

Version 2.0 Agreement Approved: June 2019

DATA PRIVACY AGREEMENT (DPA) FOR TEXAS K-12 INSTITUTIONS

**Wichita Falls ISD**

08/19/2022

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LEA NAME [Box 1]

DATE [Box 2]

and

**Imagine Learning LLC**

8/12/2022

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OPERATOR NAME [Box 3]

DATE [Box 4]

### **Background and Instructions**

**History of Agreement-** This agreement has been drafted by the Texas Student Privacy Alliance (TXSPA). The Alliance is a collaborative group of Texas school districts that share common concerns around student and data privacy. The Texas K-12 CTO Council is the organization that sponsors the TXSPA and the TXSPA is the Texas affiliate of the national Student Data Privacy Consortium (SDPC). The SDPC works with other state alliances by helping establish common data privacy agreements unique to the jurisdiction of each state. This Texas agreement was drafted specifically for K-12 education institutions and included broad stakeholder input from Texas school districts, statewide associations such as TASB, TASA, and TASBO, and the Texas Education Agency. The purpose of this agreement is to set standards of both practice and expectations around data privacy such that all parties involved have a common understanding of expectations. This agreement also provides a mechanism (Exhibit E- General Offer of Terms) that would allow an Operator to extend the ability of other Texas school districts to be covered under the terms of the agreement should an Operator sign Exhibit E. This mechanism is intended to create efficiencies for both Operators and LEAs and generally enhance privacy practices and expectations for K-12 institutions and for companies providing services to K-12 institutions.

**Instructions for Operators:** This agreement is intended to be provided to an Operator from a LEA. The Operator should fully read the agreement and is requested to complete the below areas of the agreement. Once the Operator accepts the terms of the agreement, the Operator should wet sign the agreement and return it to the LEA. Once the LEA signs the agreement, the LEA should provide a signed copy of the agreement to the Operator.

<b>Article/Exhibit</b>	<b>Box #</b>	<b>Description</b>
Cover Page	Box # 3	Official Name of Operator
Cover Page	Box # 4	Date Signed by Operator
Recitals	Box #5	Contract Title for Service Agreement
Recitals	Box #6	Date of Service Agreement
Article 7	Boxes #7-10	Operator's designated representative
Signature Page	Boxes #15-19	Authorized Operator's representative signature
Exhibit A	Box #25	Description of services provided
Exhibit B	All Applicable Boxes	<input checked="" type="checkbox"/> Operator notates if data is collected to provide the described services. <input checked="" type="checkbox"/> Defines the schedule of data required for the Operator to provide the services outlined in Exhibit A
Exhibit D	All Applicable Boxes	(Optional Exhibit): Defines deletion or return of data expectations by LEA

Exhibit E	All Applicable Boxes	(Optional Exhibit): Operator may, by signing the Form of General Offer of Privacy Terms (General Offer, attached as <u>Exhibit E</u> ), be bound by the terms of this DPA to any other Subscribing LEA who signs the acceptance in said Exhibit.
Exhibit F	Boxes # 25-29	A list of all Subprocessors used by the Operator to perform functions pursuant to the Service Agreement, list security programs and measures, list Operator's security measures

**Instructions for LEA and/or Subscribing LEA:** This agreement is intended to be provided to an Operator from a LEA. Upon receiving an executed agreement from an Operator, the LEA should fully review the agreement and if agreeable, should have an authorized LEA contact wet sign the agreement. Once signed by both the Operator and LEA, the LEA should send a copy of the signed agreement to the Operator.

Article/Exhibit	Box #	Description
Cover Page	Box # 1	Official Name of LEA
Cover Page	Box #2	Date Signed by LEA
Article 7	Boxes #11-14	LEA's designated representative
Signature Page	Boxes #20-24	Authorized LEA representative's signature
Exhibit D	All Applicable Boxes	(Optional Exhibit): Defines deletion or return of data expectations by LEA
Exhibit E	All Applicable Boxes	(Optional Exhibit) Only to be completed by a Subscribing LEA
Exhibit F	All Applicable Boxes	Completed by Operator

## RECITALS

**WHEREAS**, the Operator has agreed to provide the Local Education Agency (“LEA”) with certain digital educational services (“Services”) according to a contract titled “Price Quote” [Box 5] and dated 09/01/2022 (the “Service Agreement”), and [Box 6]

**WHEREAS**, in order to provide the Services described in the Service Agreement, the Operator may receive or create and the LEA may provide documents or data that are covered by federal statutes, among them, the Federal Educational Rights and Privacy Act (“FERPA”) at 20 U.S.C. 1232g (34 CFR Part 99), Children’s Online Privacy Protection Act (“COPPA”), 15 U.S.C. 6501-6506, and Protection of Pupil Rights Amendment (“PPRA”) 20 U.S.C. 1232h; and

**WHEREAS**, the documents and data transferred from LEAs and created by the Operator’s Services are also subject to state student privacy laws, including Texas Education Code Chapter 32; and

**WHEREAS**, the Operator may, by signing the "General Offer of Privacy Terms", agree to allow other LEAs in Texas the opportunity to accept and enjoy the benefits of this DPA for the Services described within, without the need to negotiate terms in a separate DPA.

**NOW THEREFORE**, for good and valuable consideration, the parties agree as follows:

### ARTICLE I: PURPOSE AND SCOPE

1. **Nature of Services Provided.** The Operator has agreed to provide digital educational services as outlined in Exhibit A and the Agreement.
2. **Purpose of DPA.** For Operator to provide services to the LEA it may become necessary for the LEA to share certain LEA Data. This DPA describes the Parties’ responsibilities to protect Data.
3. **Data to Be Provided.** In order for the Operator to perform the Services described in the Service Agreement, LEA shall provide the categories of data described in the Schedule of Data, attached as Exhibit B.
4. **DPA Definitions.** The definitions of terms used in this DPA are found in Exhibit C. In the event of a conflict, definitions used in this DPA shall prevail over terms used in the Service Agreement.

## ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

1. **Ownership of Data.** All Data transmitted to the Operator pursuant to the Service Agreement is and will continue to be the property of and under the control of the LEA. The Operator further acknowledges and agrees that all copies of such Data transmitted to the Operator, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this DPA in the same manner as the original Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to Data contemplated per the Service Agreement shall remain the exclusive property of the LEA.
2. **Operator Materials.** Operator retains all right, title and interest in and to any and all of Operator's software, materials, tools, forms, documentation, training and implementation materials and intellectual property ("Operator Materials"). Operator grants to the LEA a personal, nonexclusive license to use the Operator Materials for its own non-commercial, incidental use as set forth in the Service Agreement. Operator represents that it has all intellectual property rights necessary to enter into and perform its obligations in this DPA and the Service Agreement, warrants to the District that the District will have use of any intellectual property contemplated by the Service Agreement free and clear of claims of any nature by any third Party including, without limitation, copyright or patent infringement claims, and agrees to indemnify the District for any related claims.
3. **Parent Access.** LEA shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Data on the pupil's records, correct erroneous information, and procedures for the transfer of pupil-generated content to a personal account, consistent with the functionality of services. Operator shall respond in a reasonably timely manner (and no later than 28 days from the date of the request) to the LEA's request for Data in a pupil's records held by the Operator to view or correct as necessary. In the event that a parent of a pupil or other individual contacts the Operator to review any of the Data accessed pursuant to the Services, the Operator shall refer the parent or individual to the LEA, who will follow the necessary and proper procedures regarding the requested information.
4. **Data Portability.** Operator shall, at the request of the LEA, make Data available including Pupil Generated Content in a readily accessible format.
5. **Third Party Request.** Should a Third Party, including law enforcement or a government entity, contact Operator with a request for data held by the Operator pursuant to the Services, the Operator shall immediately (within 1 business day), and to the extent legally permitted, redirect the Third Party to request the data directly from the LEA, notify the LEA of the request, and provide a copy of the request to the LEA. Furthermore, if legally permissible, Operator shall promptly notify the LEA of a subpoena compelling disclosure to a Third Party and provide a copy of the subpoena with sufficient time for the LEA to raise objections to the subpoena. The Operator will not use, disclose, compile, transfer, or sell the Data and/or any portion thereof to any third party or other entity or allow any other third party or other entity to use, disclose, compile, transfer or sell the Data and/or any portion thereof. Notwithstanding any provision of this DPA or Service Agreement to the contrary, Operator understands that the LEA is subject to and will comply with the Texas Public Information Act (Chapter 552, Texas Government Code). Operator understands and agrees that information, documentation and other material in connection with the DPA and Service Agreement may be subject to public disclosure.
6. **No Unauthorized Use.** Operator shall use Data only for the purpose of fulfilling its duties and obligations under the Service Agreement and will not share Data with or disclose it to any Third Party without the prior written consent of the LEA, except as required by law or to fulfill its duties and obligations under the Service Agreement.
7. **Subprocessors.** All Subprocessors used by the Operator to perform functions pursuant to the Service Agreement shall be identified in Exhibit F. Operator shall either (1) enter into written agreements with all

Subprocessors performing functions pursuant to the Service Agreement, such that the Subprocessors agree to protect Data in a manner the same as or better than as provided pursuant to the terms of this DPA, or (2) indemnify and hold harmless the LEA, its officers, agents, and employees from any and all claims, losses, suits, or liability including attorneys' fees for damages or costs resulting from the acts or omissions of its Subprocessors. Operator shall periodically conduct or review compliance monitoring and assessments of Subprocessors to determine their compliance with this DPA. Subprocessors shall agree to the provisions of the DPA regarding governing law, venue, and jurisdiction.

### ARTICLE III: DUTIES OF LEA

1. **Provide Data In Compliance With State and Federal Law.** LEA shall provide data for the purposes of the Service Agreement in compliance with FERPA, COPPA, PPRA, Texas Education Code Chapter 32, and all other Texas privacy statutes cited in this DPA as these laws and regulations apply to the contracted services. The LEA shall not be required to provide Data in violation of applicable laws. Operator may not require LEA or users to waive rights under applicable laws in connection with use of the Services.
2. **Consider Operator as School Official.** The Parties agree that Operator is a "school official" under FERPA and has a legitimate educational interest in personally identifiable information from education records. For purposes of the Service Agreement and this DPA, Operator: (1) provides a service or function for which the LEA would otherwise use employees; (2) is under the direct control of the LEA with respect to the use and maintenance of education records; and (3) is subject to the requirements of FERPA governing the use and redisclosure personally identifiable information from education records
3. **Reasonable Precautions.** LEA shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the services and hosted data.
4. **Unauthorized Access Notification.** LEA shall notify Operator promptly of any known unauthorized access. LEA will assist Operator in any efforts by Operator to investigate and respond to any unauthorized access.

### ARTICLE IV: DUTIES OF OPERATOR

1. **Privacy Compliance.** Operator may receive Personally Identifiable Information ("PII") from the District in the course of fulfilling its duties and obligations under the Service Agreement. The Operator shall comply with all applicable State and Federal laws and regulations pertaining to data privacy and security including FERPA, COPPA, PPRA, Texas Education Code Chapter 32, and all other Texas privacy statutes cited in this DPA.
2. **Employee Obligation.** Operator shall require all employees and agents who have access to Data to comply with all applicable provisions of this DPA with respect to the data shared under the Service Agreement. Operator agrees to require and maintain an appropriate confidentiality agreement from each employee or agent with access to Data pursuant to the Service Agreement.
3. **De-identified Information.** De-identified Information may be used by the Operator only for the purposes of development, product improvement, to demonstrate or market product effectiveness, or research as any other member of the public or party would be able to use de-identified data pursuant to 34 CFR 99.31(b). Operator agrees not to attempt to re-identify De-identified Information and not to transfer De-identified Information to any party unless (a) that party agrees in writing not to attempt re-identification, and (b) prior written notice has been given to LEA who has provided prior written consent

for such transfer. Operator shall not copy, reproduce or transmit any De-identified Information or other Data obtained under the Service Agreement except as necessary to fulfill the Service Agreement.

4. **Access To, Return, and Disposition of Data.** Upon written request of LEA, Operator shall dispose of or delete all Data obtained under the Service Agreement when it is no longer needed for the purpose for which it was obtained, and transfer said data to LEA or LEA's designee within sixty (60) days of the date of termination and according to a schedule and procedure as the Parties may reasonably agree. Operator acknowledges LEA's obligations regarding retention of governmental data, and shall not destroy Data except as permitted by LEA. Nothing in the Service Agreement shall authorize Operator to maintain Data obtained under the Service Agreement beyond the time period reasonably needed to complete the disposition. Disposition shall include (1) the shredding of any hard copies of any Data; (2) Data Destruction; or (3) Otherwise modifying the personal information in those records to make it unreadable or indecipherable. Operator shall provide written notification to LEA when the Data has been disposed of.

The duty to dispose of Data shall not extend to data that has been de-identified or placed in a separate Student account, pursuant to the other terms of the DPA. The LEA may employ a "Request for Return or Deletion of Data" FORM, a sample of this form is attached on Exhibit "D"). Upon receipt of a request from the LEA, the Operator will immediately provide the LEA with any specified portion of the Data within five (5) business days of receipt of said request.

5. **Targeted Advertising Prohibition.** Operator is prohibited from using or selling Data to (a) market or advertise to students or families/guardians; and staff (b) inform, influence, or enable marketing, advertising, or other commercial efforts by a Operator; (c) develop a profile of a student, family member/guardian or group, for any commercial purpose other than providing the Service to LEA; or (d) use the Data for the development of commercial products or services, other than as necessary to provide the Service to LEA. This section does not prohibit Operator from generating legitimate personalized learning recommendations.
6. **Access to Data.** Operator shall make Data in the possession of the Operator available to the LEA within five (5) business days of a request by the LEA.

## **ARTICLE V: DATA PROVISIONS**

1. **Data Security.** The Operator agrees to abide by and maintain adequate data security measures, consistent with industry standards and technology best practices, to protect Data from unauthorized disclosure or acquisition by an unauthorized person. The general security duties of Operator are set forth below. Operator shall further detail its security programs and measures in Exhibit F. These measures shall include, but are not limited to:
  - a. **Passwords and Employee Access.** Operator shall secure usernames, passwords, and any other means of gaining access to the Services or to Data, at a level consistent with an industry standard agreed upon by LEA (e.g. suggested by Article 4.3 of NIST 800-63-3). Operator shall only provide access to Data to employees or subprocessors that are performing the Services. Employees with access to Data shall have signed confidentiality agreements regarding said Data. All employees with access to Data shall pass criminal background checks.
  - b. **Security Protocols.** Both parties agree to maintain security protocols that meet industry best practices in the transfer or transmission of any data, including ensuring that data may only be viewed or accessed by parties legally allowed to do so. Operator shall maintain all data obtained or generated pursuant to the Service Agreement in a secure computer environment.
  - c. **Employee Training.** The Operator shall provide periodic security training to those of its employees who operate or have access to the system.

- d. **Security Technology.** When the Services are accessed using a supported web browser, Secure Socket Layer (“SSL”) or equivalent technology shall be employed to protect data from unauthorized access. The service security measures shall include server authentication and data encryption. Operator shall host data pursuant to the Service Agreement in an environment using a firewall that is periodically updated according to industry standards.
  - e. **Security Contact.** Operator shall provide the name and contact information of Operator's Security Contact on Exhibit F. The LEA may direct security concerns or questions to the Security Contact.
  - f. **Periodic Risk Assessment.** Operator shall conduct periodic risk assessments and remediate any identified security and privacy vulnerabilities in a timely manner. Upon request, Operator will provide the LEA an executive summary of the risk assessment or equivalent report and confirmation of remediation.
  - g. **Backups.** Operator agrees to maintain backup copies, backed up at least daily, of Data in case of Operator’s system failure or any other unforeseen event resulting in loss of any portion of Data.
  - h. **Audits.** Within 30 days of receiving a request from the LEA, and not to exceed one request per year, the LEA may audit the measures outlined in the DPA. The Operator will cooperate fully with the LEA and any local, state, or federal agency with oversight authority/jurisdiction in connection with any audit or investigation of the Operator and/or delivery of Services to students and/or LEA, and shall provide full access to the Operator’s facilities, staff, agents and LEA’s Data and all records pertaining to the Operator, LEA and delivery of Services to the Operator. Failure to cooperate shall be deemed a material breach of the DPA. The LEA may request an additional audit if a material concern is identified.
  - i. **Incident Response.** Operator shall have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of any portion of Data, including PII, and agrees to provide LEA, upon request, an executive summary of the written incident response plan.
2. **Data Breach.** When Operator reasonably suspects and/or becomes aware of an unauthorized disclosure or security breach concerning any Data covered by this Agreement, Operator shall notify the District within 24 hours. The Operator shall take immediate steps to limit and mitigate the damage of such security breach to the greatest extent possible. If the incident involves criminal intent, then the Operator will follow direction from the Law Enforcement Agencies involved in the case.
- a. The security breach notification to the LEA shall be written in plain language, and address the following
    - 1. A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
    - 2. A description of the circumstances surrounding the disclosure or breach, including the actual or estimated, time and date of the breach, and Whether the notification was delayed as a result of a law enforcement investigation.
  - b. Operator agrees to adhere to all requirements in applicable state and federal law with respect to a Data breach or disclosure, including any required responsibilities and procedures for notification or mitigation
  - c. In the event of a breach or unauthorized disclosure, the Operator shall cooperate fully with the LEA, including, but not limited to providing appropriate notification to individuals impacted by the breach or disclosure. Operator will reimburse the LEA in full for all **reasonable** costs incurred by the LEA in investigation and remediation of any Security Breach caused in whole or in part by Operator or



Operator’s subprocessors, including but not limited to costs of providing notification and providing one year’s credit monitoring to affected individuals if PII exposed during the breach could be used to commit financial identity theft.

- d. The LEA may immediately terminate the Service Agreement if the LEA determines the Operator has breached a material term of this DPA.
- e. The Operator’s obligations under Section VII shall survive termination of this DPA and Service Agreement until all Data has been returned and/or Securely Destroyed.

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

- 1. **General Offer of Privacy Terms.** Operator may, by signing the attached Form of General Offer of Privacy Terms (General Offer, attached as Exhibit E), be bound by the terms of this DPA to any other LEA who signs the acceptance in said Exhibit.

**ARTICLE VII: MISCELLANEOUS**

- 1. **Term.** The Operator shall be bound by this DPA for the duration of the Service Agreement or so long as the Operator maintains any Data. Notwithstanding the foregoing, Operator agrees to be bound by the terms and obligations of this DPA for no less than three (3) years.
- 2. **Termination.** In the event that either party seeks to terminate this DPA, they may do so by mutual written consent so long as the Service Agreement has lapsed or has been terminated.
- 3. **Effect of Termination Survival.** If the Service Agreement is terminated, the Operator shall dispose of all of LEA’s Data pursuant to Article IV, section 5.
- 4. **Priority of Agreements.** This DPA shall govern the treatment of Data in order to comply with the privacy protections, including those found in FERPA and all applicable privacy statutes cited in this DPA. In the event there is conflict between the terms of the DPA and the Service Agreement, or with any other bid/RFP, license agreement, terms of service, privacy policy, or other writing, the terms of this DPA shall apply and take precedence. Except as described in this paragraph, all other provisions of the Service Agreement shall remain in effect.
- 5. **Notice.** All notices or other communication required or permitted to be given hereunder must be in writing and given by personal delivery, facsimile or e-mail transmission (if contact information is provided for the specific mode of delivery), or first-class mail, postage prepaid, sent to the designated representatives before: The designated representative for the Operator for this Agreement is:

First Name: Sean [Box 7]

Last Name: Moe [Box 8]

Operator’s Company Name: Imagine Learning LLC [Box 9]

Title of Representative: Director of Privacy, Data Protection [Box 10]

The designated representative for the LEA for this Agreement is: First Name:

First Name: Curtis [Box 11]

Last Name: Shahan [Box 12]

LEA's Company Name: Wichita Falls ISD [Box 13]

Title of Representative: Chief of Technology [Box 14]

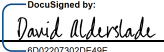
6. **Entire Agreement.** This DPA constitutes the entire agreement of the parties relating to the subject matter and supersedes all prior communications, representations, or agreements, oral or written, by the Parties. This DPA may be amended and the observance of any provision of this DPA may be waived (either generally or in any particular instance and either retroactively or prospectively) only with the signed written consent of both parties. Neither failure nor delay on the part of any party in exercising any right, power, or privilege hereunder shall operate as a waiver of such right, nor shall any single or partial exercise of any such right, power, or privilege preclude any further exercise thereof or the exercise of any other right, power, or privilege.
7. **Severability.** Any provision of this DPA that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this DPA, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be prohibited or unenforceable in such jurisdiction while, at the same time, maintaining the intent of the parties, it shall, as to such jurisdiction, be so narrowly drawn without invalidating the remaining provisions of this DPA or affecting the validity or enforceability of such provision in any other jurisdiction.
8. **Governing Law; Venue and Jurisdiction.** THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. EACH PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS FOR THE COUNTY IN WHICH THIS AGREEMENT IS FORMED FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS SERVICE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.
9. **Authority.** Operator represents that it is authorized to bind to the terms of this DPA, including confidentiality and destruction of Data and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Data and/or any portion thereof, or may own, lease or control equipment or facilities of any kind where the Data and portion thereof is stored, maintained or used in any way.
10. **Waiver.** Waiver by any party to this DPA of any breach of any provision of this DPA or warranty of representation set forth herein shall not be construed as a waiver of any subsequent breach of the same or any other provision. The failure to exercise any right under this DPA shall not operate as a waiver of such right. All rights and remedies provided for in this DPA are cumulative. Nothing in this DPA shall be construed as a waiver or relinquishment of any governmental immunities or defenses on behalf of the LEA, its trustees, officers, employees, and agents as a result of the execution of this DPA or performance of the functions or obligations described herein.

11. **Assignment.** The Parties may not assign their rights, duties, or obligations under this DPA, either in whole or in part, without the prior written consent of the other Party except that either party may assign any of its rights and obligations under this DPA without consent in connection with any merger (including without limitation by operation of law), consolidation, reorganization, or sale of all or substantially all of its related assets or similar transaction. This DPA inures to the benefit of and shall be binding on the Parties' permitted assignees, transferees and successors.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the parties have executed this DATA PRIVACY AGREEMENT FOR TEXAS K-12 INSTITUTIONS as of the last day noted below.

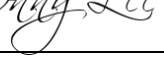
**Operator's Representative:**

BY:  [Box 15] Date: 8/12/2022 [Box 16]

Printed Name: David Alderslade [Box 17] Title/Position: EVP, CFO [Box 18]

Address for Notice Purposes: 8860 E Chaparral Rd Ste 100 Scottsdale, AZ 85250 [Box 19]

**LEA's Representative**

BY:  [Box 20] Date: 08/19/2022 [Box 21]

Printed Name: Dr. Donny Lee [Box 22] Title/Position: Superintendent [Box 23]

Address for Notice Purposes: PO Box 97533 Wichita Falls, TX 76307 [Box 24]

*Note: Electronic signature permitted by this LEA.*

**EXHIBIT "A"**

DESCRIPTION OF SERVICES

Description : [Box 25]

Imagine Learning provides digital K-12 curriculum to the District. Products include supplemental and courseware curricula such as Imagine Espanol, Imagine Language & Literacy, Imagine Math 3+, Imagine Math PreK-2, Courseware 6-12 and Odysseyware Courseware 6-12.

**EXHIBIT “ B”**

**SCHEDULE OF DATA**

**Instructions:** Operator should identify if LEA data is collected to provide the described services. If LEA data is collected to provide the described services, check the boxes indicating the data type collected. If there is data collected that is not listed, use the “Other” category to list the data collected.

- We do not collect LEA Data to provide the described services.
- We do collect LEA Data to provide the described services.


**SCHEDULE OF DATA**

Category of Data	Elements	Check if used by your system
Application Technology Meta Data	IP Addresses of users, Use of cookies, etc.	<input checked="" type="checkbox"/>
	Other application technology meta data-Please specify: Single-Sign On IDs if the LEA elect to use	<input checked="" type="checkbox"/>
Application Use Statistics	Meta data on user interaction with application-Please specify: Analytical Data measuring of usage/engagement	<input checked="" type="checkbox"/>
Assessment	Standardized test scores	<input type="checkbox"/>
	Observation data	<input type="checkbox"/>
	Other assessment data-Please specify: In-product placement and progress assessments	<input checked="" type="checkbox"/>
Attendance	Student school (daily) attendance data	<input type="checkbox"/>
	Student class attendance data	<input checked="" type="checkbox"/>
Communications	Online communications that are captured (emails, blog entries)	<input checked="" type="checkbox"/>
Conduct	Conduct or behavioral data	<input type="checkbox"/>

Demographics	Data of Birth	<input checked="" type="checkbox"/> Optional
	Place of Birth	<input checked="" type="checkbox"/> Optional
	Gender	<input checked="" type="checkbox"/> Optional
	Ethnicity or race	<input checked="" type="checkbox"/> Optional
	Language information (native, preferred or primary language spoken by student)	<input checked="" type="checkbox"/> Optional
	Other demographic information-Please specify: [Redacted]	<input type="checkbox"/>
Enrollment	Student school enrollment	<input checked="" type="checkbox"/>
	Student grade level	<input checked="" type="checkbox"/>
	Homeroom	<input checked="" type="checkbox"/> Some products
	Guidance counselor	<input type="checkbox"/>
	Specific curriculum programs	<input type="checkbox"/>
	Year of graduation	<input type="checkbox"/>
	Other enrollment information-Please specify: [Redacted]	<input type="checkbox"/>
Parent/Guardian Contact Information	Address	<input type="checkbox"/>
	Email	<input checked="" type="checkbox"/> Optional
	Phone	<input checked="" type="checkbox"/> Optional
Parent/Guardian ID	Parent ID number (created to link parents to students)	<input checked="" type="checkbox"/> Optional
Parent/Guardian Name	First and/or Last	<input checked="" type="checkbox"/> Optional
Schedule	Student scheduled courses	<input type="checkbox"/>
	Teacher names	<input checked="" type="checkbox"/>
Special Indicator	English language learner information	<input checked="" type="checkbox"/> Optional
	Low income status	<input checked="" type="checkbox"/> Optional
	Medical alerts/health data	<input type="checkbox"/>
	Student disability information	<input checked="" type="checkbox"/> Optional
	Specialized education services (IEP or 504)	<input checked="" type="checkbox"/> Optional
	Living situations (homeless/foster care)	<input checked="" type="checkbox"/> Optional
	Other indicator information-Please specify: [Redacted]	<input type="checkbox"/>

Student Contact Information	Address	<input type="checkbox"/>
	Email	<input checked="" type="checkbox"/> Some products
	Phone	<input type="checkbox"/>
Student Identifiers	Local (School district) ID number	<input checked="" type="checkbox"/>
	State ID Number	<input checked="" type="checkbox"/> Optional
	Vendor/App assigned student ID number	<input checked="" type="checkbox"/>
	Student app username	<input checked="" type="checkbox"/>
	Student app passwords	<input checked="" type="checkbox"/>
Student Name	First and/or Last	<input checked="" type="checkbox"/>
Student In App Performance	Program/application performance (typing program-student types 60 wpm, reading program-student reads below grade level)	<input checked="" type="checkbox"/>
Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	<input type="checkbox"/>
Student Survey Responses	Student responses to surveys or questionnaires	<input type="checkbox"/>
Student work	Student generated content; writing, pictures, etc.	<input checked="" type="checkbox"/>
	Other student work data-Please specify: [Redacted]	<input type="checkbox"/>
Transcript	Student course grades	<input checked="" type="checkbox"/> Odysseyware only
	Student course data	<input checked="" type="checkbox"/> Odysseyware only
	Student course grades/performance scores	<input checked="" type="checkbox"/>
	Other transcript data-Please specify: [Redacted]	<input type="checkbox"/>
Transportation	Student bus assignment	<input type="checkbox"/>
	Student pick up and/or drop off location	<input type="checkbox"/>
	Student bus card ID number	<input type="checkbox"/>
	Other transportation data-Please specify: [Redacted]	<input type="checkbox"/>



	Other	Please list additional data element used, stored or collected through the services defined in Exhibit A 	<input type="checkbox"/>
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Additional Information about Data Elements

Imagine Math 3+ offers live teacher support via chat from certified teachers to students who ask for assistance. Live teacher support is not required for product use.

Some Imagine Learning products provide parents and legal guardians access to progress reports for their student(s). This registration data is required for parents interested in accessing these reports, but is not required for students to use the product. Parents may only register for access if approved by the LEA.

LEAs have the option to flag specific students for additional reporting needs, such as student in an Individualized Education Program (IEP) or English Language Learners (ELLs). These flags are not required for product use, and are only collected at the LEA's discretion.

As students use the Services, additional collected data may include:

- Assessment results and scores, including academic performance and placement
- Curriculum progress
- Audio recordings (e.g., students reading passages aloud)
- Responses to writing prompts
- Math journals
- Certificates of achievement and curriculum completion

Please visit <https://imaginelearning.com/privacy> for our Privacy Policy and a related FAQ.

## **EXHIBIT “C”**

### **DEFINITIONS**

**HB 2087:** The statutory designation for what is now Texas Education Code Chapter 32 relating to pupil records.

**Data:** Data shall include, but is not limited to, the following: student data, educational records, employee data, metadata, user content, course content, materials, and any and all data and information that the District (or any authorized end user(s)) uploads or enters through their use of the product. Data also specifically includes all personally identifiable information in education records, directory data, and other non-public information for the purposes of Texas and Federal laws and regulations. Data as specified in Exhibit B is confirmed to be collected or processed by the Operator pursuant to the Services. Data shall not constitute that information that has been anonymized or de-identified, or anonymous usage data regarding a student’s use of Operator’s services.

**De-Identified Information (DII):** De-Identified Information is Data subjected to a process by which any Personally Identifiable Information (“PII”) is removed or obscured in a way that eliminates the risk of disclosure of the identity of the individual or information about them, and cannot be reasonably re-identified.

**Data Destruction:** Provider shall certify to the District in writing that all copies of the Data stored in any manner by Provider have been returned to the District and permanently erased or destroyed using industry best practices to assure complete and permanent erasure or destruction. These industry best practices include, but are not limited to, ensuring that all files are completely overwritten and are unrecoverable. Industry best practices do not include simple file deletions or media high level formatting operations.

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

**Personally Identifiable Information (PII):** The terms “Personally Identifiable Information” or “PII” shall include, but are not limited to, Data, metadata, and user or pupil-generated content obtained by reason of the use of Operator’s software, website, service, or app, including mobile apps, whether gathered by Operator or provided by LEA or its users, students, or students’ parents/guardians. PII includes Indirect Identifiers, which is any information that, either alone or in aggregate, would allow a reasonable person to be able to identify a student to a reasonable certainty. For purposes of this DPA, Personally Identifiable Information shall include the categories of information listed in the definition of Data.

**Pupil-Generated Content:** The term “pupil-generated content” means materials or content created by a pupil during and for the purpose of education including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, videos, and account information that enables ongoing ownership of pupil content.

**Subscribing LEA:** A LEA that was not party to the original Services Agreement and who accepts the Operator’s General Offer of Privacy Terms.

**Subprocessor:** For the purposes of this Agreement, the term “Subprocessor” (sometimes referred to as the “Subcontractor”) means a party other than LEA or Operator, who Operator uses for data collection, analytics, storage, or other service to operate and/or improve its software, and who has access to PII.

**Targeted Advertising:** Targeted advertising means presenting an advertisement to a student where the selection of the advertisement is based on student information, student records or student generated content or inferred over time from the usage of the Operator’s website, online service or mobile application by such student or the retention of such student’s online activities or requests over time.

**Texas Student Privacy Alliance:** The Texas Student Privacy Alliance (TXSPA) is a collaborative group of Texas school districts that share common concerns around student privacy. The goal of the TXSPA is to set standards of both practice and expectations around student privacy such that all parties involved have a common understanding of expectations. The Texas K-12 CTO Council is the organization that sponsors TXSPA and the TXSPA is the Texas affiliate of the National Student Privacy Consortium.

**EXHIBIT "D"**

SAMPLE REQUEST FOR RETURN OR DELETION OF DATA

**Instructions:** This Exhibit is optional and provided as a sample ONLY. It is intended to provide a LEA an example of what could be used to request a return or deletion of data.

Wichita Falls ISD directs Imagine Learning LLC to  
LEA OPERATOR

dispose of return data obtained by Operator pursuant to the terms of the Service Agreement between LEA and Operator. The terms of the Disposition are set forth below:

**1. Extent of Return or Disposition**

- Return or Disposition is partial. The categories of data to be disposed of are set forth below or are found in an attachment to this Directive:
  
- Return or Disposition is Complete. Disposition extends to all categories of data.

**2. Nature of Return or Disposition**

- Disposition shall be by destruction or deletion of data.
  
- Return shall be by a transfer of data. The data shall be transferred to the following site as follows:

**3. Timing of Return or Disposition**

Data shall be returned or disposed of by the following date:

As soon as commercially practicable

By the following agreed upon date:

**4. Signatures**

\_\_\_\_\_  
Authorized Representative of LEA

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

**5. Verification of Disposition of Data**

\_\_\_\_\_  
Authorized Representative of Operator

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

**EXHIBIT “ E”**

**GENERAL OFFER OF PRIVACY TERMS**

**Instructions:** This is an optional Exhibit in which the Operator may, by signing this Exhibit, be bound by the terms of this DPA to any other Subscribing LEAs who sign the acceptance in said Exhibit. The originating LEA SHOULD NOT sign this Exhibit, but should make Exhibit E, if signed by an Operator, readily available to other Texas K-12 institutions through the TXSPA web portal. Should a Subscribing LEA, after signing a separate Service Agreement with Operator, want to accept the General Offer of Terms, the Subscribing LEA should counter-sign the Exhibit E and notify the Operator that the General Offer of Terms have been accepted by a Subscribing LEA.

**1. Offer of Terms**

Operator offers the same privacy protections found in this DPA between it and 9/1/22 which is dated [8/31/23] to any other LEA (“Subscribing LEA”) who accepts this General Offer through its signature below. This General Offer shall extend only to privacy protections and Operator’s signature shall not necessarily bind Operator to other terms, such as price, term, or schedule of services, or to any other provision not addressed in this DPA. The Operator and the other LEA may also agree to change the data provided by LEA to the Operator to suit the unique needs of the LEA. The Operator may withdraw the General Offer in the event of:

- (1) a material change in the applicable privacy statutes;
- (2) a material change in the services and products listed in the Originating Service Agreement;
- (3) the expiration of three years after the date of Operator’s signature to this Form.

Operator shall notify the Texas Student Privacy Alliance (TXSPA) in the event of any withdrawal so that this information may be may be transmitted to the Alliance’s users.

**Operator’s Representative:**

BY:  \_\_\_\_\_

Date: 8/12/2022 \_\_\_\_\_

Printed Name: David Alderslade

Title/Position: EVP, CFO

**2. Subscribing LEA**

A Subscribing LEA, by signing a separate Service Agreement with Operator, and by its signature below, accepts the General Offer of Privacy Terms. The Subscribing LEA and Operator shall therefore be bound by the same terms of this DPA. The Subscribing LEA, also by its signature below, agrees to notify Operator that it has accepted this General Offer, and that such General Offer is not effective until Operator has received said notification.

**Subscribing LEA’s Representative:**

BY: \_\_\_\_\_

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

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

Title/Position: \_\_\_\_\_

**EXHIBIT "F"**

DATA SECURITY

**1. Operator's Security Contact Information:**

**Sean Moe** [Box 26]

Named Security Contact

**privacy@imaginelearning.com** [Box 27]

Email of Security Contact

**801-549-0100** [Box 28]

Phone Number of Security Contact

**2. List of Operator's Subprocessors:**

A current list of IL subprocessors may be found at [Box 29]  
<https://www.imaginelearning.com/support/privacy/privacy-faq>

**3. Additional Data Security Measures:**

None. [Box 30]

**Certificate Of Completion**

Envelope Id: CA976DA7FDAE4832A1E890D24BC0976D	Status: Completed
Subject: Please DocuSign: Version 2.0 Agreement 07142022 SDPC DPA_jbs 2022.08.08.pdf	
Source Envelope:	
Document Pages: 22	Signatures: 2
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelope Stamping: Enabled	Morgan Reece
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	8860 E. Chaparral Rd. Suite 100
	Scottsdale, AZ 85251
	morgan.reece@imaginelearning.com
	IP Address: 108.211.226.75

**Record Tracking**

Status: Original	Holder: Morgan Reece	Location: DocuSign
8/12/2022 1:05:56 PM	morgan.reece@imaginelearning.com	

**Signer Events**

David Alderslade  
david.alderslade@imaginelearning.com  
CFO  
Imagine Learning Inc.  
Security Level: Email, Account Authentication (None)

**Signature**

DocuSigned by:  
  
6D02207302DE49E...  
Signature Adoption: Pre-selected Style  
Using IP Address: 72.217.71.13

**Timestamp**

Sent: 8/12/2022 1:08:03 PM  
Viewed: 8/12/2022 1:10:21 PM  
Signed: 8/12/2022 1:10:33 PM

**Electronic Record and Signature Disclosure:**  
Accepted: 8/12/2022 1:10:21 PM  
ID: fa69726f-b339-43b7-beb1-8deec3719507

**In Person Signer Events**

**Signature**

**Timestamp**

**Editor Delivery Events**

**Status**

**Timestamp**

**Agent Delivery Events**

**Status**

**Timestamp**

**Intermediary Delivery Events**

**Status**

**Timestamp**

**Certified Delivery Events**

**Status**

**Timestamp**

**Carbon Copy Events**

**Status**

**Timestamp**

Clayton Renfro  
clayton.renfro@imaginelearning.com  
Security Level: Email, Account Authentication (None)

**COPIED**

Sent: 8/12/2022 1:10:35 PM  
Viewed: 8/12/2022 6:27:38 PM

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Privacy  
privacy@imaginelearning.com  
Security Level: Email, Account Authentication (None)

**COPIED**

Sent: 8/12/2022 1:10:35 PM

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**Witness Events**

**Signature**

**Timestamp**

**Notary Events**

**Signature**

**Timestamp**

**Envelope Summary Events**

**Status**

**Timestamps**

<b>Envelope Summary Events</b>	<b>Status</b>	<b>Timestamps</b>
Envelope Sent	Hashed/Encrypted	8/12/2022 1:08:03 PM
Certified Delivered	Security Checked	8/12/2022 1:10:21 PM
Signing Complete	Security Checked	8/12/2022 1:10:33 PM
Completed	Security Checked	8/12/2022 1:10:35 PM

<b>Payment Events</b>	<b>Status</b>	<b>Timestamps</b>
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<b>Electronic Record and Signature Disclosure</b>
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## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, Imagine Learning LLC (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

### **How to contact Imagine Learning LLC:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [legal@imaginelearning.com](mailto:legal@imaginelearning.com)

### **To advise Imagine Learning LLC of your new email address**

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at [legal@imaginelearning.com](mailto:legal@imaginelearning.com) and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

### **To request paper copies from Imagine Learning LLC**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to [legal@imaginelearning.com](mailto:legal@imaginelearning.com) and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

### **To withdraw your consent with Imagine Learning LLC**

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to [legal@imaginelearning.com](mailto:legal@imaginelearning.com) and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

### **Required hardware and software**

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

### **Acknowledging your access and consent to receive and sign documents electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Imagine Learning LLC as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Imagine Learning LLC during the course of your relationship with Imagine Learning LLC.

## Document History

SignNow E-Signature Audit Log

All dates expressed in MM/DD/YYYY (US)

**Document name:** Please\_DocuSign\_Version\_20\_Agreement\_071420p  
**Document created:** 08/19/2022 21:10:24  
**Document pages:** 27  
**Document ID:** 56e967bc272e4368bd9f454fcc6e6576e4d9181c  
**Document Sent:** 08/19/2022 21:11:18 UTC  
**Document Status:** Signed  
 08/19/2022 23:55:05UTC

**Sender:** bmorton@wfsd.net  
**Signers:** dlee@wfsd.net  
**CC:** mgraham@wfsd.net

Client	Event	By	Server Time	Client Time	IP Address
SignNow Web Application	Uploaded the Document	bmorton@wfsd.net	08/19/2022 21:10:24 pm UTC	08/19/2022 21:10:14 pm UTC	137.83.19.148
SignNow Web Application	Viewed the Document	bmorton@wfsd.net	08/19/2022 21:10:31 pm UTC	08/19/2022 21:10:31 pm UTC	137.83.19.148
SignNow Web Application	Document Saved	bmorton@wfsd.net	08/19/2022 21:11:13 pm UTC	08/19/2022 21:11:12 pm UTC	137.83.19.148
SignNow Web Application	Invite Sent to: dlee@wfsd.net	bmorton@wfsd.net	08/19/2022 21:11:18 pm UTC	08/19/2022 21:11:17 pm UTC	137.83.19.148
SignNow Web Application	Viewed the Document	dlee@wfsd.net	08/19/2022 23:54:23 pm UTC	08/19/2022 23:54:23 pm UTC	174.197.65.132
SignNow Web Application	Signed the Document, Signature ID: f01792d5b5824aee8cf4	dlee@wfsd.net	08/19/2022 23:55:05 pm UTC	08/19/2022 23:55:05 pm UTC	174.197.65.132
SignNow Web Application	Document Saved	dlee@wfsd.net	08/19/2022 23:55:05 pm UTC	08/19/2022 23:55:05 pm UTC	174.197.65.132