

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

Boerne Independent School District

LEA NAME [Box 1]

DATE [Box 2]

and

Cengage Learning, Inc.

03/12/2024

OPERATOR NAME [Box 3]

DATE [Box 4]

RECITALS

WHEREAS, the Operator has agreed to provide the Local Education Agency ("LEA" or "Boerne ISD") with certain digital educational services ("Services") according to a contract titled " _____ " [Box 5]

and dated 8.13.24 (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.

- 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 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 PII, and agrees to provide LEA, upon request, an executive summary of the written incident response plan.

- ## ARTICLE VI- GENERAL OFFER OF PRIVACYTERMS

- 7

**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 between the parties, 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:

[Box 7]

First Name: Stephanie _____

Last Name: Zezzo _____ [Box 8]

Operator's Company Name: Cengage Learning, Inc. _____ [Box 9]

Title of Representative: State Sr. Manager Proposals and Bids _____ [Box 10]

The designated representative for the LEA for this Agreement is:

First Name: Sean _____ [Box 11]

Last Name: Babcock _____ [Box 12]

LEA's Name: Boerne ISD _____ [Box 13]

Title of Representative: CTO - Chief Technology Officer _____ [Box 14]

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: Stephanie Zezzo [Box 15] Date: 8.13.24 _____ [Box 16]

Printed Name: Stephanie Zezzo _____ [Box 17] Title/Position: Sr. Manager Proposals_ [Box

18] Address for Notice Purposes: 5191 Natorp Blvd. Nason Ohio 45040 _____ [Box 19]

LEA's Representative

BY: Sean C. Babcock [Box 20] Date: 8/13/2024 [Box 21]

Printed Name: Sean Babcock [Box 22] Title/Position: CTO [Box 23]

Address for Notice Purposes: 235 Johns Rd Boerne, TX 78006 [Box 24]

Note: Electronic signature not permitted.

EXHIBIT "A"

DESCRIPTION OF SERVICES

Description : [Box 25]

Medical Assisting: Administrative & Clinical Competencies, 9th, K12 MindTap – 4 years

Forensic Science Fundamentals/Investigations, 3E, K12 MindTap – 4 years

Body Structures and Functions, 14th, K12 MindTap – 4 years

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:	<input type="checkbox"/>
Application Use Statistics	Meta data on user interaction with application- Please specify:	<input checked="" type="checkbox"/>
Assessment	Standardized test scores	<input type="checkbox"/>
	Observation data	<input type="checkbox"/>
	Other assessment data-Please specify: item or an activity score	<input checked="" type="checkbox"/>
Attendance	Student school (daily) attendance data	<input type="checkbox"/>
	Student class attendance data	<input type="checkbox"/>
Communications	Online communications that are captured (emails, blog entries)	<input type="checkbox"/>
Conduct	Conduct or behavioral data	<input type="checkbox"/>
	Date of Birth	<input type="checkbox"/>

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

Category of Data	Elements	Check if used by your system
Student Contact Information	Address	<input type="checkbox"/>
	Email	<input type="checkbox"/>
	Phone	<input type="checkbox"/>
Student Identifiers	Local (School district) ID number	x <input type="checkbox"/>
	State ID number	x <input type="checkbox"/>
	Vendor/App assigned student ID number	<input type="checkbox"/>
	Student app username	x <input type="checkbox"/>
	Student app passwords	x <input type="checkbox"/>
Student Name	First and/or Last	x <input type="checkbox"/>
Student In App Performance	Program/application performance (typing program-student types 60 wpm, reading program-student reads below grade level)	x <input 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	x <input type="checkbox"/>
Student work	Student generated content; writing, pictures etc.	<input type="checkbox"/>
	Other student work data -Please specify:	<input type="checkbox"/>
Transcript	Student course grades	x <input type="checkbox"/>
	Student course data	<input type="checkbox"/>
	Student course grades/performance scores	<input type="checkbox"/>
	Other transcript data -Please specify:	<input type="checkbox"/>
	Student bus assignment	<input type="checkbox"/>
	Student pick up and/or drop off location	<input type="checkbox"/>

	Transportation	Student bus card ID number	<input type="checkbox"/>
		Other transportation data -Please specify:	<input type="checkbox"/>
	Other	Please list each additional data element used, stored or collected through the services defined in Exhibit A	<input type="checkbox"/>

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 _____ 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:

X ☐

As soon as commercially practicable

☐

By the following agreed upon date:

4. Signatures

Authorized Representative of LEA

Date:

5. Verification of Disposition of Data

Stephanie Zizzo

Authorized Representative of Operator

8.13.2024

Date:

EXHIBIT “F”

DATA SECURITY

1. Operator’s Security Contact Information:

Ator Foster [Box 26]

Named Security Contact

Ator.Foster@cengage.com [Box 27]

Email of Security Contact

+1 (248) 699-8623 [Box 28]

Phone Number of Security Contact

2. Operator’s Subprocessors:

Subprocessor Name	Purpose of Subprocessor processing
Straive	Business processing services (e.g., call center, hosting) Product functionality
Cognizant	Business processing services (e.g., call center, hosting)
Amazon Web Services	Hosting
OKTA	Identity services
Dynatrace/OpsGenie	Monitoring
Splunk	Observability
Readspeaker	Product functionality
Google	Google Drive, Google Analytics
Jira	Issue tracking and project management
WalkMe	Guided contextual help

3.

Additional Data Security Measures:

[Box 30]

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

and which is dated [] 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: _____

Printed Name: _____

Title/Position: _____

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: _____