information listed in subsections (b) and (c), above.

## **ARTICLE VI- GENERAL OFFER OF TERMS**

Provider may, by signing the attached Form of General Offer of Privacy Terms (General Offer, attached hereto as Exhibit "E"), be bound by the terms of this to any other Subscribing School Unit who signs the acceptance on in said Exhibit. The Form is limited by the terms and conditions described therein.

## **ARTICLE VII: MISCELLANEOUS**

1. **Term.** The Provider shall be bound by this DPA for so



long as the Provider maintains any Student Data. Notwithstanding the foregoing, Provider 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 Provider shall dispose of and destroy all of School Unit's data pursuant to Article IV, section 5.
4. **Priority of Agreements.** This DPA shall govern the treatment of student records in order to comply with the privacy protections, including those found in FERPA and all applicable privacy statutes identified in this DPA. In addition, all School Unit users of the Provider Services, including its employees and students, must comply with Provider's Terms of Service. In the event there is conflict between the terms of the DPA and Provider's Terms of Service, or with any other bid/RFP, license agreement, terms of use, or privacy policy, or writing, the terms of this DPA shall apply and take precedence.
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 Provider for this Agreement is:

Eli Luberoff  
\_\_\_\_\_  
Chief Executive Officer  
9450 SW Gemini Drive, PMB 49136  
\_\_\_\_\_  
Beaverton, OR 97008-7105  
\_\_\_\_\_

The designated representative for the School Unit for this Agreement is:

Todd Finn  
\_\_\_\_\_  
Superintendent of Schools  
36 Oak Street  
\_\_\_\_\_  
Lewiston, Maine 04240  
\_\_\_\_\_  
***[INSERT INFORMATION]***

6. **Entire Agreement.** This DPA and Provider's Terms of Service constitute the entire agreement of the parties relating to the subject matter hereof and supersedes all prior communications, representations, or agreements, oral or written, by the parties relating thereto. 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 MAINE, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. EACH PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS IN CUMBERLAND COUNTY, MAINE 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 PROVIDER IN THE FORM OF A COMPLAINT (EMAIL TO: PRIVACY@DESMOS.COM), AND SCHOOL UNIT MUST GIVE DESMOS REASONABLE TIME TO RESOLVE THE CLAIM.
9. **Authority.** Provider 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 stored, maintained or used in any way.
10. **Waiver.** No delay or omission of the School Unit to exercise any right hereunder shall be construed as a waiver of any such right and the School Unit reserves the right to exercise any such right from time to time, as often as may be deemed expedient.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties have executed this Maine Student Data Privacy Agreement as of the last day noted below.

Desmos, Inc.


BY:  Date: 1/6/2021

Printed Name: Eli Luberoff Title/Position: Chief Executive Officer

Address for Notice Purposes:

9450 SW Gemini Dr, PMB 49136  
Beaverton, OR 97008-7105  
privacy@desmos.com

Lewiston Public Schools

BY:  Date: 1/8/21

Printed Name: Jake Tangla Title/Position: Superintendent

Address for Notice Purposes:

36 Oak Street  
Lewiston, Maine 04240

## **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**

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	
Demographics	Date of Birth	
	Place of Birth	
	Gender	
	Ethnicity or race	
	Language information (native, preferred or	X

Category of Data	Elements	Check if used by your system
	primary language spoken by student)	
	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 programs	X
	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

Category of Data	Elements	Check if used by your system
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
	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	X

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

No Student Data Collected at this time \_\_\_\_\_.

\*Provider shall immediately notify LEA if this designation is no longer applicable.

OTHER: Use this box, if more space needed.

## **EXHIBIT "C"**

### DEFINITIONS

**METDA (Maine Educational Technology Directors Association):** Refers to the membership organization serving educational IT professionals in the state of Maine to promote general recognition of the role of IT professionals in educational institutions; improve network and computer services; integrate emerging technologies; encourage appropriate use of information technology for the improvement of education and support standards whereby common interchanges of electronic information can be accomplished efficiently and effectively.

**Covered Information:** Covered Information means materials that regard a student that are in any media or format and includes materials as identified by MSIPA. The categories of Covered Information under Maine law are found in Exhibit B. For purposes of this DPA, Covered Information is referred to as Student Data.

**Educational Records:** Educational Records are official records, files and data directly related to a student and maintained by the school or school unit, including but not limited to, records encompassing all the material kept in the student's cumulative folder, such as general identifying data, records of attendance and of academic work completed, records of achievement, and results of evaluative tests, health data, disciplinary status, test protocols and individualized education programs and 504 plans. The categories of Educational Records under Maine law are also found in Exhibit B. For purposes of this DPA, Educational Records are referred to as Student Data.

**De-Identifiable Information (DII):** De-Identification refers to the process by which the Provider removes or obscures any Personally Identifiable Information ("PII") from student records in a way that removes or minimizes the risk of disclosure of the identity of the individual and information about them.

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

**Operator:** The term "Operator" means the operator of an Internet Website, online service, online application, or mobile application with actual knowledge that the site, service, or application is used primarily for K-12 school purposes and was designed and marketed for K-12 school purposes. This term shall encompass the term "Third Party," as it is found in applicable state statutes.

**Personally Identifiable Information (PII):** The terms "Personally Identifiable Information" or "PII" shall include, but are not limited to, student data, metadata, and user or pupil-generated content obtained by reason of the use of Provider's software, website, service, or app, including mobile apps, whether gathered by Provider or provided by School Unit or its users, students, or students' parents/guardians. PII includes Indirect Identifiers, which is any information that, either alone or in aggregate or combination, would allow a reasonable person who does not have knowledge of the relevant circumstances to be able to identify a student. For purposes of this DPA, Personally Identifiable Information shall include the categories of information listed in the definition of Student Data.



**Provider:** For purposes of the DPA, the term “Provider” means provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records. Within the DPA, the term “Provider” includes the term “Third Party” and the term “Operator” as used in applicable state statutes.

**Pupil Generated Content:** The term “pupil-generated content” means materials or content created by a pupil 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.

**Pupil Records:** Means both of the following: (1) Any information that directly relates to a pupil that is maintained by School Unit and (2) any information acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other School Unit employee. For the purposes of this Agreement, Pupil Records shall be the same as Educational Records and Covered Information.

**School Official:** For the purposes of this Agreement and pursuant to 34 CFR 99.31 (B), a School Official is a contractor that: (1) Performs an institutional service or function for which the agency or institution would otherwise use employees; (2) Is under the direct control of the agency or institution with respect to the use and maintenance of education records; and (3) Is subject to 34 CFR 99.33(a) governing the use and re-disclosure of personally identifiable information from student records.

**Student Data:** Student Data includes any data, whether gathered by Provider or provided by School Unit or its users, students, or students’ parents/guardians, that is descriptive of the student including, but not limited to, information in the student’s educational record 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, student identifies, search activity, photos, voice recordings or geolocation information. Student Data shall constitute Pupil Records for the purposes of this Agreement, and for the purposes of Massachusetts and Federal laws and regulations. Student Data as specified in Exhibit B is confirmed to be collected or processed by the Provider 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 Provider’s services.

**SDPC (The Student Data Privacy Consortium):** Refers to the national collaborative of schools, districts, regional, territories and state agencies, policy makers, trade organizations and marketplace providers addressing real-world, adaptable, and implementable solutions to growing data privacy concerns.

**Subscribing School Unit:** A School Unit that was not party to the original DPA and who accepts the Provider’s General Offer of Privacy Terms.

**Subprocessor:** For the purposes of this Agreement, the term “Subprocessor” (sometimes referred to as the “Subcontractor”) means a party other than School Unit or Provider, who Provider 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 Provider’s website, online service or mobile application by such student or the retention of such student’s online activities or requests over time.

**Third Party:** The term “Third Party” means a provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records. However, for the purpose of this Agreement, the term “Third Party” when used to indicate the provider of digital educational software or services is replaced by the term “Provider.”

**EXHIBIT "D"**

DIRECTIVE FOR DISPOSITION OF DATA

Lewiston Public Schools ("School Unit" directs Desmos

("Company") to dispose of data obtained by Company pursuant to the terms of the Service Agreement between School Unit and Company. The terms of the Disposition are set forth below:

1. Extent of Disposition

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

\_\_\_ Disposition is Complete. Disposition extends to all categories of data.

2. Nature of Disposition

\_\_\_ Disposition shall be by destruction or deletion of data.

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

3. Timing of Disposition

Data shall be disposed of by the following date:

\_\_\_ As soon as commercially practicable

\_\_\_ By

4. Signature

\_\_\_\_\_  
Authorized Representative of School Unit

\_\_\_\_\_  
Date

5. Verification of Disposition of Data

\_\_\_\_\_  
Authorized Representative of Company

\_\_\_\_\_  
Date


**EXHIBIT "E"**

**GENERAL OFFER OF PRIVACY TERMS**

**1. Offer of Terms**

Provider offers the same privacy protections found in this DPA between it and Lewiston Public Schools and which is dated January 6, 2021 to any other School Unit ("Subscribing School Unit") who accepts this General Offer through its signature below. This General Offer shall extend only to privacy protections and Provider's signature shall not necessarily bind Provider to other terms, such as price, term, or schedule of services, or to any other provision not addressed in this DPA. The Provider and the Subscribing School Unit may also agree to change the data provided by Subscribing School Unit to the Provider to suit the unique needs of the Subscribing School Unit. The Provider 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 subject listed in the DPA; or three (3) years after the date of Provider's signature to this Form. Provider shall notify either the METDA or SDPC in the event of any withdrawal so that this information may be transmitted to the Alliance's users.

Desmos, Inc.

BY: 

Date: 1/6/2021

Printed Name: Eli Luberoff

Title/Position: Chief Executive Officer

**2. Subscribing School Unit:**

Name: Portland Public Schools

Representative: Courtney Graffius

A Subscribing School Unit, by its signature below, accepts the General Offer of Privacy Terms. The Subscribing School Unit and the Provider shall therefore be bound by the same terms of this DPA.

BY: 

Date: 3/16/22

Printed Name: Courtney Graffius

Title/Position: Technology Integration Coordinator

**EXHIBIT "F" DATA SECURITY REQUIREMENTS**