

STUDENT DATA & TEACHER OR PRINCIPAL DATA PRIVACY AND SECURITY ADDENDUM

This is an addendum (the “Addendum”) to an agreement (the “Agreement”) entered into by and between the **PORT WASHINGTON UNION FREE SCHOOL DISTRICT**, with offices at 100 Campus Drive, Port Washington, New York 11050 (the “District”) and Desmos, Inc. (“Contractor”), with offices 9450 SW Gemini Dr., PMB 49136, Beaverton OR 97008, covering the period from 3/8/22 through the contractual agreement, with respect to Services to be provided by Contractor to the District. Upon being executed by the District’s and Contractor’s authorized representatives, this Addendum shall be deemed to have been in full force and effect as of the effective date of the Agreement it amends.

WHEREAS, Contractor and the District desire to supplement and amend the terms of the Agreement to affect compliance with New York State Education Law Section 2-d (“*Section 2-d*”) as set forth below.

NOW, THEREFORE, it is mutually agreed that the Agreement is hereby amended in accordance with this Addendum, as follows:

The District is an *educational agency* within the meaning of *Section 2-d*, and Contractor is a *third party contractor* within the meaning of *Section 2-d*. Pursuant to the Agreement that this Addendum modifies, Contractor and its authorized officers, employees and agents shall have access to “*student data*” and/or “*teacher or principal data*” regulated by *Section 2-d*.

As used in this Addendum, the term “*student*” means any person attending or seeking to enroll in the District. The term “*eligible student*” means a *student* eighteen years of age or older.

As used in this Addendum, the term “*student data*” means *personally identifiable information* that is obtained by Contractor pursuant to the Agreement, from *student* records of the District.

As used in this Addendum, the term “*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 Section 3012-c of the New York Education Law, which is obtained by Contractor pursuant to the Agreement, from the records of the District.

Wherever the term “*data*” is used herein without the preceding modifier “*student*” or “*principal or teacher*,” it shall refer collectively to both *student data* and *teacher or principal data*.

The provisions of this Addendum are intended to comply with *Section 2-d* in all respects. To the extent that any term of the Agreement (including Contractor’s Data

Privacy & Security Policy and/or Contractor's Terms of Service ["TOS"]) conflicts with the terms of this Addendum, the terms of this Addendum shall apply and be given effect.

Confidentiality

Contractor agrees that the confidentiality of *student data* and *teacher or principal data* shall be maintained in accordance with state and federal laws and the District's policies on data privacy and security that protect the confidentiality of *student data* and *teacher or principal data*, including, as applicable, any new or amended policies adopted by the District after the effective date of this Addendum, upon written notice to Contractor, insofar as such policies are consistent with the District's legal obligations.

In addition to Contractor's overarching obligation to maintain the confidentiality of *student data* and *teacher or principal data* in all its forms, Contractor shall take steps to ensure the privacy and security of any *student data* and *teacher or principal data* that is transferred to Contractor in an electronic format, if any, in accordance with industry best practices, including but not necessarily limited to: disk encryption, file encryption, firewalls, and password protection, both during transfer and while the data is being stored.

Upon expiration of the Agreement to which this Addendum applies, and Contractor's receipt of a written request from the District, without a successor agreement in place, Contractor shall assist the District in exporting all *student data* and *teacher or principal data* previously received by Contractor from the District, and Contractor shall, at the written request of the District, securely delete any *student data* and *teacher or principal data* remaining in Contractor's possession. If *student data* or *teacher or principal data* is to be maintained by Contractor or any lawful purpose, such *data* shall remain in an encrypted format and shall be stored on systems maintained by Contractor in a secure *data* facility located within the United States.

Challenges to Data

In the event that a *student's* parent or an *eligible student* wishes to challenge the accuracy of *student data* (pertaining to the particular *student*) that is disclosed to Contractor pursuant to the Agreement, the challenge will be processed in accordance with the District's procedures with respect to amendment of education records in accordance with the Family Educational Rights and Privacy Act (FERPA).

A teacher or principal who wishes to challenge the accuracy of *data* pertaining to the teacher or principal personally, which is disclosed to Contractor pursuant to the Agreement, shall do so in accordance with the procedures for challenging APPR data, as established by the District.

Training

Contractor agrees that any of its officers, employees and/or assignees who will have access to *student data* or *teacher or principal data* pursuant to the Agreement that this Addendum modifies will receive training on the federal and state laws governing

confidentiality of such *student data* and *teacher or principal data*, prior to receiving access to such *data*.

Use/Disclosure of Data

The exclusive purpose for which Contractor is being provided access to *student data* and *teacher or principal data* is to enable Contractor to perform its responsibilities in accordance with the Agreement that this Addendum supplements and amends.

Contractor shall not sell or use for any commercial purpose *student data* or *teacher or principal data* that is received by Contractor pursuant to the Agreement.

Contractor shall ensure, to the extent that it comes into possession of *student data* and/or *teacher or principal data* pursuant to the Agreement, that it will only share such *data* with additional third parties or otherwise disclose such *data* to additional third parties if those third parties are contractually bound to adhere to the *data* protection and security requirements set forth in this Addendum.

Contractor's Additional Obligations under Section 2-d and this Agreement

Contractor acknowledges that it has the following obligations with respect to any *student data* and/or *teacher or principal data* received through its relationship with the District pursuant to the Agreement, and any failure to fulfill these obligations shall be a breach of the Agreement. Contractor shall:

- store all *data* transferred to Contractor pursuant to the Agreement by the District in an electronic format on systems maintained by Contractor in a secure *data* facility located within the United States;
- limit internal access to *student data* and *teacher or principal data* to Contractor's officers, employees and agents who are determined to have "legitimate educational interests" (within the meaning of FERPA and *Section 2-d*) in obtaining access to such *data*;
- not use *student data* and/or *teacher or principal data* for any purpose(s) other than those purpose(s) explicitly authorized in the Agreement;
- not sell or otherwise use *student data* or *teacher or principal data* for any marketing purposes whatsoever;
- not disclose *student data* or *teacher or principal data* to any other party who is not an authorized representative of Contractor using the information to carry out Contractor's obligations under the Agreement, unless: (i) the other party has the prior written consent of the applicable *student's* parent or of the *eligible student*; or (ii) the other party has the prior written consent of the applicable teacher or principal; or (iii) the disclosure is required by statute or court order, and notice of

the disclosure is provided to the District no later than the time of disclosure (unless such notice is expressly prohibited by the statute or court order);

- maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of *data* in its custody;
- use encryption technology to protect *data* while in motion or in its custody from unauthorized disclosure, using a technology or methodology specified by the secretary of the U.S. Department of HHS in guidance issued under P.L. 111-5, Section 13402(H)(2);
- notify the District, in the most expedient way possible and without unreasonable delay, of any breach of security resulting in an unauthorized release of *student data* and/or *teacher or principal data* by Contractor or its assignees in violation of:
 - state or federal law;
 - the District’s “Parents’ Bill of Rights for Student Data Privacy and Security” (included as **Exhibit 1** to this Addendum);
 - the data privacy and security policies of the District; or
 - Contractor’s contractual obligations relating to *data* privacy and security.
- familiarize its applicable officers, employees and agents with this Agreement and with the “Parents’ Bill of Rights for Data Privacy and Security.”

Contractor acknowledges and understands that the District is required by law, upon notification by Contractor, to report any breach of security and unauthorized release of *student data* and/or *teacher or principal data* to the New York State Education Department. Contractor further acknowledges and understands that the District shall notify the *student(s)*’s parent(s) and/or the *eligible student(s)* of the unauthorized release of *student data* in the most expedient way possible and without unreasonable delay. In the case of an unauthorized release of *teacher or principal data*, the District shall notify each such teacher or principal in the most expedient way possible and without unreasonable delay, about the unauthorized release of data that includes *personally identifiable information* from the teacher’s or principal’s annual professional performance review. Contractor shall promptly reimburse the District for the full cost of such notifications. Contractor further acknowledges and understands that Contractor may be subject to civil and criminal penalties in accordance with *Section 2-d* for violations of *Section 2-d* and/or this Agreement.

It is understood that further revisions to this Addendum may be necessary to ensure compliance with *Section 2-d*, after certain regulations have been promulgated and model policies have been prepared by the New York State Education Department. Contractor and the District agree to take such additional steps as may be necessary at that time to facilitate compliance with *Section 2-d*.

IN WITNESS WHEREOF, Contractor and the District execute this Addendum to the Agreement as follows:

CONTRACTOR:

By: Janessa Lidge

Title: Contract Administrator

Signature: *Janessa Lidge*

Date: 3/8/2022

THE DISTRICT:

By: _____

Title: _____

Signature: _____

Date: _____

Exhibit 1

PARENTS' BILL OF RIGHTS FOR DATA PRIVACY AND SECURITY

In accordance with the requirements of *Section 2-d* of the New York Education Law, the Port Washington Union Free School District provides the following Parents' Bill of Rights with respect to maintaining the privacy and security of student data:

- 1) A student's personally identifiable information cannot be sold or released for any commercial purposes;
- 2) Parents have the right to inspect and review the complete contents of their child's education record;
- 3) State and federal laws protect the confidentiality of personally identifiable information, and safeguards associated with industry standards and best practices, including but not limited to, encryption, firewalls, and password protection, must be in place when data is stored or transferred. Towards this end, the District has implemented the following safeguards to protect personally identifiable information about students, which is stored or transferred by the District, against unauthorized disclosure.
 - All databases that have student information are protected by a secure password and login. Logins are monitored, and passwords are kept up-to-date.
 - All databases that have student information are protected by encryption in and secured behind a firewall.
- 4) A complete list of all student data elements collected by the State shall be made available for public review online, and by mail, upon written request, when this list is provided by the State. In the meantime, information regarding data elements collected by the State Education Department (SED) is available online at:

http://www.p12.nysed.gov/irs/sirs/2011-12/2011-12SIRSGuidance/NEWER/2013-14SIRSMannual9-1_20131107.pdf

Parents have the right to have complaints about possible breaches of student data addressed. Complaints should be directed to: Ms. Christine Wise, Data Privacy Officer, 516-767-5465, StudentDataPrivacy@portnet.org, Administrative Annex 90 Avenue C, Port Washington NY 11050.

PLEASE NOTE: The foregoing Parents' Bill of Rights is neither complete nor final, as the District is awaiting further guidance (as specified by law) regarding implementation of *Section 2-d*, from New York's Commissioner of Education and from the "Chief Privacy Officer" appointed by the Commissioner. Accordingly, this Parents' Bill of Rights is subject to revision and/or supplementation as needed to comply with the District's obligations under the law.

Additional information is available on the New York State Education Department's website at: <http://www.p12.nysed.gov/docs/parents-bill-of-rights.pdf>.

CONTRACTOR:

By: Janessa Lidge

Title: Contract Administrator

Signature: *Janessa Lidge*

Date: 3/8/2022