

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

Boerne Independent School District

LEA NAME [Box 1]

DATE [Box 2]

and

Aperture Education, LLC July 25, 2024

OPERATOR NAME [Box 3]

DATE [Box 4]

ARTICLE VI- GENERAL OFFER OF PRIVACYTERMS

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:	<u>Demetre</u>	[Box 7]
Last Name:	<u>Klebaner</u>	[Box 8]
Operator's Company Name:	<u>Aperture Education, LLC</u>	[Box 9]
Title of Representative:	<u>General Counsel</u>	[Box 10]

The designated representative for the LEA for this Agreement is:

First Name:	<u>Sean</u>	[Box 11]
Last Name:	<u>Babcock</u>	[Box 12]
LEA's Name:	<u>Boerne ISD</u>	[Box 13]
Title of Representative:	<u>Chief Technology Officer</u>	[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]

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.

_____ directs Aperture Education, LLC to
LEA OPERATOR

dispose of data obtained by Operator pursuant to the terms of the Service Agreement between
return 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: 90 days following termination if the Services Agreement

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 via email legal@apertureed.com.

1. Offer of Terms

Operator offers the same privacy protections found in this DPA between it and **Aperture Education, LLC** and which is dated [07/25/24] 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: Scott E. Olson

Date: 07/25/24

Printed Name: Scott E. Olson

Title/Position: Manager of Proposal Services

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:**

JESSICA DUHADWAY, Director of Engineering [Box 26]

Named Security Contact

jduhadway@apertureed.com [Box 27]

Email of Security Contact

844-685-2499 [Box 28]

Phone Number of Security Contact

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

N/A [Box 29]

3.

Additional Data Security Measures:

Application data is encrypted at rest and in transit. User credentials are encrypted at rest and in transit. Database fields are protected using FIPS-140 compliant encryption for all tables / fields containing sensitive data. All of our employees go through extensive data security training. Only authorized individuals have access to the information based on their need to access the information as a part of their responsibilities through requiring access enforcement that (i) assigns privileges to individuals based on job classification and function, (ii) restricts access based on a user's need to know, and (iii) is set to "deny all" unless specifically allowed. [Box 30]

Application requires authentication for access to data. Access to application is through individually identifiable means (no shared logins).

Aperture System is hosted in the Google Cloud Platform. The data centers are geographically dispersed throughout the United States and comply with key industry standards for security, reliability, and availability. The data center's infrastructure undergoes exhaustive third-party auditing to ensure continued compliance to the most stringent policies, procedures, standards, and regulatory requirements across a broad scope of industries. Continuous and consistent data backups to a disparate data repository, maintained for a 30-day window.

Aperture regularly monitors vulnerabilities in underlying products (e.g., GCP, databases) and patches all critical vulnerabilities within 30 days and has Service Level Agreement that includes targets for initial response time to reports of breach of confidentiality or integrity and penalties for noncompliance. Aperture has a plan for compliance with all applicable breach notification laws. Aperture will promptly, and in no event later than 30 calendar days after the determination that a Security Breach has institute, provide the Customer with the name and contact information for an employee of the Company who shall serve as the Company's primary security contact and shall be available to assist customer twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a Security Breach.

Sensitive application data (including student or employee data and any PII or PHI) is encrypted at rest and in transit. User, Database, and other application interface credentials are encrypted at rest and in transit. Encryption keys are never stored in cleartext such as in configuration files. Cryptographic modules are FIPS-140-compliant using the National Institute of Standards and Technology's FIPS 140-1 and FIPS 140-2. Connection to database is encrypted. Database tables/fields are protected using FIPS-140-compliant encryption for all tables/fields containing sensitive data.