

(PLEASE MAKE A COPY)

**STUDENT DATA SHARING ADDENDUM:  
APPLICABLE TO WASHINGTON COUNTY PUBLIC SCHOOL SYSTEM USERS/MEMBERS**

**Directions:** WCPS staff complete the yellow highlighted sections which indicate vendor name, current date, and a high-level description of services that the vendor / digital tool will be providing. Both parties sign and date.

This Addendum, which is part of the Agreement or Purchase Order (“Agreement”) between [REDACTED] (“Vendor” or “Company”) and the Board of Education of Washington County, Maryland (“Board of Education”, “WCPS”, or “CLIENT”), is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_. This Addendum is valid for the entirety of the contractual arrangement between the Vendor and the Board of Education.

The Board of Education is required, when entering into agreements with other parties, to follow all applicable laws, regulations, policies, and standards including those related to ethics; privacy and security; accessibility; records retention; limitations on indemnification; fiscal law constraints; advertising and endorsements; public information; and governing law and dispute resolution forum. Accordingly, the Vendor’s Terms of Service (TOS) are hereby modified by this Addendum as they pertain to WCPS’s use of the Company’s Site and/or Services. All terms in the Addendum supersede and take precedence over any conflicting terms in the Agreement.

- A. Purpose of the Agreement:** Under terms of the agreement between the parties, the Vendor will be providing the following services: **identify the specific service the vendor will be providing.**
- B. Definition of “CLIENT DATA”:** Under this Addendum, CLIENT DATA is defined as: (1) all Personally Identifiable Information (PII) and other Client Information contained in a student’s “education record” as defined by the Family Educational Rights and Privacy Act (FERPA) (34 CFR Part 99); and (2) other non-public information that include, but are not limited to: personally identifiable personnel data, personally identifiable student data, personally identifiable parent / guardian data, personally identifiable metadata, and personally identifiable user or Board of Education content.
- C. Data Collection and Use:** Vendor will collect and use CLIENT DATA only for the purpose of fulfilling its duties and providing services under the Agreement between the parties as defined in Section A, and for improving services under the Agreement and Addendum.
1. **Specific CLIENT DATA Shared Under the Agreement**
    - i. Information associated with maintaining authentication between Vendor and CLIENT, e.g. public/private keys, LTI secret, OATH keys.
    - ii. Information associated with maintaining a user’s profile, e.g. username, email address, first name, last name, source IP address, or cookies.
    - iii. A user’s status within the service, e.g. number of questions answered, time elapsed in lesson, student’s score, and employment information.
- D. Education Records:** If Vendor will have access to “education records” as defined under the Family Educational Rights and Privacy Act (FERPA) (34 CFR Part 99), the Vendor acknowledges that for the purpose of this Addendum and the Agreement it will be designated as a ‘school official’ with ‘legitimate educational interests’ and will use the Education Record only for the purpose of fulfilling its duties under

this Addendum and the Agreement.

- E. **School System Records and Access:** The Board of Education acknowledges that use of Vendor's Site and Services may require management of School System records. School System and School System-generated content may meet the definition of records as determined by the Board of Education. If the Vendor holds School System records, the Board of Education and the Vendor must manage the records in accordance with all applicable records management laws and regulations. Managing the records includes, but is not limited to secure storage, retrievability, and proper disposition of all records. Any Data or Records held by the Vendor will be made available to the Board of Education upon request by an authorized Board of Education representative.
- F. **Data De-Identification:** Vendor may use de-identified Data for product development or other internal purposes only. De-identified Data will have all direct and indirect personal identifiers removed. This includes, but is not limited to: name, ID numbers, date of birth, demographic information, location information, and school ID. Furthermore, Vendor agrees not to attempt to re-identify de-identified Data.
- G. **Data Mining, Marketing and Advertising:** Vendor is prohibited from mining CLIENT DATA for any purposes other than those agreed to by the parties. **Data mining or scanning of user or Board of Education content for the purpose of advertising or marketing to students, their parents/guardians, or Board of Education employees and staff is strictly prohibited.** Any and all forms of advertising or solicitation directly towards students, parents, guardians, or Board employees is strictly prohibited unless allowed by express written consent of the Board of Education. As such, Vendor agrees not to serve or display any commercial advertisements or solicitations in the publicly available portion of the Site displaying content uploaded by or under the control of the Board of Education.
- H. **Modification of Terms of Service:** Vendor will not change how CLIENT DATA is collected, used, or shared under the terms of this Addendum or the Agreement in any way without advance notice to the CLIENT. This Addendum and the Agreement constitute the entire agreement between the CLIENT (including all District end users) and the Vendor. All other agreements or understandings, whether electronic, click-through, verbal or in writing, with District Employees or other End Users shall be null and void.
- I. **Data Sharing:** Vendor will not share CLIENT DATA, including anonymized data, with or disclose it to any third party, except to affiliated subcontractors, agents, or third-party service providers of the Vendor as required to fulfill the purpose of the Agreement, without prior specific and informed written consent of the CLIENT, except as required by law.
- J. **Data Storage:** Data will not be stored outside of the United States without prior, specific and informed written consent from the CLIENT.
- K. **Data Deletion:** Upon termination or completion of the Services hereunder and prior thereto at the request of the CLIENT, Vendor will delete the CLIENT DATA, provided that Vendor may maintain archival copies for audit purposes and dispute resolution purposes. If Vendor maintains archival copies of CLIENT DATA, Vendor shall remain under the contractual obligations of this Addendum regarding the maintenance and use of CLIENT DATA. This Section shall survive the termination of the Agreement.
- L. **Terms, Data Transfer, Survival and Destruction:** The Board of Education may immediately terminate the Agreement if the Board or Education determines the Vendor has breached the Agreement or this Addendum. The Agreement and Addendum will automatically terminate at the expiration date. However, the Vendor's obligations under this Addendum shall survive termination of the Agreement until ALL CLIENT DATA has been returned and/or securely removed or destroyed. Vendor will ensure that all Data in its possession and in the possession of any subcontractors, or agents to which the VENDOR may have

transferred Data, are destroyed and/or transferred to the Board of Education in a commonly used file or database format as the Vendor deems appropriate when the Data is no longer needed for their specified purpose.

- M. **Rights and License in and to School System Content and Data:** Any right Vendor reserves in the Agreement or Addendum to modify or adapt Board of Education content is limited to technical actions necessary to index, format, and display that content. The right to modify or adapt does not include the right to substantively edit or otherwise alter the meaning of the content. In the event the Board of Education discovers that Board of Education content has been modified in a manner that alters the meaning of such content, the Board of Education may contact Vendor and the Parties shall work together in good faith to resolve the matter.

All goods, products, materials, documents, reports, writings, video images, photographs, papers and intellectual property of any nature including software or computer images prepared by the Vendor (or subcontractors) specifically or solely for the CLIENT or specifically or solely from CLIENT-provided material will not be disclosed to any other person or entity and remains the property of the CLIENT. All student-produced work remains the property of the CLIENT or that eligible student. The Vendor has a limited, nonexclusive license to the data described herein solely for the purpose of performing its obligations as outlined in the Agreement. The Agreement does not give Vendor any rights, implied or otherwise, to CLIENT DATA, content, or intellectual property, except as expressly stated in the Agreement or Addendum, including any right to sell or trade Data. The VENDOR retains all right, title, and interest in and to any all of VENDOR'S proprietary software, materials, tools, forms, documentation, training, and implementation materials and intellectual property and nothing in the Agreement or this Addendum conveys any rights of ownership of the same to the CLIENT.

- N. **No Endorsement:** Vendor agrees that Board of Education seals, trademarks, logos, service marks, trade names, school names and the fact that the Board of Education has a presence on the Vendor Site and uses its Services, shall not be used by Vendor in such a manner as to state or imply that Vendor's products or services are endorsed, sponsored, or recommended by the Board of Education, or are considered by the Board of Education to be superior to any other products or services. Except for pages whose design and content are under the control of the Board of Education, or for links to or promotion of such pages, Vendor agrees not to display any Board of Education or government seals, trademarks, logos, service marks, school names, and trade names on the Vendor's homepage or elsewhere on the Vendor's site, without prior and specific writing authorization from the CLIENT.
- O. **No Business Relationship Created:** The Parties acknowledge and agree that they are independent entities and nothing in this Addendum or the Agreement creates a partnership, joint venture, agency, or employer/employee relationship.
- P. **Access:** Except as otherwise expressly prohibited by law, the Vendor will immediately notify the CLIENT of any subpoenas, warrants, or other legal orders, demands or requests, including Audits, and governmental requests and demands, received by the Vendor seeking CLIENT DATA. If the CLIENT receives a similar request, the CLIENT will promptly provide the Vendor with a copy of official request and the records or information required by the CLIENT to respond.
- Q. **Security Controls and Risk Management:** Vendor will, in good faith, exercise due diligence in storing and processing CLIENT DATA in accordance with industry best practices. This includes appropriate administrative, physical, and technical safeguards to: 1) ensure the security and confidentiality of CLIENT

DATA; 2) protect against any anticipated threats or hazards to the security or integrity of CLIENT DATA; 3) protect against unauthorized access to or use of CLIENT DATA that could result in substantial harm or inconvenience to any customer or to any CLIENT employee and/or student; and 4) dispose of CLIENT DATA Information in a secure manner.

1. To comply with the safeguard obligations generally described above, Vendor has (a) designated an employee to coordinate its information security program, (b) identified reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of CLIENT DATA that could result in the unauthorized disclosure, misuse, alteration, destruction, or other compromise of such data, and assessed the sufficiency of any safeguards in place to control these risks, and (c) designed and implemented information safeguards to control the risks identified through the risk assessment, and regularly tests or otherwise monitors the effectiveness of safeguards' key controls, systems and procedures.
  2. Vendor will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. Vendor will also have a written incident response plan, to include prompt notification of the Board of Education in the event of a security or privacy incident, as well as best practices for responding to a breach of PII. Vendor agrees to share its incident response plan with the Board of Education upon request.
- R. **Data Breaches:** Vendor shall notify Board of Education in writing as soon as commercially practicable, however no later than seventy-two (72) hours, after Vendor has either actual or constructive knowledge of a breach which affects the confidentiality, integrity, and/or availability of CLIENT's Data (an "Incident") unless it is determined by law enforcement that such notification would impede or delay their investigation. Vendor shall have actual or constructive knowledge of an Incident if Vendor actually knows there has been an Incident or if Vendor has reasonable basis in facts or circumstances, whether acts or omissions, for its belief that an Incident has occurred. The notification required by this section shall be made as soon as commercially practicable after the law enforcement agency determines that notification will not impede or compromise the investigation. Vendor shall cooperate with law enforcement in accordance with applicable law provided however, that such cooperation shall not result in or cause an undue delay to remediation of the Incident. Vendor shall promptly take appropriate action to mitigate such risk or potential problem at Vendor's expense. In the event of an Incident, Vendor shall, at its sole cost and expense, restore the PII and any other Confidential Information, to as close its original state as practical, including, without limitation any and all CLIENT DATA, and institute appropriate measures to prevent any recurrence of the problem as soon as is commercially practicable.
- S. **Employee and Subcontractor Qualifications:** Vendor shall ensure that its employees and all subcontractors who have potential access to CLIENT DATA have undergone appropriate background screening and possess all needed qualifications to comply with the terms of this Addendum and the Agreement. Further, all employees and subcontractors are subject to the same FERPA compliance in relation to the 'school official' designation, and shall be trained that the disclosure of PII, CLIENT DATA, and/or Confidential Information will violate federal and state laws and may result in criminal and/or civil penalties. Annual compliance training for all employees and contractors on FERPA and other applicable laws should be performed.
- T. **Governing Law:** Any arbitration, mediation, or similar dispute resolution provision in the Agreement is hereby deleted. This Addendum and the Agreement shall be governed by and interpreted and enforced in accordance with the laws of the United States of America and the State of Maryland without reference

to conflict of laws. To the extent permitted by Maryland and federal law, the laws of the State of Maryland will apply in the absence of applicable Maryland or federal law. Any action or proceeding seeking any relief under or with respect to this Addendum or the Agreement shall be brought solely in the appropriate Maryland Court.

- U. Vendor shall comply with Maryland Education Code ANN. § 4-131, "Operators of School Internet Web Sites, Online Services, Online Applications, and Mobile Applications." Vendor agrees to be bound as an "operator" under the law regardless of the Vendor's exemptions that may exist in Maryland Education Code ANN. § 4-131(a)(3).

Vendor shall comply with all applicable Federal Laws including, but not limited to, Family Educational Rights and Privacy Act, Protecting Pupil Rights Amendment, Protecting Children in the 21st Century Act, Children's Internet Protection Act, and Children's Online Privacy Protection Act as well as all Board of Education policies, regulations and procedures relating to data security and access as each may be amended from time to time.

Vendor shall comply with all applicable laws governing accessibility of digital tools, including the Maryland Equivalent and Nonvisual Access Accountability Act for K-12 Education, Md. Code Ann., Educ. § 7-910 and its implementing regulation, COMAR 13A.06.05 *et seq.*, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 and its implementing regulation, 34 CFR Part 104, and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.* and its implementing regulation, 28 CFR Part 35.

- V. **Indemnification:** Any provisions in the Agreement related to the Board of Education indemnifying the Vendor are hereby waived, and shall not apply.

Vendor agrees to indemnify and hold harmless the Board of Education for any damages or costs, including reasonable attorney's fees, which arise out of any negligence or misconduct by Vendor, its agents and employees concerning its obligations under the terms of this Data Sharing Agreement.

- W. **Limitation of Liability:** Vendor shall be liable for any and all damages, costs and attorneys' fees which the CLIENT may incur as a result of any claims, suits and judgments against CLIENT which arise out of any breach of this Addendum or the Agreement by the Vendor, its employees, servants, representatives or agents under the term of this Addendum or the Agreement. The Parties agree that nothing in the Limitation of Liability clause or elsewhere in the Agreement in any way grants Vendor a waiver from, release of, or limitation of liability pertaining to any past, current, or future violation of Maryland or federal law.

- X. **Changes to Standard Agreement:** Language in the Agreement reserving to Vendor the right to change the Agreement without notice at any time is hereby amended to grant the Board of Education at least 90 days advance notice of any material change to the Agreement. The Board of Education is authorized to terminate the contract with Vendor, without any liability, should the Board of Education elect to take such action. However, no changes made to the original TOS will override or negate any of the provisions of this Addendum. In no case, will the Vendor change how Data are collected, used, or shared under the terms of this Addendum.

- Y. **No Cost Agreement:** Nothing in the Agreement as modified by this Addendum obligates the Board of Education to expend appropriations or incur financial obligations. The Parties acknowledge and agree

that none of the obligations arising from the Agreement as modified by this Addendum are contingent upon the payment of fees by one party to another.

Z. **Precedence; Further Amendments:** If there is any conflict between this Addendum and the Agreement or between this Addendum and other terms, rules, or policies on the Vendor Site or related to its Services, this Addendum shall prevail. This Addendum constitutes an amendment to the Agreement; any language in the Agreement indicating it may not be modified or that it alone is the entire agreement between the Parties is waived. Any further amendment must be agreed to by both Parties.

AA. **Monitoring:** Vendor agrees to allow CLIENT the ability to audit Vendor's use of CLIENT DATA to ensure compliance with the terms of the Agreement.

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

CLIENT:

By:

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Board of Education of Washington County  
10435 Downsville Pike  
Hagerstown, MD 21740

VENDOR:

By:

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Vendor Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State

\_\_\_\_\_  
Zip Code