

**Contract Rider between Vestal Central School District**

**And**

**ExploreLearning, LLC**

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- a. ExploreLearning, LLC (Vendor) acknowledges that the Vestal Central School District (Customer) is a public education governmental unit pursuant to the laws of the State of New York.
- b. This Rider is hereby incorporated into the Agreement between Vendor and Customer. Notwithstanding any other language in the Agreement, including any referenced documents as well as otherwise incorporated documents, to the contrary, the language of this Rider has been individually negotiated and supersedes any other language that conflicts with the provisions of this Rider.
- c. No part of this Agreement can be changed or modified as relates to Customer, without Customer's prior written notice and written agreement of the proposed changes to the Agreement.
- d. Vendor agrees to defend, indemnify, and hold harmless Customer and Customer's officers, employees, volunteers, Users, agents, and other representatives (collectively Indemnitees) from any and all losses, costs, liabilities, damages, and expenses (including but not limited to reasonable attorneys' fees and reasonable attorneys' fees in seeking to enforce its rights pursuant to this Agreement) arising out of intellectual property claims brought by third parties based upon any intellectual property supplied to Indemnitees by Vendor or Vendor's affiliates or licensors pursuant to this Agreement.
- e. No defense, indemnification, or hold harmless provision of the Agreement shall be applied against Customer except to the extent Vendor also provides that identical provision protecting Customer and Customer's officers, employees, volunteers, agents, authorized users and other representatives.
- f. Vendor waives and releases Customer from any claim of reimbursement of legal fees relating to its enforcement of the Agreement except to the extent the relevant provision of the Agreement provides that the prevailing party is entitled to such fees on the disputed matter following the decision and judgment of a Court of law finally deciding the matter.
- g. Customer general liability. No limitations, exclusions, disclaimers or other language seeking to reduce or eliminate Vendors legal or financial duties shall apply to its duties under this subparagraph of the Rider.

- h. No limitations shall apply to Vendor's duty to defend, indemnify, or hold harmless pursuant to subsection d above. For all other liabilities, Vendor's liability to Customer shall be the greatest of the amount and kind provided for in the agreement, or,*
- a. One year's fees payable by Customer to Vendor pursuant to Agreement, or*
  - b. Vendor's applicable insurance coverage.*
- i. The Parties agree that this Agreement shall be governed by the laws of the State of New York, without regard to its conflict of laws principles. The parties agree that exclusive jurisdiction to resolve any conflicts relating to this Agreement shall be in the State and Federal Courts with venue in Broome County New York. The Parties consent to personal jurisdiction in such Courts. Arbitration is expressly prohibited. There is no waiver of class action suits against Vendor.*
- j. No assignment shall be authorized against a Customer without its written consent.*
- k. No Service of Process against Customer by electronic means is permitted.*
- l. Vendor acknowledges that Customer is subject to New York State Freedom of Information Law. Confidential Information does not include any information required to be produced pursuant to law, or a lawfully issued subpoena or other judicially enforceable demand. Customer does not have to provide advance notice to Vendor prior to complying with such lawful demands for information.*
- m. No limitation of time in the Agreement shall shorten Customers' time period to seek redress from the Vendor and where not satisfied, bring an action or special proceeding against Vendor as otherwise provided by applicable law.*
- n. Vendor's rate of interest on any unpaid amounts due from Customer shall be 3% annual.*
- o. This Rider shall survive termination of the Agreement.*

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*Vestal Central School District*

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*Date*

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*Julia M. Given*

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*4/8/2022*

*Vendor*

*Date*

## **Exhibit A**

### **DATA PRIVACY RIDER FOR ALL CONTRACTS INVOLVING PROTECTED DATA PURSUANT TO EDUCATION LAW §2-C AND §2-D**

District and Vendor agree as follows:

1. Definitions:

(1) Protected Data means personally identifiable information of students from student education records as defined by FERPA, as well as teacher and Principal data regarding annual professional performance reviews made confidential under New York Education Law §3012-c and §3012-d;

(2) Personally Identifiable Information (PII) means the same as defined by the regulations implementing FERPA (20 USC §1232-g);

2. Confidentiality of all Protected Data shall be maintained in accordance with State and Federal Law and the [District's Data Security and Privacy Policy](#);

3. The Parties agree that the District's Parents' Bill of Rights for Data Privacy and Security are incorporated as part of this agreement, and Vendor shall comply with its terms;

4. Vendor agrees to comply with Education Law §2-d and its implementing regulations;

5. Vendor agrees that any officers or employees of Vendor, and its assignees who have access to Protected Data, have received or will receive training on federal and State law governing confidentiality of such data prior to receiving access;

6. Vendor shall:

(1) limit internal access to education records to those individuals that are determined to have legitimate educational interests;

(2) not use the education records for any other purposes than those explicitly authorized in its contract. Unauthorized use specifically includes, but is not limited to, selling or disclosing personally identifiable information for marketing or commercial purposes or permitting, facilitating, or disclosing such information to a third party for marketing or commercial purposes;

(3) except for authorized representatives of the third party contractor to the extent they are carrying out the contract, not disclose any personally identifiable information to any other party:

(i) without the prior written consent of the parent or eligible student; or

(ii) unless required by statute or court order and the party provides notice of the disclosure to the department, Board of Education, or institution that provided the information no later than the time the information is disclosed, unless providing notice of the disclosure is expressly prohibited by the statute or court order;



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

(5) 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 United States Department of Health and Human Services in guidance issued under Section 13402(H)(2) of Public Law §111-5;

(6) adopt technology, safeguards and practices that align with NIST Cybersecurity Framework;

(7) impose all the terms of this rider in writing where the Vendor engages a subcontractor or other party to perform any of its contractual obligations which provides access to Protected Data.

(8) If any terms of the foregoing agreement conflict with any terms of this exhibit, the terms of this exhibit, New York Education Law §2-d and the regulations shall control.”



## **Exhibit B**

### **PARENTS' BILL OF RIGHTS FOR DATA PRIVACY AND SECURITY**

The District, in compliance with Education Law §2-d, provides the following:

#### **DEFINITIONS:**

As used in this policy, the following terms are defined:

**Student Data** means personally identifiable information from the student records of a District student.

**Teacher or Principal Data** means personally identifiable information from District records relating to the annual professional performance reviews of classroom teachers or Principals that is confidential and not subject to release under the provisions of Education Law §§3012-c and 3012-d.

**Third-Party Contractor** means any person or entity, other than a District, that receives student data or teacher or Principal data from the District pursuant to a contract or other written agreement for purposes of providing services to the District, including, but not limited to, data management or storage services, conducting studies for or on behalf of the District, or audit or evaluation of publicly funded programs. Such term shall include an educational partnership organization that receives student or teacher or Principal data from a school district to carry out its responsibilities pursuant to Education Law §211-e and is not a District, and a not-for-profit corporation or other nonprofit organization, other than a District.

**Parent** means a parent, legal guardian, or person in parental relation to a student. These rights may not apply to parents of eligible students.

**Eligible Student** means a student 18 years and older.

1. Neither student data, nor teacher or Principal data will be sold or released for any commercial purpose;
2. Parents have the right to inspect and review the complete contents of their child's education records. Procedures for reviewing student records can be found in the Board Policy entitled *Student Records: Access and Challenge (#7240)*.
3. Security protocols regarding confidentiality of personally identifiable information are currently in place and the safeguards necessary to protect the confidentiality of student data are maintained at industry standards and best practices as defined below. The safeguards include, but are not limited to, encryption, firewalls, and password protection. As required by Education Law §2-d (5), the National Institute for Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity Version 1.1 (NIST Cybersecurity Framework or NIST CSF) is adopted as the standard for data security and privacy;

4. New York State maintains a complete list of all student data collected by the State and the data is available for public review at <http://www.p12.nysed.gov/irs/sirs/NYSEDDataElements2018.xlsx>, or by writing to the Office of Information & Reporting Services, New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, New York 12234;
5. Parents have the right to have complaints about possible breaches of student data addressed. Complaints should be directed to the District's Data Protection Officer at 607-757-2211.

Complaints may be also be submitted to NYSED online at [www.nysed.gov/data-privacy-security](http://www.nysed.gov/data-privacy-security), by mail to Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, NY 12234; by email to [privacy@nysed.gov](mailto:privacy@nysed.gov); or by telephone at 518-474-0937.

6. Parents have the right to be notified in accordance with applicable laws and regulations if a breach or unauthorized release of their student's personally identifiable information occurs.
7. Educational agency workers that handle personally identifiable information will receive annual training on applicable state and federal laws, the educational agency's policies, and safeguards associated with industry standards and best practices that protect personally identifiable information.
8. The District will promptly acknowledge receipt of complaints, commence an investigation, and take the necessary precautions to protect personally identifiable information.
  - Following its investigation of a submitted complaint, the District shall provide the parent or eligible student with its findings within a reasonable period, but no more than 60 calendar days from receipt of the complaint;  
Where the District requires additional time, or where the response may compromise security or impede a law enforcement investigation, the District shall provide the parent or eligible student with a written explanation that includes the approximate date when the District anticipates that it will respond to the complaint;
  - The District will require complaints to be submitted in writing;
  - The District will maintain a record of all complaints of breaches or unauthorized releases of student data and their disposition in accordance with applicable data retention policies, including the Records Retention and Disposition Schedule LGS-1.



9. This policy will be regularly updated with supplemental information for each contract the District enters into with a third-party contractor where the third-party contractor receives student data or teacher or Principal data. The supplemental information must be developed by the District and include the following information:
- the exclusive purposes for which the student data or teacher or Principal data will be used by the third-party contractor, as defined in the contract;
  - how the third-party contractor will ensure that the subcontractors, or other authorized persons or entities to whom the third-party contractor will disclose the student data or teacher or Principal data, if any, will abide by all applicable data protection and security requirements, including, but not limited to, those outlined in applicable State and federal laws and regulations (e.g., FERPA; Education Law §2-d);
  - the duration of the contract, including the contract's expiration date and a description of what will happen to the student data or teacher or Principal data upon expiration of the contract or other written agreement (e.g., whether, when and in what format it will be returned to the District, and whether, when and how the data will be destroyed);
  - if and how a parent, student, eligible student, teacher or Principal may challenge the accuracy of the student data or teacher or Principal data that is collected;
  - where the student data or teacher or Principal data will be stored, it will be described in such a manner as to protect data security and the security protections taken to ensure that such data will be protected and data security and privacy risks mitigated; and how the data will be protected using encryption while in motion and at rest will be addressed.
10. This policy shall be published on the District's website. This policy shall also be included with every contract the District enters with a third-party contractor where the third-party contractor receives student data or teacher or Principal data.



**Vestal Central School District**  
**New York State Education Law 2-D: Supplemental Information**

\*This section to be completed by the Vendor\*

<b>CONTRACTOR</b>	[Vendor Name] ExploreLearning, LLC
<b>PRODUCT</b>	[Product Name] Gizmos
<b>SUPPLEMENTAL INFORMATION ELEMENT</b>	<b>SUPPLEMENTAL INFORMATION</b>
Please list the exclusive purposes for which the student data or teacher or Principal data will be used by the third-party contractor, as defined in the contract <i>(or list the section(s) in the contract where this information can be found)</i>	Product update and enhancement notifications and in a customer service capacity when replying to support inquiries.
Please list how the third-party contractor will ensure that the subcontractors, or other authorized persons or entities to whom the third-party contractor will disclose the student data or teacher or Principal data, if any, will abide by all applicable data protection and security requirements, including, but not limited to, those outlined in applicable State and federal laws and regulations (e.g., FERPA; Education Law §2-d) <i>(or list the section(s) in the contract where this information can be found)</i>	All employees and contractors are subject to background checks and annual company privacy policy and security training. We comply with COPPA and FERPA and have been certified by the Safe-Harbor authority, iKeepSafe. For more information, please refer here. a. Children's Online Privacy Protection Act (COPPA)
Please list the duration of the contract, including the contract's expiration date and a description of what will happen to the student data or teacher or Principal data upon expiration of the contract or other written agreement (e.g., whether, when and in what format it will be returned to the District, and whether, when and how the data will be destroyed) <i>(or list the section(s) in the contract where this information can be found)</i>	Please contact your sales rep.
Please list if and how a parent, student, eligible student, teacher or Principal may challenge the accuracy of the student data or teacher or Principal data that is collected <i>(or list the section(s) in the contract where this information can be found)</i>	Should customer have concerns about the veracity of student information, they should submit an inquiry to ExploreLearning support. who will work with the customer to
Please list where the student data or teacher or Principal data will be stored, it will be described in such a manner as to protect data security and the security protections taken to ensure that such data will be protected and data security and privacy risks mitigated; and how the data will be protected using encryption while in motion and at rest will be addressed <i>(or list the section(s) in the contract where this information can be found)</i>	All web traffic to our products use the HTTPS protocol. Data is encrypted at AES 128 or higher. Data is encrypted with AES256, AES128 and 3DES in server-preferred order depending on client support. Information is encrypted in transit between our data center and client machines (using HTTPS). Our certificates

*Julia M. Given*

Signature

Julia M Given, VP Finance

Name & Job Title

4/8/2022

Date

# Terms and Conditions of Use

Please read these terms and conditions carefully before activating your ExploreLearning Gizmos account.

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# Registering and Using ExploreLearning

As part of the registration process, each User will select a password and user name ("User Name"). You agree to provide us with accurate, complete, and updated Account information. Failure to do so will constitute a breach of this Agreement, which may result in immediate termination of your rights to use the Account. You may not (a) select or use a User Name of another person with the intent to impersonate that person, (b) use a name subject to the rights of any other person without authorization, or (c) use a User Name that we, in our sole discretion, deem inappropriate or offensive. You are responsible for maintaining the confidentiality of your User Name and password, and you will be responsible for all uses of your User Name and password, whether or not authorized by you.

In order to use the Website, you need to obtain a pass code (consisting of a username and a password. Pass codes are issued only to individual subscribers and learning institutions or teachers (collectively, "Users") who have registered.

Pass codes that have been issued to learning institutions or teachers may not be shared. They may only be used by the administrators, teachers and students to whom they are assigned. Users remain at all times solely and fully responsible for the proper use of pass codes issued hereunder. Individual subscribers may share their access codes with their, spouse, children or grandchildren ("Immediate Family") only. Users remain at all times solely and fully responsible for the proper use of pass codes issued hereunder. Individual subscribers who intend to share their pass codes with Users of their Immediate Family under 13 years of age agree to supervise the minors' use of the Website.

## Using Your Account

All Users are entirely liable for all activities conducted through that Account, and are responsible for ensuring that any other person who uses the Account is aware of, and complies with, the terms of this Agreement. Each person who uses the Account agrees to be bound by the terms of this Agreement, whether or not such person is a Member. You will notify us of any known or suspected unauthorized use(s) of your Account, or any known or suspected breach of security, including loss, theft, or unauthorized disclosure of your User Name and password. We will have no liability for any circumstances arising from the unauthorized use of a User Name, Member's password or your Account. Any fraudulent, abusive, or otherwise illegal activity on your Account may be reported to appropriate law-enforcement agencies by us.

If you have reason to believe that your Account is no longer secure (for example, in the event of a loss, theft, or unauthorized disclosure or use of your User Name, password, or any credit, debit, or charge card number stored on the Service), you must promptly change your password and notify us of the problem by sending an email to [support@ExploreLearning.com](mailto:support@ExploreLearning.com).

## Browsers, Equipment and Accessibility

Users are solely responsible for obtaining and maintaining equipment and software, including without limitation operating system and browser software, that conforms to ExploreLearning's specifications in effect, as revised from time to time, in order to connect to, communicate with and use the ExploreLearning website.

ExploreLearning shall use commercially reasonable efforts to maintain the accessibility of the Website at all times, but may discontinue some or all of the Website features or services at any time, with or without notice, in order to perform hardware or software maintenance and/or upgrades or problem resolution. Additionally, to the extent that use of the Website is prevented, hindered, delayed or made impracticable by reason of force majeure (including any cause that cannot be overcome by reasonable diligence and without unreasonable expense) or due to



ExploreLearning's compliance with its commercially reasonable standard operating procedures or with any laws, rules, policies, practices or regulations of any industry association or organization, or any jurisdiction or governmental authority, ExploreLearning and its affiliates will be excused from such delay or performance.

## Communications Authorities

Use of the Website is subject to the requirements, rules, regulations, operations and procedures of any relevant public communications authorities and/or private communications carriers. ExploreLearning (and its affiliates) shall not be liable for any losses, costs, liabilities, damages, expenses and/or claims arising from or relating to the delay, alteration or interruption of telecommunications between Users and ExploreLearning caused by the failure for any reason of any communications facilities which User or ExploreLearning (or any of affiliate) has contracted from any public communications authority or private communications carrier.

## Billing Policies

1. All subscriptions must be pre-paid annually.
2. Payment Options: You must pay in US Dollars via Purchase Order, Credit Card (Visa or MasterCard), check or money order, or wire transfer.
  - Purchase Orders (US Residents Only): Mail (payable to ExploreLearning) to ExploreLearning, 110 Avon Street, Charlottesville, VA 22902 or FAX to (877) 829-3039.
  - Credit Card Billing: ExploreLearning will bill your designated credit card (Visa or MasterCard only) and is subject to any restrictions imposed by your credit card issuer. If payment cannot be charged to your credit card or your charge is returned to ExploreLearning for any reason, including charge back, ExploreLearning reserves the right to either suspend or terminate your access and account, thereby terminating this Agreement and all obligations of ExploreLearning hereunder, and thereafter to collect any amount due.
  - Checks or Money Orders: Mail (payable to ExploreLearning) to ExploreLearning, 110 Avon Street, Charlottesville, VA 22902.
  - Wire Transfers: Call (866) 882-4141 option 2 or e-mail [support@ExploreLearning.com](mailto:support@ExploreLearning.com) for more information
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5. Refund Policy. We take great pride in supplying a quality product at a reasonable price. In general, it is our policy to provide a refund for anyone who has been unable to use the site. A refund must be requested in writing within 30 days of purchase of your account and the account cannot have been accessed numerous times. Email a refund request to [sales@ExploreLearning.com](mailto:sales@ExploreLearning.com) or fax a request to (877) 829-3039. Please include the username, full name of subscriber, product, and reason you are requesting a refund. We will not be able to refund a license after 30 days, or for an account with heavy usage, except for problems accessing the service. Refunds will be issued according to the original payment method.

## Billing Security

All communication between our servers, the acquiring bank, and the issuing bank are encrypted to assure server authenticity and invulnerability to man-in-the-middle attacks.

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ExploreLearning may change, modify, suspend, or discontinue any aspect of the Website at any time, including, without limitation, access policies, the availability of any Website feature, hours of availability, content, data, or software or equipment needed to access the Website. We may also impose limits on certain features or restrict your access to parts or all of the Website without notice or liability. We reserve the right to change prospectively the amount of, or basis for determining, any fees or charges for the Website, and to institute new fees or charges for access to portions of the Website effective upon prior notice to Users by posting such changes on its web site or by sending e-mails to Users. You hereby agree to pay all charges to your account, including applicable taxes, in accordance with billing terms in effect at the time the fee or charge becomes payable.

We may, from time to time, have special events, software or content available on the Service, which will be subject to additional terms and conditions that will be made available for your review. You agree that if you or any User uses or accesses such special events, software or other content, such additional terms and conditions will be binding.

We reserve the right, at our sole discretion, to change, modify, add, supplement or delete any of the terms and conditions of this Agreement at any time. We will post notification of any such changes on the Service, or give notice of them to you via e-mail, postal mail or by pop-up screen, at our sole discretion. If any future changes to this Agreement are unacceptable to you or cause you to no longer be in compliance with this Agreement, you may terminate your Account. The continued use of the Service by you following your receiving a notice of changes to this Agreement will mean you accept any and all such changes.

## Posting Material by Users

ExploreLearning may permit its Users to post materials on the Website. Users shall not upload to, distribute through or otherwise publish, via e-mail, message boards or otherwise, any content which is libelous, defamatory, obscene, threatening, invasive of privacy or publicity rights, abusive, illegal or otherwise objectionable, that would constitute a criminal offense, violate the rights of any third party, or that would give rise to liability or violate any law.

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## Miscellaneous



In the event any provision of this Agreement conflicts with the law or if any such provisions are held invalid by a court with jurisdiction over the parties to this Agreement, such provision will be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law, and the remainder of this Agreement will remain in full force and effect.

The laws of the State of Texas will govern this Agreement. The laws of the State of Texas will govern any dispute arising from the terms of this agreement or breach of this agreement and you agree to personal jurisdiction by the state and federal courts sitting in Dallas, Texas. The parties hereby expressly waive trial by jury in any action, proceeding or counterclaim brought by either of the parties against the other on any matters whatsoever arising out of, or in any way connected with, these Terms and Conditions and agree to submit to binding arbitration. ExploreLearning makes no representation that materials on ExploreLearning are appropriate or available for use in all locations. Those who choose to access ExploreLearning do so on their own initiative and are responsible for compliance with local laws, if and to the extent local laws are applicable. Materials from ExploreLearning are further subject to United States export controls. No materials from ExploreLearning may be downloaded or otherwise exported or re-exported (i) into (or to a national or resident of) Cuba, Iran, Iraq, Libya, North Korea, Syria or any other country to which the United States has embargoed goods; or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. By downloading or using the materials, you represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list.

The failure of either party to insist upon or enforce strict performance by the other party of any provision of this Agreement or to exercise any right under this Agreement will not be construed as a waiver or relinquishment to any extent of such party's right to assert or rely upon any such provision or right in that or any other instance, rather, the same will be and remain in full force and effect.

ExploreLearning may assign its rights and obligations under this Agreement and upon such assignment ExploreLearning may be relieved of any further obligation hereunder. You represent to ExploreLearning that you have the authority to subscribe to and/or use ExploreLearning according to the terms and conditions of this Agreement. The section titles in this Agreement are for convenience only and have no legal or contractual effect.

## Acceptance

By using and/or subscribing to the Service, you hereby acknowledge that you have read and understand the foregoing Agreement, as may be amended or modified from time to time according to its terms, and agree to be bound by all of the terms and conditions hereof. You further specifically permit ExploreLearning to use the email entered during the registration process to deliver support, sales, and product information related to your Free Trial or paid subscription.

## Questions

If you have any questions about this Agreement, please email us at: [support@ExploreLearning.com](mailto:support@ExploreLearning.com).





# Privacy Statement for ExploreLearning Data Management System

ExploreLearning is committed to protecting your online privacy. Gizmos are certified COPPA, FERPA, and CSPC compliant.



## On This Page

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This site provides you with access to ExploreLearning's Data Management System. This system is an integral component of ExploreLearning's curriculum products and provides valuable reporting, instructional recommendations, and other resources used by teachers and other instructional leaders in conjunction with ExploreLearning's curriculum with the goal of improving student performance.

This statement describes the privacy and security practices ExploreLearning employs for this site. We have adopted these practices to protect you, the students, and the school district, and to enable each of us to comply with applicable legal requirements. Use of this site requires district acceptance of the practices outlined in this statement.

Two types of personally identifiable information are used on this site: **your personal data** and **student data**.

## Your Personal Data

### Collection

ExploreLearning collects information from you as you use this site. For example, you must enter certain personally identifiable information, including your name, e-mail address, and phone number. We use this information to verify your identity and prevent unauthorized access to your account and to contact you in connection with your use of this site.

In addition to the information you provide, ExploreLearning collects information about your use of this site through tracking, cookies, and log files, as described in our general Terms of Use statement.

## Protection

Because you enter your personal data, you control its accuracy. If you discover that your personal data is inaccurate or if it changes or if you want to retain possession of it, you may make corrections by notifying us at [support@ExploreLearning.com](mailto:support@ExploreLearning.com) or 866-882-4141. We will not share your personal data collected through this site with third persons without your consent. However, your personal data will be available to authorized users from your school district who have permission from the school district to access it. We will not use your personal data collected through this site for any purpose other than providing you with access to this site and the associated services. We will use the same security to protect your personal data that we use to protect student data collected through this site.

## Student Data

As you use this site, you will enter student data or interact with student data that has already been entered. Federal law (the Family Educational Rights and Privacy Act, "FERPA") allows a school district to release student records to an organization that is "conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests... [or] improving instruction."

However, FERPA requires limitations on disclosure of those records and implementation of appropriate security measures to protect those records. To help your school district comply with FERPA, ExploreLearning has adopted certain practices, and requires that educators using this site fulfill certain responsibilities to safeguard student data. Additionally, ExploreLearning operates in compliance with the Children's Online Privacy Protection Act ("COPPA") and obtains consent when necessary to collect information from children under 13 years of age.

The following statement explains our practices and your responsibilities regarding the student data you enter on this site.

## Student Data Security and Confidentiality Statement

### Purposes of Data Entry

You control what student data is entered on this site and you retain ownership of the student data at all times. Student data entered on this site should be limited to information that is relevant to the legitimate educational purpose of improving student performance. We will not ask you to enter, and you are instructed not to enter, data about students that is not relevant to this legitimate educational purpose.

Therefore, only a minimum amount of personally identifiable student data required for the setup of the system is requested. We require student first name, student last name, and student identification number. Additional data, not specific to the student, is also required to complete system setup, including the teacher first and last name, class name, grade level, and school name. Student demographic data, for the purposes of optional disaggregated reporting, is requested separately from the initial setup data and is obtained only with written permission from your district.



## Use, Disclosure, and Storage

We will use the student data to provide the services to your school district. We will not keep the student data after you or the school district instructs us to delete it. You may not disclose or otherwise use the student data entered on this site for any unauthorized purposes.

We will only disclose student data to authorized employees or representatives of the school district, and will not knowingly disclose the student data to any third person without express written authorization. When, at the request of the district, we acquire assessment or other information, including personally identifiable student data, from a third party source we treat that information with the same confidentiality and security safeguards as though it were provided directly by the district. Additional agreements may be required by the third party to authorize transmission of data to ExploreLearning.

Your district may from time to time request that ExploreLearning provide student data to third parties of its choosing. We will do so with written authorization, which acknowledges that ExploreLearning is providing that data as your district's agent and that once the data is received by the third party, ExploreLearning no longer has any control over the use or disposition of the data.

We may also use aggregated data in our research, product development, and marketing. That aggregated, non-personally identifiable data (e.g., summary or statistical data) may be shared with third parties. However, we do not use personally identifiable student data to market any products or services directly to students or their parents.

In the event that ExploreLearning wishes, from time to time, to release aggregated data that identifies your school or school district by name, ExploreLearning will enter into a separate agreement with you to authorize release and publication.

ExploreLearning does not utilize third parties to provide products and does not share your student data with any third parties.

**We may sell, transfer or otherwise share some or all of our assets, including your Personal Information, in connection with a merger, acquisition, reorganization or sale of assets or in the event of bankruptcy. Your consent to this Privacy Policy followed by your submission of Personal Information represents your explicit agreement to that transfer.**

## Data Quality

You are responsible for keeping the student data that you enter accurate, complete and up-to-date. If you recognize that student data is inaccurate, incomplete, or out-of-date, you are responsible for correcting it. If you experience problems making corrections to student data, please notify us at [support@ExploreLearning.com](mailto:support@ExploreLearning.com) and we will assist you with making corrections.

## Security Safeguards

We are committed to protecting student data against unauthorized access, destruction, use, modification or disclosure. Protecting student data requires efforts from us and from you. We will implement reasonable and appropriate safeguards when collecting student data from you and when storing that student data in our database and you will observe our security safeguards and exercise reasonable caution when using this site.

Specific institutional and technological security safeguards include:

1. Only ExploreLearning employees who are authorized to handle student data are able to access the Data Management System.

2. Only school district employees and representatives that the district authorizes as school officials are permitted to access the system. It has a hierarchical permissions system.

This means:

- a. A teacher will only be able to see data for his/her class.
  - b. A Principal, Coach, or other authorized School User will be able to view all data at a given school.
  - c. An authorized district-level employee, such as an Instructional Coordinator or Superintendent, will be able to see all data across the district.
3. Each authorized school official is given a Userid and Password valid only for the duration of the academic year, including a summer program if applicable. You must safeguard your Userid and Password, and not permit any unauthorized access to student data entered or kept in ExploreLearning's system.
  4. Upon written request by the district, ExploreLearning will destroy any student data for districts who no longer participate in an ExploreLearning program. ExploreLearning will provide written verification that the data has been destroyed as requested.
  5. If a district has not used any ExploreLearning product for a period of two years, ExploreLearning will provide written notice that the student data pertaining to their district will be destroyed, unless the district requests the records be kept. Upon destruction, ExploreLearning will provide written verification that the data has been destroyed.
  6. ExploreLearning uses industry standard server and network hardware and software to ensure that data is protected from unauthorized access or disclosure.

Although we make concerted good faith efforts to maintain the security of personal information, and we work hard to ensure the integrity and security of our systems, no practices are 100% immune, and we can't guarantee the security of information. Outages, attacks, human error, system failure, unauthorized use or other factors may compromise the security of user information at any time. If we learn of a security breach or other unauthorized disclosure of your PII, we will attempt to notify you so that you can take appropriate protective steps by posting a notice on our homepage (<https://gizmos.explorelearning.com>) or elsewhere in our Service and we will send email to you at the email address you have provided to us. Additionally, we will notify the primary administrative contact at your school or district by email and telephone and assist with their efforts to ensure your notification.

Any such notice will include:

- The date of the breach.
- The type of information that was subject to breach.
- General description of what occurred.
- Steps we are taking to address the breach.
- The contact person with our Company who you can contact regarding the breach.

If you are a parent, legal guardian or eligible student and an unauthorized disclosure of your student's PII records occurs, we will notify you by email at the email address we have on record for you or through notice to your school or district's primary administrative contact in the event that we do not have an email address on record for you..

When you use this site, you consent to our privacy practices and agree to accept the responsibilities outlined in this statement.

## Contact

If you have any questions, concerns or inquiries about our Privacy Policy, or our use of your PII, or our privacy practices, please contact us at [support@ExploreLearning.com](mailto:support@ExploreLearning.com) or 866-882-4141, or mail to General Counsel 17855 Dallas Parkway, Suite 400 Dallas, TX 75287. You may also contact [COPPAPrivacy@ikeepssafe.org](mailto:COPPAPrivacy@ikeepssafe.org).

*Last Updated: February 26<sup>th</sup>, 2020*





Gizmos are certified COPPA, FERPA, and CSPA compliant.