



Data Processing Addendum

This Data Processing Addendum (this "**Addendum**") is entered into as of [____], 2024 (the "**Effective Date**"), by and between [____] ("**Controller**"), and **Otus, LLC** with its principal place of business at 900 N. Michigan Ave., Suite 1600, Chicago, IL 60611, USA ("**Processor**"). Controller and Processor are each a "party" and collectively, the "parties."

WHEREAS, the parties entered into that certain [____] dated as of [____] (the "**Agreement**") whereby Controller has engaged Processor to provide certain technology-based educational products, solutions and services (the "**Services**");

WHEREAS, in order for Processor to provide the Services to Controller, Controller agrees to share, transmit and disclose certain Personal Data to Processor and further authorizes Processor to conduct certain Processing activities as set forth herein; and

WHEREAS, the parties recognize the need to comply with Applicable Laws with respect to the provision of Services and Processing of Personal Data, and the parties desire to enter into this Addendum to control with respect to all matters related thereto.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions

- a. "**Applicable Laws**" means any and all applicable laws with respect to the collection, sharing, transmitting, storage, use, disclosure and Processing of Personal Data, including, without limitation, United States state-specific privacy laws, the Family Educational Rights and Privacy Act ("**FERPA**"), and the Children's Online Privacy Protection Act ("**COPPA**") and any related regulations or rulemaking promulgated thereunder by the U.S. Federal Trade Commission.
- b. "**Controller**" means the entity that determines the purposes and means of the Processing of Personal Data.
- c. "**Data Subject**" means an individual whose Personal Data is being Processed.
- d. "**Personal Data**" means any information relating to an identified or identifiable natural person as defined by Applicable Laws, including, but not limited to, names, email addresses, phone numbers, sensitive personal information, or any other information that can be used to identify an individual, including such information identified on Exhibit A attached hereto.
- e. "**Process**" or "**Processing**" means any operation or set of operations performed on Personal Data, including sharing, transmitting, collection, storage, use, and disclosure.
- f. "**Processor**" means the entity that Processes Personal Data on behalf of the Controller.

- g. **“Security Incident”** means any unauthorized acquisition of data that compromises the security, confidentiality, or integrity of Personal Data in Processor’s possession.
- h. **“Unsuccessful Security Incidents”** means, without limitation, incidents that do not result in unauthorized access, use, disclosure, modification, or destruction of information including, but not limited to: (i) “pings” and other broadcast attacks on an information system firewall; (ii) port scans; (iii) attempts to log on to an information system or enter a database with an invalid password or user name; or (iv) denial-of-service attacks that do not result in a server being taken offline, or any combination of the aforementioned, that does not result in unauthorized access, use, disclosure, modification, or destruction of Personal Data in Processor’s possession.

2. Compliance with Applicable Laws

- a. **Processor's Compliance:** Processor agrees to Process Personal Data only in accordance with the terms of this Addendum and the Agreement and to comply with all Applicable Laws while providing the Services.
- b. **Controller's Compliance:** The Controller is responsible for ensuring that it has the appropriate legal basis for the sharing and disclosure of Personal Data with Processor and that it complies with all Applicable Laws when instructing the Processor to Process Personal Data. Without limiting the generality of the foregoing, the Controller represents and warrants that it has obtained, to the extent required, verifiable parental consent and permission to collect, share and disclose Personal Data of children under thirteen (13) years of age.

3. Processor’s Obligations

- a. **Scope of Processing:** Processor will process Personal Data only for the purposes set forth in the Agreement, this Addendum or as otherwise reasonably requested by Controller in writing; provided, that, such request is compliant with Applicable Law. Processor will not Process Personal Data for any other purpose without the prior written consent of the Controller. Without limiting the foregoing, Processor will not: (i) collect, retain, use, or disclose Personal Data for any purpose other than as necessary for the specific business purpose of performing the Services, to comply with any Applicable Laws or as described in the Agreement or this Addendum; and/or (ii) sell the Personal Data.
- b. **Data Minimization:** Processor shall only Process the minimum amount of Personal Data that is necessary to fulfill the purposes set out in the Agreement and Addendum.
- c. **Subprocessors:** Processor may use, and Controller hereby provides its general authorization to use, subprocessors, including, without limitation, subcontractors and Processor’s affiliates, to assist in the Processing of Personal Data; provided, that, Processor enters into a written agreement with each subprocessor that imposes substantially similar data protection obligations as those set forth in this Addendum.
- d. **Data Security:** Processor agrees to implement reasonably appropriate technical and organizational measures to protect Personal Data from accidental or unlawful destruction, loss, alteration, unauthorized disclosure, or access, in compliance with applicable data security requirements under any Applicable Laws.

- e. **Data Subject Rights:** Processor will reasonably assist the Controller in fulfilling its obligations to respond to Data Subject requests and/or exercise of such Data Subject's privacy rights, including but not limited to requests for access, amendment, correction, rectification, deletion or erasure, restriction, or objection, as applicable, to Processing of Personal Data, in accordance with Applicable Laws.
 - f. **Third Party Requests:** Processor shall notify Controller in writing within ten (10) business days of receipt of any third party request, whether by a Data Subject or otherwise, to (i) restrict the Processing of Personal Data, (ii) transmit Personal Data to a third party, or (iii) exercise a Data Subject's rights with respect to such Personal Data. Processor will use commercially reasonable efforts to assist Controller, upon Controller's reasonable written request and at Controller's sole cost and expense, in complying with Controller's obligations to respond to requests and complaints directed to Controller with respect to Personal Data Processed by Processor.
4. **Data Transfers.** Processor is located within the United States. To the extent Personal Data is transferred from the United States to a country outside the United States, the Processor will ensure that the transfer is compliant with Applicable Laws, including but not limited to the use of appropriate Standard Contractual Clauses or other mechanisms approved by the relevant authorities.
5. **Term and Termination**
- a. **Term:** This Addendum shall remain in effect for the duration of the Agreement and shall continue until all Personal Data has been returned or destroyed in accordance with the terms of the Agreement, this Addendum and Applicable Laws.
 - b. **Termination:** Either party may terminate this Addendum if the other party materially breaches its obligations and fails to cure such breach within thirty (30) days of receiving written notice reasonably describing such breach. Upon termination, Processor will return or delete all Personal Data in accordance with Section 5(c) of this Addendum.
 - c. **Return or Destruction of Personal Data:** Upon written request by Controller or termination of the Agreement, Processor will use commercially reasonable efforts to return or, at Controller's option, destroy all Personal Data and all copies thereof, except to the extent that such Personal Data is retained in Processor's disaster recovery archival system or otherwise required by Applicable Law.
6. **Security Incidents.** If Processor becomes aware of any Security Incident, Processor shall, at Controller's sole cost and expense: (a) within five (5) business days of discovery of such Security Incident, notify Controller of the Security Incident; and (b) reasonably assist Controller to investigate, remediate, and take any action required under Applicable Law regarding the Security Incident; provided, however, that the obligations in this Section 6 do not apply to Unsuccessful Security Incidents and/or incidents that are caused by Controller or Controller's personnel or its Authorized Users.
7. **LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS ADDENDUM OR THE AGREEMENT, PROCESSOR SHALL NOT BE LIABLE TO CONTROLLER OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, UNDER ANY CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO,**

LOST PROFITS, REVENUE OR SAVINGS, LOSS OF GOODWILL, OR THE LOSS OF USE OF ANY DATA, EVEN IF PROCESSOR HAD BEEN ADVISED OF, KNEW, OR SHOULD HAVE KNOWN, OF THE POSSIBILITY THEREOF. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS ADDENDUM OR THE AGREEMENT, UNDER NO CIRCUMSTANCES SHALL PROCESSOR'S AGGREGATE CUMULATIVE LIABILITY TO CONTROLLER FOR ANY CAUSE WHATSOEVER ARISING UNDER OR RELATED TO THIS ADDENDUM OR THE AGREEMENT REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, INCLUDING NEGLIGENCE, EXCEED THE TOTAL AMOUNT OF FEES ACTUALLY PAID BY CONTROLLER UNDER THE AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. CONTROLLER AND PROCESSOR RESPECTIVELY ACKNOWLEDGE THAT THE FEES PAID BY CONTROLLER UNDER THE AGREEMENT REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS ADDENDUM AND THAT PROCESSOR WOULD NOT ENTER INTO THIS ADDENDUM WITHOUT THESE LIMITATIONS ON ITS LIABILITY. These limits of liability shall survive termination of this Addendum or the Agreement for any reason.

8. **Disclaimers.** Processor makes no representation or warranty that this Addendum is legally sufficient to meet Controller's needs under any Applicable Laws. Processor expressly disclaims all representations or warranties, whether express, implied, statutory, through a course of dealing, or otherwise that this Addendum will comply with or satisfy any of Controller's obligations under Applicable Law. Controller acknowledges and agrees that it is solely responsible for complying with all its obligations imposed by Applicable Law.
9. **Miscellaneous**
 - a. **Governing Law:** This Addendum shall be governed by the laws of the state of North Carolina without giving effect to the state's choice of law rules.
 - b. **Amendments:** Any amendments to this Addendum must be in writing and signed by both parties.
 - c. **Severability:** If any provision of this Addendum is found to be invalid or unenforceable, the remainder of the Addendum will remain in full force and effect.
 - d. **Entire Agreement:** This Addendum and the Agreement constitute the entire agreement between the parties and supersedes any prior discussions or agreements on the subject.
 - e. **Conflicts:** In the event of any conflicts or inconsistencies between this Addendum and the Agreement, the terms of this Addendum shall control.
 - f. **Notices:** All notices required or permitted under this Addendum will be in writing and deemed delivered when (a) delivered in person, (b) deposited in the mail, postage prepaid, (c) delivered via a recognized international delivery service, such as UPS, FedEx or DHL, or (d) sent via e-mail, with receipt of confirmation of delivery, addressed as set forth on the signature page of the Agreement.
 - g. **Capitalized Terms:** Any capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

Signature Page to Follow

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed by their duly authorized representatives.

CONTROLLER:

[_____]

By: _____

Name:

Title:

PROCESSOR:

Otus, LLC

By: _____

Name: Chris Hull

Title:

EXHIBIT A

PERSONAL DATA

Category	Examples	Collected
A. Identifiers.	A real name, alias, postal address, unique personal identifier, online identifier, Internet Protocol address, email address, account name, Social Security number, driver's license number, passport number, or other similar identifiers.	YES
B. Personal information including financial information.	A name, signature, Social Security number, physical characteristics or description, address, telephone number, passport number, driver's license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, medical information, or health insurance information. Some personal information included in this category may overlap with other categories.	YES
C. Protected classification characteristics under state and federal law.	Age (40 years or older), race, color, ancestry, national origin, citizenship, religion or creed, marital status, medical condition, physical or mental disability, sex (including gender, gender identity, gender expression, pregnancy or childbirth and related medical conditions), sexual orientation, veteran or military status, genetic information (including familial genetic information).	YES
D. Commercial information.	Records of personal property, products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies.	NO
E. Biometric information.	Genetic, physiological, behavioral, and biological characteristics, or activity patterns used to extract a template or other identifier or identifying information, such as, fingerprints, faceprints, and voiceprints, iris or retina scans, keystroke, gait, or other physical patterns, and sleep, health, or exercise data.	NO
F. Internet or other similar network activity.	Browsing history, search history, information on a individual's interaction with a third-party website, application, or advertisement.	NO
G. Geolocation data.	Physical location or movements.	NO
H. Sensory data.	Audio, electronic, visual, thermal, olfactory, or similar information.	NO

I. Professional or employment-related information.	Current or past job history or performance evaluations.	NO
J. Non-public education information (per FERPA).	Education records directly related to a student maintained by an educational institution or party acting on its behalf, such as grades, transcripts, class lists, student schedules, student identification codes, student financial information, or student disciplinary records.	YES
K. Inferences drawn from other personal information.	Profile reflecting a person's preferences, characteristics, psychological trends, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes.	YES