

Version 2.0 Agreement Approved: June 2019

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

Wichita Falls ISD

LEA NAME [Box 1]

DATE [Box 2]

and

Skyward, Inc., a Wisconsin corporation

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.

Article/Exhibit	Box #	Description
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 type="checkbox"/> Operator notates if data is collected to provide the described services. <input 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
Exhibit G	All applicable Boxes	Additional requirements from LEA in order to be compliant with District policies.

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
Exhibit G	All Applicable Boxes	(Required) Completed by LEA and Operator with signatures

RECITALS

WHEREAS, the Operator has agreed to provide the Local Education Agency (“LEA”) with certain digital educational services (collectively, the “Services”) as more particularly described in that certain Skyward Software as a Service Agreement dated June 22, 2017 (the “Service Agreement”), and

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.

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 the Services described in Exhibit A.
2. **Purpose of DPA.** For Operator to provide the 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 (collectively, the "Operator Materials"). Operator has granted to the LEA a personal, nonexclusive limited license to use the Operator Materials for its own non-commercial, incidental use as set forth in the Service Agreement.
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.** LEA may transfer Pupil Generated Content to a separate student account based on interoperability within and between applicable software applications.
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 promptly, 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 to the LEA. 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.** Except as provided in Article IV, Section 3 below, Operator shall use Data only for the purpose of fulfilling its duties and obligations under the Service Agreement or as otherwise requested by the LEA, 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 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. Subprocessors shall agree to the provisions of the DPA regarding governing law, venue, and jurisdiction. [Notwithstanding the foregoing, Operator will have no obligation to enter into any such agreements and shall not be responsible for any third parties, including but not limited to, educational service centers, to which LEA transmits Data or contracts with for services outside the scope of the Services provided by Operator pursuant to the Service Agreement.](#)

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. [If the LEA has a policy of disclosing education records under 34 CFR § 99.31 \(a\) \(1\), LEA shall include a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest in its annual notification of rights, and determine whether Operator qualifies as a school official.](#)
3. **Reasonable Precautions.** LEA shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the Services and Data.
4. **Unauthorized Access Notification.** LEA shall notify Operator promptly of any known unauthorized access. LEA and Operator [shall take such action to respond to any unauthorized access as is required in Article V, Section 2 below.](#)

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 [obligation](#) 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, **except as required by law**. 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 (a) de-identified; (b) placed in a separate Student account, pursuant to the other terms of the DPA; or (c) incidental Data that was placed in emails or other medium by LEA related to the Services and was not properly de-identified by LEA prior to transmission. 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 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 **and who are subject to confidentiality and non-disclosure restrictions regarding the Data.**
 - 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 in its possession in a secure computer environment. **LEA agrees not to transmit Data to Operator by email or other unsecure transmission. Operator shall not be responsible for LEA's failure to (i) transmit Data to Operator in a secure manner; or (ii) properly or completely de-identify any Data prior to transmitting it to Operator.**
 - 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, provided LEA is operating the Services under Operator’s recommended configuration. The service security measures shall include server authentication and data encryption. Operator shall not be responsible for any security breach or unauthorized access resulting from (i) the negligence or willful misconduct of LEA or its employees, agents or subcontractors; (ii) LEA’s failure to operate the Service in compliance with Operator’s recommended configuration; or (iii) LEA’s failure to follow industry standard security protocols with respect to LEA’s use of the Services..
 - 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. **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. In the event that the disclosure or security breach concerning any Data was caused in whole or in part by the negligence or willful misconduct of LEA or its employees, agents or contractors, then Operator shall reasonably cooperate with LEA to limit and mitigate the damage of such security breach but Operator shall not be required to comply with the requirements and terms of this Article V, Section 2 and the same shall be the sole and exclusive obligation of LEA. If the incident involves criminal intent, then the parties 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. The responsible party (LEA or Operator, as the case may be) 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 that is a direct result of Operator’s negligence or willful misconduct, 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 costs incurred by the LEA in investigation and remediation of any Security Breach directly caused by Operator’s negligence or willful misconduct), 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 terminate the Service Agreement pursuant to the terms thereof, if 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- Intentionally omitted.

ARTICLE VII: MISCELLANEOUS

1. **Term.** The term of this DPA shall commence on the date signed by all of the parties hereto and shall continue thereafter until terminated as provided below.
2. **Termination.** In the event the Service Agreement is terminated or has expired, this DPA shall also automatically terminate without further notice or action by the parties.
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 privacy policy with respect to the treatment of Data, the terms of this DPA shall apply and take precedence. Except as described in this paragraph, the Service Agreement shall control in all respects and shall remain in full force and effect following the execution of this DPA.
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: Raymond

Last Name: Ackerlund

Operator's Company Name : Skyward Inc.

Title of Representative: President

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

First Name: Shad [Box 11]

Last Name: McGaha [Box 12]

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

Title of Representative: Chief of Technology [Box 14]

6. **Entire Agreement.** This DPA [and the Service Agreement](#) constitute 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. **Notwithstanding the foregoing, in the event the Service Agreement is assigned as permitted by the terms thereof, this DPA shall automatically be assigned to any such permitted assignee without the necessity of further action by the parties hereto.** 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:  6E27D2EBBC87495...

Date: September 25, 2020

Printed Name: Raymond H Ackerlund

Title/Position: President

Address for Notice Purposes:
2601 Skyward Drive
Stevens Point, WI 54482

LEA's Representative

BY:  F57D8F4277D2452...

[Box 20]

Date: September 28, 2020

[Box 21]

Printed Name: Timothy Sherrad

[Box 22]

Title/Position: CFO

[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

The services described in that certain Skyward Software as a Service Agreement dated June 22, 2017.

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: [Redacted]	<input type="checkbox"/>
Application Use Statistics	Meta data on user interaction with application-Please specify: User login history, User Program Usage histroy [Redacted]	<input checked="" type="checkbox"/>
Assessment	Standardized test scores	<input checked="" type="checkbox"/>
	Observation data	<input checked="" type="checkbox"/>
	Other assessment data-Please specify: [Redacted]	<input checked="" type="checkbox"/>
Attendance	Student school (daily) attendance data	<input checked="" 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 checked="" type="checkbox"/>

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

Student Contact Information	Address	<input checked="" type="checkbox"/>
	Email	<input checked="" type="checkbox"/>
	Phone	<input checked="" type="checkbox"/>
Student Identifiers	Local (School district) ID number	<input checked="" type="checkbox"/>
	State ID Number	<input checked="" type="checkbox"/>
	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 checked="" type="checkbox"/>
Student Survey Responses	Student responses to surveys or questionnaires	<input checked="" 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"/>
	Student course data	<input checked="" type="checkbox"/>
	Student course grades/performance scores	<input checked="" type="checkbox"/>
	Other transcript data-Please specify: [Redacted]	<input type="checkbox"/>
Transportation	Student bus assignment	<input checked="" type="checkbox"/>
	Student pick up and/or drop off location	<input checked="" type="checkbox"/>
	Student bus card ID number	<input checked="" 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"/>

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. [DII shall not be considered Data for the purposes of this DPA.](#)

Data Destruction: [Operator](#) shall certify to the [LEA](#) in writing that all copies of the Data stored in any manner by [Operator](#) have been returned to the [LEA](#) 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. [The foregoing duty to dispose of Data shall not extend to DII or other data that has been: \(a\) de-identified; \(b\) placed in a separate Student account; or \(c\) incidental Data that was placed in emails or other medium by LEA related to the Services and was not properly de-identified by LEA prior to transmission.](#)

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.

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 [has contracted with](#) 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
to LEA
OPERATOR

dispose of Data ([as that term is defined in the Data Privacy Agreement entered into by LEA and Operator](#)) obtained by Operator pursuant to the terms of the Service Agreement between LEA and Operator. The terms of the Disposition are set forth below. [Provided however, LEA acknowledges that such disposition shall be subject to the exceptions described in Article IV, Section 4 of the Data Privacy Agreement between LEA and Operator.](#)

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:

5. **Signatures**

DocuSigned by:
Timothy Sherrad
F57D8F4277D2452...

Authorized Representative of LEA

September 28, 2020

Date:

6. **Verification of Disposition of Data**

DocuSigned by:
Raymond H. Ackerlund
6E27D2EBBC87495...

Raymond H Ackerlund
Authorized Representative of Operator

September 25, 2020

Date:

EXHIBIT “ E” Intentionally omitted.

EXHIBIT "F"

DATA SECURITY

1. Operator's Security Contact Information:

Mike Bianco
Named Security Contact

Mike.bianco@skyward.com
Email of Security Contact

800.236.7274
Phone Number of Security Contact

2. List of Operator's Subprocessors:

3. Additional Data Security Measures:

EXHIBIT "G"

LEA SPECIFIC TERMS AND CONDITIONS

1. **Insurance.** Operator shall take out and maintain, at its expense, until termination of the Service Agreement, at least the following insurance with an appropriately licensed insurance company in the state of Texas:

<u>Insurance Type</u>	<u>Amount Required</u>
Commercial General Liability	<u>\$1,000,000</u>
BI & PD - each occurrence	<u>\$ 100,000</u>
BI & PD – aggregate	<u>\$ 300,000</u>
Medical Expenses – any one person	<u>\$ 10,000</u>
Personal & Adv Injury – each occurrence	<u>\$1,000,000</u>
Errors & Omissions Coverage	<u>\$3,000,000</u>
Cyber Liability Coverage	<u>\$1,000,000</u>

Operator represents that it is not an employee of the LEA and that it has or will follow Texas statutory guidelines regarding workers compensation. Operator shall require all subcontractors performing any work to maintain coverage as specified herein.

Cyber Liability Coverage – Skyward has a technology Liability policy that includes liability for Errors & Omissions and first party coverage for Cyber Liability. Total limits exceed what are required.

2. **Authorized Use.** The data shared pursuant to the Service Agreement, including persistent unique identifiers, shall be used for no purpose other than the Services stated in the Service Agreement and/or otherwise authorized under the statutes referred to in subsection (1), above. Operator also acknowledges and agrees that it shall not make any re-disclosure of any Data or any portion thereof, including without limitation, meta data, user content or other non-public information and/or personally identifiable information contained in the Data, without the express written consent of the LEA.
3. **Data Transfer.** Operator and LEA agree that all data will be transferred using secure FTP and/or physical delivery, as agreed to by Operator and LEA.
4. **Data Storage.** Operator acknowledges and agrees that all electronic data and records will not be shipped, stored, transferred, or exported outside the United States, including any backups or copies, without prior written consent from an authorized representative of the LEA.
5. **Notification of Criminal History.** A person or business entity that enters into a contract with a Texas public school district, such as the LEA, must give advance notice to the LEA if the person or an owner or operator of the business entity has been convicted of a felony. Pursuant to the Texas Education Code §22.0834 and the Texas Government Code §411.082, Operator will, at least annually, obtain criminal history record information

that relates to an employee, applicant, or agent of Operator, if the person has or will have continuing duties related to the LEA, and the duties are or will be performed on the LEA's property or at another location where students are regularly present. Operator shall assume all expenses associated with the background checks, and shall immediately remove any employee or agent who was convicted of a felony or a misdemeanor involving moral turpitude from the LEA's property or other location where students are regularly present. Licensee shall determine what constitutes "moral turpitude" or "a location where students are regularly present." Operator understands that failure to comply with the requirements of this section may be grounds for termination of the Service Agreement.

Operator further agrees that employees who will have access to raw data that has not been disaggregated will also undergo criminal background checks at least annually. Operator shall assume all expenses associated with the background checks, and shall immediately remove any employee or agent who was convicted of a felony or a misdemeanor involving moral turpitude from the LEA's property or other location where students are regularly present.

6. **Compliance with Texas Government Code Chapter 2270**; Prohibition on Contract with Companies that Boycott Israel. Operator represents and warrants that it does not boycott Israel and will not boycott Israel during the Term of the Service Agreement.

[Signature Page Follows]

Signature Page for Exhibit G

IN WITNESS WHEREOF, the parties have executed this Texas Data Privacy Agreement as of the date of the last signature noted below.

Authorized Representative of LEA:

BY:  Date: September 28, 2020
F57D8F4277D2452...

Printed Name: Timothy Sherrod Title/Position: CFO

Authorized Representative of Operator:

BY:  Date: September 25, 2020
6E27D2EBBC87495...

Printed Name: Raymond H Ackerlund Title/Position: President