

Tinkercad Student Data Privacy Agreement (U.S. Educational Institutions)

This Tinkercad Student Data Privacy Agreement (“DPA”) is entered into on this day of September 25, 2020, between Autodesk, Inc. (“Autodesk”) and the educational institution that has signed this DPA (the “Educational Institution”).

1. **DEFINITIONS.** For purposes of this DPA, the following terms have the meanings set forth below:

“**AB 1584**” means the California Contracts with Third Parties for Digital Storage and Management of Pupil Records, California Education Code section 49073.1.

“**Account Holder**” means an individual that is affiliated with an active Tinkercad account. This includes Student Accounts, as well as accounts created by the Educational Institution or the Moderator.

“**Administrative Contact**” means the administrative contact for the Educational Institution identified below, or as updated by Educational Institution by written notice to Autodesk.

“**Classroom**” means a classroom created by a Moderator consisting of a group of class seats through which Students use the Service under moderation by a Moderator.

“**CCPA**” means California Consumer Privacy Act of 2018, Cal. Civ. Code § 1798.100 *et seq.*, and its implementing regulations.

“**COPPA**” means the Children’s Online Privacy Protection Act, 15 U.S.C. § 6501- 6505.

“**FERPA**” means the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and its implementing regulations enacted at 34 C.F.R. Part 99.

“**Moderator**” means, in connection with this DPA, a verified adult affiliated with and authorized by the Educational Institution to moderate a Student Account or a Classroom, as permitted by the Service.

“**Personally Identifiable Information**” (“**PII**”) has the same meaning as defined under FERPA at 34 C.F.R. § 99.3. To the extent that Educational Institution provides Autodesk with Student Personal Information from California residents in connection with the Service, PII shall also include the “personal information” of such California residents, as that term is defined under CCPA at Cal. Civ. Code § 1798.140(o).

“**PPRA**” means the Protection of Pupil Rights Amendment, 20 U.S.C. § 1232h

“**Service**” means Autodesk Tinkercad.

“**School Official**” has the same meaning as under FERPA at 34 C.F.R. § 99.31(a)(1), and includes contractors, consultants, volunteers, or other parties to which an educational institution has outsourced institutional services or functions.

“**SOPIPA**” means the Student Online Personal Information Protection Act, CA SB-1177.

“**Safe Mode**” means a state of the Service in which any Student using the Service is not allowed to share Student-Generated Content or PII in the Service gallery or any other public part of the Service without Moderator approval.

“**Student**” means a student enrolled at the Educational Institution using a Student Account or a Classroom.

“**Student Account**” means a Service account of a student enrolled at the Educational Institution under moderation by a Moderator.

“**Student-Generated Content**” means materials created by a Student using the Service through a Student Account or Classroom such as, for example, models, circuit designs, and codeblocks.

“**Subprocessor[s]**” means a service provider of Autodesk, Inc. or its affiliates.

2. RESPONSIBILITIES OF AUTODESK

- 2.1. Autodesk and Educational Institution acknowledge that Educational Institution must comply with FERPA and PPRA, among other applicable federal and state laws, and Autodesk agrees to conduct the Service consistent with the requirements of FERPA, CCPA, COPPA, SOPIPA, PPRA, and AB 1584, among other applicable federal and state laws.
- 2.2. Autodesk agrees that to the extent that Educational Institution is subject to FERPA and provides Autodesk with Student PII in connection with the Service, Autodesk will be considered a School Official.
- 2.3. Autodesk agrees that to the extent that Educational Institution provides Autodesk with Student PII from California residents in connection with the Service, Autodesk will handle all Student Personal Information as a “service provider” to

Educational Institution with respect to such Student Personal Information, as that term is defined by CCPA.

- 2.4. As between the parties, Autodesk acknowledges that the Educational Institution is the owner of Student PII and Student-Generated Content provided by the Educational Institution through the Service.
- 2.5. Autodesk will collect, use, and otherwise process Student PII and Student-Generated Content provided through the Service only as described in this DPA and the Autodesk Privacy Statement, including the Autodesk Children's Privacy Statement, available at <https://www.autodesk.com/company/legal-notices-trademarks/privacy-statement/childrens-privacy-statement>, which is incorporated into this DPA by reference. Autodesk will not (i) use Student PII or Student-Generated Content for any purposes not specified in this DPA, or not authorized by the parent/guardian or the Educational Institution, (ii) use Student PII or Student-Generated Content for advertising or marketing purposes; (iii) use Student PII or Student-Generated Content to amass a profile about a student except in furtherance of the Service; (iv) sell Student PII or and Student-Generated Content, or (v) disclose Student PII or Student-Generated Content, unless permitted by law or upon approval of the Educational Institution.
- 2.6. Autodesk will collect, use, and otherwise process the following PII data elements in connection with the Service: Student and Moderator's member or account username, name, password, date of birth, machine IP address or mobile device identifier; Moderator's email address, and phone number. Autodesk will not collect more information than is reasonably necessary in order to provide the Service.
- 2.7. To the extent that Autodesk transfers any Student PII or Student-Generated Content collected through the Service to Subprocessors, Autodesk agrees to have written agreements with said Subprocessors, so that data is processed in accordance with this DPA.
- 2.8. Autodesk agrees that it will destroy Student PII or Student-Generated Content provided through the Service within its possession, custody, or control (i) within ninety (90) days following the time that the Student Account or Classroom is deleted, or (ii) if the Moderator is unable to delete the Student PII or Student-Generated Content directly through the Service, within 90 days of the receipt of a written request for deletion from Moderator. Notwithstanding the foregoing, Autodesk shall be permitted to retain an archival copy of the Student PII or Student-Generated Content as may be required by law or permitted by law.

3. RESPONSIBILITIES OF EDUCATIONAL INSTITUTION

- 3.1. Educational Institution shall gather and/or provide consent in accordance with applicable law prior to Students' use of the Service, if such consent is required.
- 3.2. Educational Institution acknowledges that it is Educational Institution's sole responsibility to ensure that any Student PII it discloses to Autodesk or authorizes Autodesk to collect under this DPA is in compliance with all applicable laws and regulations, including but not limited to FERPA and the Protection of Pupil Rights Amendment, set forth in 20 U.S.C. § 1232h.
- 3.3. Educational Institution shall ensure that all Students use the Service only in Safe Mode or a Classroom. Educational Institution will ensure that Moderator does not share, or permit Students to share, Student-Generated Content or Student PII in any Service gallery or other public part of the Service.
- 3.4. Educational Institution will not, and will ensure that Moderators will not, post any Student Generated Content to any gallery or any public location on the Service.

4. DATA SECURITY

- 4.1. Autodesk agrees to protect and maintain Student PII and Student-Generated Content with commercially reasonable security measures that include appropriate administrative, physical, and technical safeguards to secure Student PII and Student-Generated Content from unauthorized access, disclosure, and use.
- 4.2. Autodesk agrees to use best practices to secure usernames, passwords, and any other means of gaining access to the Service or Student PII or Student-Generated Content.
- 4.3. When the Service is accessed using a supported web browser, Autodesk agrees to use Hyper Text Transfer Secure (HTTPS) technology, which uses both server authentication and data encryption to help keep Student PII and Student-Generated Content secure.
- 4.4. Autodesk agrees to maintain security protocols that meet industry best practices in the transfer or transmission of data related to the Service, including that data may only be viewed or accessed by parties authorized to do so.
- 4.5. Autodesk agrees to provide periodic security training to employees who process Student PII and Student-Generated Content, and require such employees to comply with applicable student privacy laws.

- 4.6. Autodesk agrees to conduct periodic risk assessments of the Service.
- 4.7. When hosting Student PII and Student-Generated Content, Autodesk agrees to host data in an environment using a firewall that is periodically updated according to industry standards.
- 4.8. Access, edit, and deletion of Student PII and Student-Generated Content subject to this DPA, is available as a self- service feature through the Service’s online moderation tool. All access, edit, and deletions must be completed by the Moderator. If a legal guardian or Student would like to access, edit, delete, or exercise any other right under applicable law with respect to any Student PII or Student-Generated Content subject to this DPA, they must route such requests to Moderator. If so, Educational Institution is affiliated is responsible for verifying identities of legal guardian and Student to the extent required by law.
- 4.9. Download of Student-Generated Content is available as a self-service feature.
- 4.10. If a legal guardian would like to become the sole Moderator of an account, they must route this request to the Moderator of that account at the Educational Institution. Legal guardians may not become the sole moderator of an account in a Classroom.
- 4.11. Autodesk agrees to comply with applicable laws that require the notification of individuals or government authorities in the event of unauthorized access to or disclosure of Student PII and Student-Generated Content or other event requiring notification by law (“Notification Event”). In the event of a Notification Event, Autodesk agrees to notify Moderator(s) within 72 hours of identification of Notification Event and to provide reasonable assistance to Educational Institution to inform individuals or regulators if required by applicable law.
- 4.12. If Autodesk becomes compelled by law or regulation (including securities laws), subpoena, court order, or other administrative directive to disclose any Student PII or Student-Generated Content, Autodesk will provide Moderator with prompt written notice, to the extent permitted by law, so that Educational Institution may seek an appropriate protective order or other remedy. If a remedy acceptable to Educational Institution is not obtained by the date that Autodesk must comply with the request, Autodesk will furnish only that portion of the Student PII and Student-Generated Content that it is legally required to furnish, and Autodesk shall take reasonable steps to require the recipient of the Student PII or Student-Generated Content to exercise commercially reasonable efforts to keep the Student PII or Student-Generated Content confidential, to the extent permitted by law.

5. MISCELLANEOUS

- 5.1. **Term.** The term of this DPA shall commence on the date specified below and terminate in accordance with the terms of this DPA.
- 5.2. **Termination.** Either party may terminate this DPA upon 90 days prior written notice to the other party. Prior to the expiration of such 90-day period, Educational Institution or Moderator shall delete any Student PII and Student-Generated Content provided by Educational Institution pursuant to this DPA that is required to be deleted under applicable law or the Educational Institution's policies. If Moderator is unable to delete any Student PII or Student-Generated Content directly through the Service, Moderator should reach out to Autodesk for assistance.
- 5.3. **Changes to Terms.** To the maximum extent permitted by applicable law, Autodesk reserves the right from time to time to (and Educational Institution acknowledges that Autodesk may) modify this DPA as set forth in this Section. Autodesk will notify (the "Modification Notice") Educational Institution of the modification to this DPA (the "Modified Agreement"). If Educational Institution does not agree to the terms of the Modified Agreement, it may reject the modification by notifying Autodesk in writing of the rejection within 30 days of the Modification Notice. If Educational Institution rejects a modification under these circumstances, its access to and use of the Service will continue to be governed by this DPA in effect immediately before the modification until 90 days after the Modification Notice. Within such 90-day period, Educational Institution shall delete all Student PII and Student-Generated Content. Use of the Service after such 90-day period shall be under the terms of the Modified Agreement. Notwithstanding the forgoing, modifications to the Privacy Statement will be handled as described therein.
- 5.4. **Priority of Agreements.** In the event there is conflict between the terms of this DPA and the Terms of Service for the Service, the terms of this DPA shall apply and take precedence.
- 5.5. **Notice.** All notices or other communication required or permitted to be given hereunder will be in writing and given by e-mail transmission sent to/from student.dpa@autodesk.com. Notifications to Educational Institution shall be provided via email to the Administrative Contact.
- 5.6. **Entire Agreement.** This DPA constitutes 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. 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. Neither party shall assign this DPA or any right, interest, or benefit under this DPA, without the prior written consent of the other party, provided that Autodesk may assign or transfer this DPA to an affiliate or in connection with a merger, change of control, reorganization or sale or other disposition of the Service or assets related to the Service.

- 5.7. **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.

- 5.8. **Governing Law; Venue and Jurisdiction.** THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. NOTWITHSTANDING THE FOREGOING, IF THE EDUCATIONAL INSTITUTION IS LOCATED IN THE UNITED STATES AND THE LAWS OF THE U.S. STATE IN WHICH THE EDUCATIONAL INSTITUTION IS LOCATED REQUIRE SUCH STATE'S LAW TO GOVERN THIS DPA, THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF SUCH U.S. STATE. EACH PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS LOCATED IN MARIN COUNTY, CALIFORNIA FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS DPA OR THE TRANSACTIONS CONTEMPLATED HEREBY, UNLESS SUCH CONSENT IS EXPRESSLY PROHIBITED BY THE LAWS OF THE U.S. STATE IN WHICH EDUCATIONAL INSTITUTION IS LOCATED.

This DPA must be signed by an authorized representative of Educational Institution and delivered to Autodesk at student.dpa@autodesk.com.

Name of Educational Institution: Alexandria Central School

Authorized Signature: 

Name and Title of Signatory: Robert Wagoner, Data Protection Officer

Administrative Contact Name: Christopher Clapper

Administrative Contact Phone: 315-482-9971

Administrative Contact Email Address: makerspace@acsghosts.org

Educational Institution Address: 34 Bolton Ave, Alexandria Bay, NY 13607

Autodesk, Inc.

By: 

Name: Cloude Porteus

Title: Director, K-12 Product Strategy

The NYS Education Department's Education Law §2-d Bill of Rights for Data Privacy and Security

Parents and eligible students¹ can expect the following:

1. A student's personally identifiable information (PII)² cannot be sold or released for any commercial purpose.
2. The right to inspect and review the complete contents of the student's education record stored or maintained by an educational agency.
3. State and federal laws,³ such as NYS Education Law §2-d and the Family Educational Rights and Privacy Act, that protect the confidentiality of a student's PII, 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.
4. A complete list of all student data elements collected by NYSED is available for public review at www.nysed.gov/data-privacy-security, and by writing to: Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, NY 12234.
5. The right to have complaints about possible breaches and unauthorized disclosures of student data addressed. Complaints may be submitted to NYSED online at 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, or by telephone at 518-474-0937.
6. To be notified in accordance with applicable laws and regulations if a breach or unauthorized release of their student's PII occurs.
7. Educational agency workers that handle PII will receive training on applicable state and federal laws, the educational agency's policies, and safeguards associated with industry standards and best practices that protect PII.
8. Educational agency contracts with vendors that receive PII will address statutory and regulatory data privacy and security requirements.

¹ "Parent" means a parent, legal guardian, or person in parental relation to a student. These rights may not apply to parents of eligible students defined as a student eighteen years or older. "Eligible Student" means a student 18 years and older.

² "Personally identifiable information," as applied to student data, means personally identifiable information as defined in section 99.3 of title thirty-four of the code of federal regulations implementing the family educational rights and privacy act, section twelve hundred thirty-two-g of title twenty of the United States code, and, as applied to teacher or principal data, means "personally identifying information" as such term is used in subdivision ten of section three thousand twelve-c of this chapter.

³ Information about other state and federal laws that protect student data such as the Children's Online Privacy Protection Act, the Protection of Pupil Rights Amendment, and NY's Personal Privacy Protection Law can be found at <http://www.nysed.gov/student-data-privacy/federal-laws-protect-student-data>.

Third-Party Contractor Supplemental Information

Contractor: Autodesk, Inc. (“Autodesk”) **Product:** Autodesk Tinkercad

Exclusive Purposes for Data Use:

The exclusive purposes for which a student data or teacher or principal data, as defined in New York Education Law Section 2-D, will be used by the third-party include the purposes described in this Student Data Privacy Agreement (“DPA”).

Subcontractor Data Use Details:

Autodesk will ensure that any subcontractors, persons or entities who handle student data or teacher or principal data are contractually required to obey the same data protection and security requirements that Autodesk is required to obey under state and federal law.

Contract Expiration and Data Handling:

The DPA expires in accordance with the terms of the DPA. When the DPA expires, protected data will, upon the written request of Educational Institution, be deleted by Autodesk in accordance with the terms of the DPA.

Data Accuracy and Correction Process:

Parents can challenge the accuracy of any student data stored by Educational Institution in the Service by following the school district’s procedure for requesting the amendment of education records under the Family Educational Rights and Privacy Act (FERPA).

Data Storage, Protection, and Encryption:

Student data or teacher or principal data provided to Autodesk by Educational Institution is stored in the United States. The measures that Autodesk takes to protect student data and teacher and principal data aligns with industry best practices including but not limited to, disk encryption, file encryption, firewalls, and password protection. Data encryption is employed at least to the extent required by Education Law Section 2-D.