

It's about ALL kids.

# Issue Paper

**DATE:**

05/19/2022

**AGENDA ITEM (ACTION ITEM):**

Consider/Approve Dixie Heights High School would like to enter into contract with Delta Math for the 2022/23 school year for the purpose of a school teacher license for Delta Math.

**APPLICABLE BOARD POLICY:**

01.1 Legal Status of the Board

**HISTORY/BACKGROUND:**

Each school year Dixie Heights High School contracts with Delta Math. The contract consists of the Teacher Integral License renewal which includes a teacher license for instructional videos, online assessments, student upload of notes, integration with Schoology, and a few other additional features.

**FISCAL/BUDGETARY IMPACT:**

The cost of the services is \$1,450.00 which will be paid from the Esser Grant funds allocated to Dixie Heights High School.

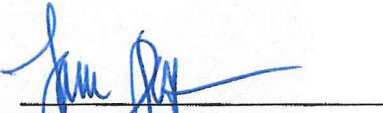
**RECOMMENDATION:**

Approval to Dixie Heights High School to enter into contract with Delta Math for the 2022/23 school year.

**CONTACT PERSON:**

Teresa Catchen/Nadia Osterbrock

  
\_\_\_\_\_  
Principal/Administrator

  
\_\_\_\_\_  
District Administrator

  
\_\_\_\_\_  
Superintendent

Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda. Principal –complete, print, sign and send to your Director. Director –if approved, sign and put in the Superintendent’s mailbox.

DeltaMath Solutions Inc.  
510 Hommocks Road  
Larchmont, NY 10538  
orders@deltamath.com



## Quote

### ADDRESS

Nadia Osterbrock  
Dixie Heights High School  
3010 Dixie Hwy  
Fort Mitchell, KY 41017

QUOTE # 13813

DATE 04/18/2022

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| DATE | ACTIVITY                          | DESCRIPTION  | QTY | RATE   | AMOUNT   |
|------|-----------------------------------|--|-----|--------|----------|
|      | <b>22-23 Teacher<br/>INTEGRAL</b> | DeltaMath INTEGRAL: teacher license for instructional videos, online assessments, print to pdf, student upload of notes, Canvas/Schoology integration, and additional features, SY 22-23 | 10  | 145.00 | 1,450.00 |

W9: <https://www.deltamath.com/files/w9.pdf>

|              |                     |
|--------------|---------------------|
| SUBTOTAL     | 1,450.00            |
| TAX          | 0.00                |
| <b>TOTAL</b> | <b>USD 1,450.00</b> |

Accepted By

Accepted Date

**Addendum to  
the DeltaMath Terms of Service Effective Date March 1, 2022 between  
the Kenton County Board of Education and DeltaMath Solutions, Inc.**

**WHEREAS**, the Kenton County Board of Education ("KCBOE"), and DeltaMath Solutions, Inc. ("DeltaMath") are parties to a Service Agreement composed of DeltaMath's Terms of Service, accessible at <https://www.deltamath.com/terms-of-service/>. The KCBOE and DeltaMath may be individually referred to as the "Party" or collectively referred to as the "Parties."

**WHEREAS**, the Parties agree to modify the terms contained in the Terms of Service, pursuant to the terms and conditions of this Addendum.

**WHEREAS**, all additions made herein shall be valid as if part of the DeltaMath's Terms of Service.

**NOW, THEREFORE**, the amendments are as follows:

Section Miscellaneous. is amended to read, as follows:

The failure of either party to exercise, in any respect, any right provided for herein shall not be deemed a *waiver* of any further rights hereunder. DeltaMath shall not be liable for any failure to perform its obligations hereunder where such failure results from any cause beyond DeltaMath's reasonable control. If any provision of this Agreement is found to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by you except with DeltaMath's prior written consent. DeltaMath may transfer, assign or delegate this Agreement and its rights and obligations without restriction. This Agreement is governed by and construed in accordance with the laws of the Commonwealth of Kentucky without regard to the conflict of laws provisions thereof. To the extent any dispute arising from or relating to the subject matter of this Agreement is permitted to be brought in a court of law, such claim shall be subject to the exclusive jurisdiction of the state and federal courts located in Kenton County, Kentucky, and for all purposes of this Agreement, you and DeltaMath consent to the exclusive jurisdiction and venue of such courts. Unless and solely to the extent that you or your Institution have a separate written agreement with DeltaMath that governs your use of the Service (in which case such agreement will control), we both agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that the Agreement may not be modified, except as otherwise provided herein. This Agreement and any subsequent versions of this Agreement posted to the Website will be deemed a writing signed by both parties. No agency, partnership, joint venture, or employment is created as a result of this Agreement and you do not have any authority of any kind to bind DeltaMath in any respect whatsoever.

**Term and Termination:** Termination for Convenience. Either party may terminate this agreement for convenience with at least sixty (60) days prior written notice, effective only at the end of the then-current annual subscription term.

**Kenton County Board of Education:**

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

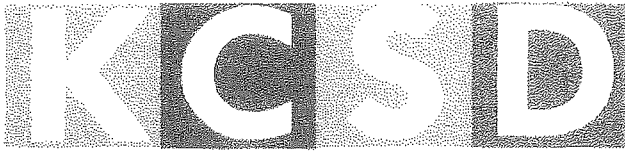
**DeltaMath Solutions, Inc.:**

Signed:  \_\_\_\_\_

Name: **Ben Peled** \_\_\_\_\_

Title: **Vice President** \_\_\_\_\_

Date: **5/6/22** \_\_\_\_\_



**THE KENTON COUNTY BOARD OF EDUCATION**  
1055 EATON DRIVE, FORT WRIGHT, KENTUCKY 41017  
TELEPHONE: (859) 344-8888 / FAX: (859) 344-1531  
WEBSITE: [www.kenton.kyschools.us](http://www.kenton.kyschools.us)  
*Dr. Henry Webb, Superintendent of Schools*

*Kenton County School District | It's about ALL kids*

## **VENDOR ASSURANCES REGARDING PROTECTION OF PERSONAL AND CONFIDENTIAL INFORMATION**

### **Data Security and Breach Protocols**

Vendors that receive Personal Information from Kenton County Board of Education (herein referred to as "KCBOE") as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the "Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

"Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

- a) An account number, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
- b) A Social Security number;
- c) A taxpayer identification number that incorporates a Social Security number;
- d) A driver's license number, state identification card number or other individual identification number issued by any agency as defined under the Act;
- e) A passport number or other identification number issued by the United States government; or
- f) Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g."

As provided in KRS 61.931(5), a "non-affiliated third party" includes any person or entity that has a contract or agreement with the KCBOE and receives (accesses, collects or maintains) personal information from the KCBOE pursuant to the contract or agreement.

The vendor hereby agrees to cooperate with the KCBOE in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

The vendor shall notify as soon as possible, but not to exceed seventy-two (72) hours, KCBOE, the Commissioner of the Kentucky State Police, the Kentucky Auditor of Public Accounts, the Commonwealth (Kentucky) Office of Technology, and the Commissioner of the Kentucky Department of Education of a determination of or knowledge of a breach, unless the exception set forth in KRS 61.932(2)(b)(2) applies and the vendor abides by the requirements set forth in that exception. Notification shall be in writing on a form developed by the Commonwealth (Kentucky) Office of Technology.

The vendor hereby agrees to report to the KCBOE, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor hereby agrees that the KCBOE may withhold payment(s) owed to the vendor for any violation of the Act's notification requirements.

The vendor hereby agrees to undertake a prompt and reasonable investigation of any security breach as defined under the Act in accordance with KRS 61.933.

Upon conclusion of an investigation of a security breach as defined under the Act as required by KRS 61.933, the vendor hereby agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.

In accordance with KRS 61.932(2)(a), the vendor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth (Kentucky) Office of Technology and that are reasonably designed to protect the Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction.

### **Student Data Security**

Pursuant to KRS 365.734, if the vendor is a cloud computing service provider (which is defined pursuant to KRS 365.734(1)(b) as any person or entity other than an educational institution that operates cloud computing services) or, through service to the KCBOE, becomes the equivalent of a cloud computing service provider, the vendor further hereby agrees that:

- The vendor shall not process student data as defined pursuant to KRS 365.734 for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the vendor receives express permission from the student's parent. The vendor shall work with the KCBOE to determine the best method of collecting parental permission.
- With a written agreement for educational research, the vendor may assist the KCBOE to conduct educational research as permitted by the Family Educational Rights and Privacy Act of 1974, as amended, 20 U.S.C. sec. 1232g.
- Pursuant to KRS 365.734, the vendor shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.
- Pursuant to KRS 365.734, the vendor shall not sell, disclose, or otherwise process student data for any commercial purpose.
- Pursuant to KRS 365.734, the vendor shall certify in writing to the agency that it will comply with KRS 365.734(2).

### **Family Educational Rights and Privacy Act, National School Lunch Act and Child Nutrition Act**

If during the course of this agreement, the KCBOE discloses to the vendor any data protected by the Family Educational Rights and Privacy Act of 1974 (FERPA), as amended (20 U.S.C. sec. 1232g, *et seq.*), and its regulations, and data protected by the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. sec. 1751 *et seq.*), and the Child Nutrition Act of 1966 (CNA) (42 U.S.C. sec. 1771 *et seq.*), the vendor agrees that it is bound by and will comply with the confidentiality, security and redisclosure requirements and restrictions stated in FERPA, NSLA and CNA.

The vendor hereby agrees to report to the KCBOE, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor agrees that FERPA-protected information is confidential information. FERPA-protected information includes, but is not limited to the student's name, the name of the student's parent or other family members, the address of the student or student's family, a personal identifier, such as the student's social security number, student number, or biometric record, other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name, and other information that, alone or in combination, is linked or linkable to a specific

student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

The vendor understands and acknowledges that any unauthorized disclosure of confidential information is illegal as provided in FERPA and in the implementing federal regulations found in 34 CFR, Part 99. The penalty for unlawful disclosure is a fine of not more than \$250,000 (under 18 U.S.C. sec. 3571) or imprisonment for not more than five years (under 18 U.S.C. sec. 3559), or both.

The vendor understands and acknowledges that children's free and reduced price meal and free milk eligibility information or information from the family's application for eligibility, obtained under provisions of the NSLA or the CNA is confidential information and that any unauthorized disclosure of confidential free and reduced price lunch information or information from an application for this benefit is illegal. The penalty for unlawful disclosure is a fine of not more than \$1,000.00 (under 7 C.F.R. 245.6) or imprisonment for up to one year (under 7 C.F.R. 245.6), or both.

In the event there is a conflict between this agreement and any other agreement between KCBOE and Vendor, the terms of this agreement shall apply.

**DeltaMath Solutions Inc.**

Vendor Name

2005 Palmer Ave #1094; Larchmont, NY 10538

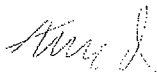
Vendor Address

(917) 434-8916

Vendor Telephone

ben@deltamath.com

Vendor Email Address



Signature by Vendor's Authorized Representative

**Ben Peled**

Print Name

5/6/22

Date

## Terms of Service

*Effective Date: March 1, 2022*

Thank you for your interest in using the online services operated by DeltaMath ("DeltaMath", "we" or "us"). These Terms of Service ("Terms" or "Agreement") govern your use of DeltaMath's online services (the "Services"). Please continue reading to learn about the terms by which you may use our Services.

These Terms apply to all schools, school districts, or teachers (collectively referred to as "Schools") as well as students and parents, who use the Services; (collectively along with "Schools" referred to as "Users" or "you").

By accessing or using the Services, creating an account, or by otherwise affirmatively stating your desire to use the Services, you signify that you have read, understood, and agree to be bound by this Agreement and to the collection and use of your information as set forth in the DeltaMath Privacy Policy, otherwise you may not use the Services. Because our Services



change relatively often, the terms in this Agreement and our Privacy Policy may change too. Upon making changes, we will update the “Effective Date” found at the top of this page. Your continued use of the Services after any changes constitutes your acceptance of the new terms.

## **DeltaMath's Service**

DeltaMath is an online math practice and learning site. Students will register with a teacher code and complete assignments made by their teacher.

As long as you are complying with all of the terms and conditions of this Agreement, DeltaMath gives you permission to access and use the Service. The Service is available for your personal, noncommercial use. We are constantly changing and improving our Services. We may add or remove functionalities or features, and we may suspend or stop a Service altogether, including, for example, if you do not comply with this Agreement or if we are investigating suspected misconduct. We may also stop providing Service to you, or add or create new limits to our Service or restrict your access to all or part of the Service at any time without notice or liability.

In particular, individual teacher licenses, paid or unpaid, are intended for single-teacher use. We reserve the right to reach out to end-users and/or revoke access in cases where it appears more than one teacher is using an account without our prior consent.

The right to access and use the Service is revoked in jurisdictions where it may be prohibited, if any.

## **Refund Policy**

Refunds for site or individual teacher licenses are available within one month (30 days) of purchase. Full or partial refunds are not available after that time, and in no case will unused licenses roll over to the next school year. Contact [orders@deltamath.com](mailto:orders@deltamath.com) to request a refund.

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## Personal Information and Student Data

The U.S. Children's Online Privacy and Protection Act ("COPPA") requires that online service providers obtain verifiable parental consent before collecting personal information from children under 13. If you are a School providing the Service to children under 13 (whether in the U.S. or elsewhere), you represent and warrant that you have received consent from parents, or have the authority to provide consent on behalf of parents, for us to collect information from students before allowing children under 13 to access DeltaMath Services. We recommend that all Schools provide appropriate disclosures to students and parents regarding their use of service providers such as DeltaMath.

When DeltaMath is used by a School for an educational purpose, DeltaMath may collect or have access to Student Data that is provided by the School or by the Student. "Student Data" is personal information that is directly related to an identifiable Student and may include "educational records" as defined by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(g).

**Confidentiality.** DeltaMath agrees to treat Student Data as confidential and not to share it with third parties other than as described in these Terms, and in our Privacy Policy.

**Student Data Access.** You authorize DeltaMath to access or collect Student Data for the purpose of providing the Service. In the U.S., DeltaMath shall collect and process Student Data as a School Official with a legitimate educational interest pursuant to FERPA 34 CFR Part 99.31(a)(1).

**Personal Information and Student Data Consents and Authority.** If you are School User, you represent and warrant that you have provided appropriate disclosures to your School and to parents regarding your sharing such Personal Information with DeltaMath. Both Parties agree to uphold their obligations under the Family Educational Rights and Privacy Act ("FERPA"), the Protection of Pupil Rights Amendment ("PPRA"), and the Children's Online Privacy and

Protection Act (“COPPA”) and applicable State laws relating to student data privacy. DeltaMath relies on each School to obtain and provide appropriate consent and disclosures, if necessary, for DeltaMath to collect any Student Data, including the collection of Student Data directly from students under 13, as permitted under COPPA. You agree to comply with these Terms and all laws and regulations governing the protection of personal information, including children’s information, and the sharing of student education records.

**Use of Student Data.** By submitting or providing us access to Student Data, you agree that DeltaMath may use the Student Data solely for the purposes of (i) providing the Service, (ii) improving and developing our Service, (iii) enforcing our rights under these Terms, and (iv) as permitted with the School’s or the User’s consent. DeltaMath shall not use Student Data to engage in targeted advertising.

**Use of Anonymized Student Data.** You agree that we may collect and use data derived from Student Data for our own purposes, such as for product development, research analytics, and marketing our Service, provided that such data will be de-identified and/or aggregated to reasonably avoid identification of a specific individual.

**Use of Personal Information for Marketing.** You agree that DeltaMath may provide information about new DeltaMath features and offerings to school or district administrative users and teachers from time to time, provided that such advertisements shall not be based on Student Data. For emphasis, and without limitation, DeltaMath shall never use Student Data to engage in targeted advertising, nor shall DeltaMath direct advertising to student users.

**Third-Party Service Providers.** You acknowledge and agree that DeltaMath may provide access to Student Data to our employees and service providers, which have a legitimate need to access such information in order to provide their services to us. We and our employees, affiliates, service providers, or agents involved in the handling, transmittal, and processing of Student Data will be required to maintain the confidentiality of such data.

**Student Data Retention and Deletion Requests.** DeltaMath retains Student Data, but for educational purposes only. Oftentimes students will want to refer back to their DeltaMath student accounts for college or other future courses. However, if a student does not utilize their account for a period of two years, their account and personally identifiable information will be deleted. Additionally, Schools may request that we delete Student Data in our possession at any time by providing such a request in writing. We shall respond to the deletion request as soon as possible, but in most instances within 45 days, other than for data stored on backup tapes which shall be deleted in the ordinary course of business. A Parent seeking to modify, correct, or delete personal information in a Student Account that is connected to an active School account will be instructed to contact the School to discuss data deletion or modification. We are not required to delete data that has been derived from Student Data so long as it has been anonymized such that it does not reasonably identify an individual.

## **Use License**

The Service and the DeltaMath Technology are intended solely for the personal, non-commercial use of our users and may only be used in accordance with this Agreement. "DeltaMath Technology" means all past, present and future content of the Service, including, all the software, hardware and technology used to provide the Service (including DeltaMath proprietary code and third-party software), user interfaces, materials displayed or performed on the Service, such as text, graphics, articles, graphs, photographs, images, illustrations and the design, structure, sequence and "look and feel" of the Services, and all other intellectual property. DeltaMath Technology is protected by copyright and other intellectual property laws. You are not allowed to use, store, copy, reproduce, modify, translate, publish, broadcast, transmit, distribute, perform, upload, create derivative works from, display, license, sell or otherwise exploit the DeltaMath Technology for any purposes other than as expressly permitted under this Agreement. You will not decompile, reverse engineer, or otherwise attempt to obtain the source code of any DeltaMath Technology.

Using our Service does not give you ownership of any intellectual property rights in our Service or the DeltaMath Technology. You may not use content from our Services, unless you obtain permission from its owner or are otherwise permitted by law. Don't remove, obscure, or alter any copyright or other legal notices displayed in or along with our Services.

By using the Services, you agree not to do any of these things: (i) copy, distribute, or disclose any part of the Services in any medium, including but not limited to by any automated or non-automated "scraping"; (ii) use any automated system, including but not limited to "robots," "spiders," "offline readers," etc., to access the Services in a manner that sends more request messages to the DeltaMath servers than a human can reasonably produce in the same period of time by using a conventional online web browser; (iii) transmit spam, chain letters, or other unsolicited email; (iv) attempt to interfere with, compromise the system integrity or security or decipher any transmissions to or from the servers running the Services; (v) take any action that imposes, or may impose an unreasonable or disproportionately large load on our infrastructure; (vi) transmit any malicious software agents through the Services; (vii) collect or harvest any third-party personally identifiable information, including account names or Student Data (as defined above), from the Services; (viii) use the Services for any commercial solicitation purposes; (ix) impersonate another person or otherwise misrepresenting your affiliation with a person or entity, conducting fraud, hiding or attempting to hide your identity; (x) interfere with the proper working of the Services; (xi) access any content on the Services through any technology or means other than those provided or authorized by the Services; or (xii) bypass the measures we use to prevent or restrict access to the Services, including but not limited to features that prevent or restrict use or copying of any content or enforce limitations on use of the Services or related content.

## **Privacy**

Your privacy is extremely important to us, and we take great care to limit what we collect and how we use it, and to enable you to understand our policies. Please read our [Privacy](#)

Policy which explains how we treat your personal information and protect your privacy when you use our Service. By using our Service, you agree that DeltaMath can use such data in accordance with our Privacy Policy.

## **Passwords and Security**

You are responsible for maintaining the confidentiality of your DeltaMath password, and you are solely responsible for all activities that occur under your password. You agree to immediately notify DeltaMath of any unauthorized use of your password or any other breach of security related to the DeltaMath Services. DeltaMath may require you to alter your password if we believe that your password is no longer secure.

## **Links**

DeltaMath has not reviewed all of the sites linked to its website and is not responsible for the contents of any such linked site. The inclusion of any link does not imply endorsement by DeltaMath of the site. Use of any such linked website is at the user's own risk.

## **Modifications**

DeltaMath may revise these terms of service for its website at any time without notice. By using this website you are agreeing to be bound by the then current version of these terms of service.

## **Disclaimer and Limitations of Liability**

a. You agree that use of the DeltaMath services is at your sole risk. The DeltaMath services are provided on an "as is" and "as available" basis. DeltaMath expressly disclaims all warranties of any kind, whether express or implied, with respect to the DeltaMath services, including, but not

limited to, the implied warranties of merchantability, fitness for a particular use or purpose, and non-infringement. You acknowledge that access to data and materials available through the DeltaMath services is not guaranteed and that DeltaMath will not be responsible to you for any loss of data or materials caused by the DeltaMath services or their unavailability. You understand and agree that any data, materials, services and/or information downloaded or otherwise obtained through the use of the DeltaMath services is done at your own discretion and risk and that you will be solely responsible for any damage arising therefrom.

b. Under no circumstances will DeltaMath or its officers, employees, directors, shareholders, agents, or licensors be liable under any theory of liability (whether in contract, tort, statutory, or otherwise) for any damages whatsoever, including direct, indirect, incidental, special, consequential or exemplary damages, including but not limited to, damages for loss of money, revenues, profits, goodwill, use, data or other intangible losses (even if such parties were advised of, knew of or should have known of the possibility of such damages), resulting from your (or anyone using your account's) use of the DeltaMath services.

c. If, notwithstanding these Terms, DeltaMath is found to be liable to you or any third party in connection with your use of the DeltaMath services, the total liability of DeltaMath and its officers, employees, directors, shareholders, agents, or licensors to you or to any third party is limited to one hundred U.S. Dollars (\$100).

d. *Exclusions And Limitations.* Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of liability for certain damages. Accordingly, some of the above limitations and disclaimers may not apply to you. To the extent that DeltaMath may not, as a matter of applicable law, disclaim any implied warranty or limit its liabilities, the scope and duration of such warranty and the extent of DeltaMath's liability will be the minimum permitted under such applicable law.

## **Indemnification**

You agree to indemnify, defend, and hold harmless DeltaMath and its officers, directors, employees, consultants and agents from and against any and all claims, liabilities, damages, losses, costs, expenses, fees (including reasonable attorneys' fees) that such parties may incur as a result of or arising from your (or anyone using your account's) violation of these Terms. DeltaMath reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, and in such case, you agree to cooperate with DeltaMath's defense of such claim.

## **Termination**

This Agreement shall remain in full force and effect while you use the Service. DeltaMath may suspend or terminate your access to the Service or your account at any time, for any reason (without cause or for your violation of any term of this Agreement), and without warning or notice, which may result in the loss of information associated with your account. Upon termination of your account, your right to use the Service will immediately cease. All provisions of this Agreement which, by their nature, should survive termination, shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, and limitations of liability.

## **Miscellaneous**

The failure of either party to exercise, in any respect, any right provided for herein shall not be deemed a waiver of any further rights hereunder. DeltaMath shall not be liable for any failure to perform its obligations hereunder where such failure results from any cause beyond DeltaMath's reasonable control. If any provision of this Agreement is found to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by you except with DeltaMath's prior written consent.



DeltaMath may transfer, assign or delegate this Agreement and its rights and obligations without restriction. This Agreement is governed by and construed in accordance with the laws of the State of New York without regard to the conflict of laws provisions thereof. To the extent any dispute arising from or relating to the subject matter of this Agreement is permitted to be brought in a court of law, such claim shall be subject to the exclusive jurisdiction of the state and federal courts located in New York County, New York, and for all purposes of this Agreement, you and DeltaMath consent to the exclusive jurisdiction and venue of such courts. Unless and solely to the extent that you or your Institution have a separate written agreement with DeltaMath that governs your use of the Service (in which case such agreement will control), we both agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that the Agreement may not be modified, except as otherwise provided herein. This Agreement and any subsequent versions of this Agreement posted to the Website will be deemed a writing signed by both parties. No agency, partnership, joint venture, or employment is created as a result of this Agreement and you do not have any authority of any kind to bind DeltaMath in any respect whatsoever.

*Effective Date: November 14, 2020*

DeltaMath (“we” or “DeltaMath”) is committed to protecting the privacy of teachers and students. This Privacy Policy will explain (i) what information DeltaMath collects from you and why we collect it, (ii) how we use and share that information, and (iii) the choices you have, including how to access, update and delete your information.

## **How we Collect and Use Information**

**Teacher Registration and Class Setup:** We ask for certain information when a teacher registers with DeltaMath. Teachers must provide a school name and address where they currently teach and also their full name and salutation. This information will be shown to students when they register so they are confident they are registering for the correct class. Teachers must also provide an email address and password. The email and password are used for login purposes to protect student data that only teachers have access to. The email address may also be used to send infrequent updates about DeltaMath. The teachers must also provide information about the classes they are teaching. This allows the teacher to create assignments on a per class basis and the students will select the correct section from a dropdown box when they register for the class.

**Student Registration:** Students may only sign up for a DeltaMath account with a valid teacher code from a registered DeltaMath teacher. The students are given the teacher code and the students are responsible for creating their own account. Students must enter their full name, email address, password and select the correct class section when creating the account. The email addresses are used for a unique login as well as password recovery initiated by the student. In order to improve privacy, there is an option in the teacher "Tools" that allows email addresses to *not* be used during registration. In this case, the teacher could assign non personally identifiable usernames and nicknames in order to increase student anonymity. The only users that will be able to see the student personally identifiable information are the teachers for whom the student has registered. The student's teachers are *not* able to see their students' passwords, but the teacher is able to reset the password of a student in the event that a student has forgotten their password.

**Assignment Data:** The primary purpose of DeltaMath is for teachers to put up assignments and for students to complete them. Teachers will create assignments, specifying relevant math problems for students to complete. Teachers have the opportunity to share their assignments with all DeltaMath users, but the default is that all assignments created are private. Students will complete the assignments and data will be collected regarding student progress. This data includes which problems were attempted, the time at which each problem was attempted, the answers the student submitted and whether they were correct, the duration the student was working on each problem, whether each assignment was completed on time and the completion percentage for each

assignment. Some problems have corresponding videos and data is collected on whether the student watched the videos and for how long. If the teacher decides to assign a "Test Correction" assignment, the students are required to enter in their grade on the given test or quiz and input which questions they got wrong in order for a customized assignment to be made for the student. All of this data is available to the student's teacher(s) in order to use the information for student accountability purposes or to inform their instruction. The information is also available to all future, past and concurrent teachers added by the student in order for each teacher to understand their students' strengths and weaknesses to the fullest extent.

**Automatically Collected Data:** We automatically collect certain technical usage information when you use the DeltaMath Services ("Usage Data"). Usage Data includes the information that your web browser or mobile application automatically sends to our servers whenever you visit. The Usage Data collected in our logs may include information such as your web request, Internet Protocol address, operating system, browser type, browser language, referring / exit pages and URLs, platform type, click history, domain names, landing pages, pages viewed and the order of those pages, the amount of time spent on particular pages, the date and time of your request, and whether you opened an email. Typically, this information is collected through log files, web beacons, browser cookies, or other device identifiers that may uniquely identify your browser or device. Teachers are able to see the IP addresses of their students for any given problem solved in order to ensure that multiple accounts are not signing in from the same computer possibly indicating one student is signing into another student's account to complete work under a false identity. In addition, the DeltaMath Services may use third party analytics and bug tracking software (including, without limitation, Google Analytics) to collect further Usage Data regarding the online usage patterns of our users and bugs in our Services. We may combine Usage Data with Personal Data in a manner that enables us to trace Usage Data to an individual user. We do not permit third party advertising networks or other third parties to collect information about your browsing behavior from our website for advertising purposes.

## **How we Share Your Information**

DeltaMath does not sell or rent any of your, or your child's, personal information to any third party for any purpose - including for advertising or marketing purposes. Targeted advertising is not permitted on DeltaMath. We use the information we collect from you to provide you with the best DeltaMath experience. More specifically, this information is used to:

- Provide and improve the Service, for example by developing new products and features
- Respond to your requests for information or customer support
- Customize the Service for you, and improve your experience with it
- Send you information about new features and DeltaMath products we believe you may be interested in

We use automatically collected information (described in the “Automatically Collected Data” section above) to provide and support our Service, and for the additional uses described in this section of our Privacy Policy.

We do not share personal information with any third parties except in the limited circumstances described in this Privacy Policy:

**Service Providers:** Targeted advertising is not permitted on DeltaMath. We do work with vendors, service providers, and other partners to help us provide the Service by performing tasks on our behalf. We may need to share or provide information (including personal information) to them to help them perform these business functions, for example sending emails on our behalf, database management services, database hosting, and security. Generally, these service providers do not have the right to use your personal information we share with them beyond what is necessary to assist us. Additionally, these service providers must adhere to the same standards of data privacy and security as those detailed herein, particularly with regard to protected personal information.

**Analytics Services:** We use analytics services, including mobile analytics software, to help us understand and improve how the Service is being used. These services may collect, store and use information in order to help us understand things like how often you use the Service, the events that occur within the application, usage, performance data, and from where the application was downloaded.

**Aggregated Information and Non-Identifying Information:** We may share aggregated, non-personally identifiable information publicly, including with users, partners or the press in order to, for example, demonstrate how DeltaMath is used, spot industry trends, or to provide marketing materials for DeltaMath. Any aggregated information shared this way will not contain any personal information.

**Legal Requirements:** We may disclose personal information if we have a good faith belief that doing so is necessary to comply with the law, such as complying with a subpoena or other legal process. We may need to disclose personal information where, in good faith, we think it is necessary to protect the rights, property, or safety of DeltaMath, our employees, our community, or others, or to prevent violations of our Terms of Service or other agreements. This includes, without limitation, exchanging information with other companies and organizations for fraud protection or responding to government requests.

**Sharing with DeltaMath Companies:** Over time, DeltaMath may grow and reorganize. We may share your personal information with affiliates such as a parent company, subsidiaries, joint venture partners or other companies that we control or that are under common control with us, in which case we will require those companies to agree to use your personal information in a way that is consistent with this Privacy Policy.

**Change of Control:** If we sell, divest or transfer DeltaMath or a portion of DeltaMath, we will not transfer Student personal information without first giving you the ability to opt-out of the transfer by deleting your account, unless the

new owner intends to maintain and provide the Service as a going concern, and provided that the new owner has agreed to data privacy standards no less stringent than our own. We may also transfer personal information – under the same conditions – in the course of mergers, acquisitions, bankruptcies, dissolutions, reorganizations, liquidations, similar transactions or proceedings involving all or a portion of our business.

## **How we Store and Protect Your Information**

**Storage and Processing:** Any information collected through the Service is stored and processed in the United States. If you use our Service outside of the United States, you consent to have your data transferred to the United States.

**Keeping Information Safe:** DeltaMath maintains strict administrative, technical and physical procedures to protect information stored in our servers, which are located in the United States. We use highly rated hosting providers with onsite 24-hour security and teams of experts dedicated to monitoring network security. Access to information is limited through user/password credentials by the administrator of the website only. When you enter any information anywhere on the Service, we encrypt the transmission of that information using secure socket layer technology (SSL/TLS) by default. We ensure passwords are stored and transferred securely using encryption, salted hashing and key stretching to prevent brute force password cracking.

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, we will attempt to notify you electronically (subject to any applicable laws) so that you can take appropriate protective steps; for example, we may post a notice on our homepage ([www.deltamath.com](http://www.deltamath.com)) or elsewhere on the Service, and may send an email to you at the email address you have provided to us.

## **How to Update or Delete Your Information**

**Account Information and Settings:** Schools and students may update account information, such as email, password and name, by signing into their account and clicking "Tools". Schools and other website users can opt-out of receiving promotional email from us by clicking on the "unsubscribe" feature at the bottom of each any email sent to them. Teachers may change a password or alter a name of any student account who has added the teacher code of that teacher to their student account.

If you have any questions about reviewing or modifying account information, contact us directly at [info@deltamath.com](mailto:info@deltamath.com).

**Deleting Your Account and Information:** If you would like to delete your account and information from the site, please contact [info@deltamath.com](mailto:info@deltamath.com) and your request will be honored within a reasonable amount of time. The request should be made from the email address associated with the account to ensure it is a legitimate request. If you are a student or a parent of a student of an active School account, the request must be made by the School as an intermediary in order to give the School ample chance to download information from the site that may be used for legitimate educational purposes. We may maintain anonymized, aggregated data, including usage data, for analytics purposes.

## **Children's Privacy**

DeltaMath does not knowingly collect any information from children under the age of 13 unless and until the School has obtained appropriate parental consent for the student to use the Service. Because DeltaMath collects and uses Student Data at the direction of and under the control of a School, DeltaMath relies on each School to provide appropriate notice to parents of the School's use of third party service providers such as DeltaMath, and for the Schools to provide consent, if necessary, and authorization for DeltaMath to collect Student Data, as permitted by the Children's Online Privacy Protection Act (COPPA). Please contact us at [info@deltamath.com](mailto:info@deltamath.com) if you believe we have inadvertently collected personal information of a child under 13 without proper consent so that we may delete such data as soon as possible.

## **Changes and Updates**

This Privacy Policy may be revised periodically and this will be reflected in the "Effective Date" at the top of this page. Your continued use of the DeltaMath Services following such update constitutes your agreement to the revised Privacy Policy.