

DATE

2019

(1) APPA SCOTLAND LTD

and

(2) [CUSTOMER NAME]

DATA PROCESSING AGREEMENT

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THIS AGREEMENT is made on the _____ day of _____ 2018

PARTIES

- (1) **APPA SCOTLAND LTD** incorporated and registered in Scotland with company number SC512087 whose registered office is at The Alhambra Suite 4th Floor, 82 Mitchell Street, Glasgow, United Kingdom, G1 3NA ("**APPA**"); and
- (2) [**FULL COMPANY NAME**] incorporated and registered in the UK with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("**Customer**"); and

BACKGROUND

- (A) The Customer and APPA entered into a contract for the provision of services ("**Contract**") on APPA's standard terms and conditions which require APPA to process Personal Data on behalf of the Customer.
- (B) This Personal Data Processing Agreement ("**Agreement**") sets out the additional terms, requirements and conditions on which APPA will process Personal Data when providing services under the Contract. This Agreement contains the mandatory clauses required by Article 28(3) of the General Data Protection Regulation ((*EU*) 2016/679) for contracts between controllers and processors.

AGREED TERMS

1 DEFINITIONS AND INTERPRETATION

The following definitions and rules of interpretation apply in this Agreement.

1.1 Definitions:

"Data Protection Legislation": all applicable privacy and data protection laws including the General Data Protection Regulation ((*EU*) 2016/679) ("**GDPR**") and any applicable national implementing laws, regulations and secondary legislation in England and Wales relating to the processing of Personal Data and the privacy of electronic communications, as amended, replaced or updated from time to time, including the Data Protection Act 2018, the Privacy and Electronic Communications Directive (2002/58/EC) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (*SI* 2003/2426).

- 1.2 This Agreement is subject to the Terms and Conditions and is incorporated into the Contract. Interpretations and defined terms set forth in the Terms and Conditions apply to the interpretation of this Agreement.
- 1.3 Defined terms set forth in the Data Protection Legislation also apply to the interpretation of this Agreement.
- 1.4 A reference to writing or written includes email.
- 1.5 In the case of conflict or ambiguity between any of the provisions of this Agreement and the provisions of the Terms and Conditions, the provisions of this Agreement will prevail.

2 PERSONAL DATA TYPES AND PROCESSING PURPOSES

- 2.1 The Customer and APPA acknowledge that for the purpose of the Data Protection Legislation, the Customer is the controller and APPA is the processor.
- 2.2 The Customer retains control of the Personal Data and remains responsible for its compliance obligations under the applicable Data Protection Legislation, including providing any required notices and obtaining any required consents, and for the processing instructions it gives to APPA.
- 2.3 Regarding processing conducted pursuant to the Contract:
- 2.3.1 Subject matter of processing: the supply and use of APPA's platform and app.
 - 2.3.2 Duration of Processing: the term of the Contract.
 - 2.3.3 Nature of Processing: Storage of personal data, transfer of summary personal data between the Customer and users(as the case may be)
 - 2.3.4 Business Purposes: the provision of the Services to the Customer for the benefit of its pupils, students, members, or employees (as the case may be)
 - 2.3.5 Personal Data Categories: depending on how the Services are used and what the Customers specific instructions are the following categories may apply to each data subject:
 - (a) full name,
 - (b) gender,

- (c) date of birth,
- (d) email address

In respect of educational establishments only:

- (f) year group,
- (g) special educational needs requirements,
- (h) English as a second language needs,
- (i) Funded, (PEF or PP)
- (j) Gifted and talented provision,
- (k) Child in Care needs (LAC)
- (m) Religion.

2.3.6 Data Subject Types: pupils, students and employees (as the case may be) of the Customer who sign up to use APPA's platform and app.

3 PROVIDER'S OBLIGATIONS

- 3.1 APPA will only process the Personal Data to the extent, and in such a manner, as is necessary for the provision of the Services in accordance with the Contract and/or the Customer's written instructions except where otherwise required by applicable law (and shall inform the Customer of that legal requirement before processing unless prohibited by that applicable law on important grounds of public interest).
- 3.2 APPA will notify the Customer if, in its opinion, the Customer's instruction would not comply with the Data Protection Legislation and shall be entitled to cease to provide the relevant services until appropriate amended instructions are received.
- 3.3 APPA will maintain the confidentiality of all Personal Data and will not disclose Personal Data to third parties unless the Customer or the Contract specifically authorises the disclosure, or as required by law. If a law, court, regulator or supervisory authority requires APPA to process or disclose Personal Data, APPA will first inform the Customer of the legal or regulatory requirement and give the Customer an opportunity to object or challenge the requirement, unless the law prohibits such notice.
- 3.4 APPA will reasonably assist the Customer with meeting the Customer's compliance obligations under articles 32 to 36 of the GDPR (and any similar obligations under

Data Protection Legislation), taking into account the nature of APPA's processing and the information available to APPA, including in relation to Data Subject rights, data protection impact assessments and reporting to and consulting with supervisory authorities under the Data Protection Legislation.

4 PROVIDER'S EMPLOYEES

4.1 APPA will ensure that all employees are informed of the confidential nature of the Personal Data and are bound by confidentiality obligations and use restrictions in respect of the Personal Data.

5 SECURITY

5.1 APPA will at all times implement appropriate technical and organisational measures against unauthorised or unlawful processing, access, disclosure, copying, modification, storage, reproduction, display or distribution of Personal Data, and against accidental or unlawful loss, destruction, alteration, disclosure or damage of Personal Data. APPA will document those measures in writing and periodically review them to ensure they remain current and complete.

5.2 APPA will implement such measures to ensure a level of security appropriate to the risk involved, including as appropriate:

5.2.1 the pseudonymisation and encryption of personal data;

5.2.2 the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;

5.2.3 the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and

5.2.4 a process for regularly testing, assessing and evaluating the effectiveness of security measures.

6 PERSONAL DATA BREACH

6.1 APPA will promptly and without undue delay notify the Customer if any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable. APPA will restore such Personal Data at its own expense.

6.2 APPA will promptly and without undue delay notify the Customer if it becomes aware of:

- 6.2.1 any accidental, unauthorised or unlawful processing of the Personal Data; or
- 6.2.2 any Personal Data Breach.

7 CROSS-BORDER TRANSFERS OF PERSONAL DATA

- 7.1 APPA (or any subcontractor) must not transfer or otherwise process Personal Data outside the European Economic Area ("**EEA**") without obtaining the Customer's prior written consent.

8 SUBCONTRACTORS

- 8.1 APPA may only authorise a third party (subcontractor) to process the Personal Data if:

- 8.1.1 the Customer is provided with an opportunity to object to the appointment of each subcontractor within 7 (seven) days after APPA supplies the Customer with full details regarding such subcontractor;

- 8.1.2 APPA enters into a written contract with the subcontractor that contains terms substantially the same as those set out in this Agreement, in particular, in relation to requiring appropriate technical and organisational data security measures; and

- 8.1.3 APPA maintains control over all Personal Data it entrusts to the subcontractor.

- 8.2 If the Customer:

- (a) objects to the appointment of any subcontractor within the timescale referred to in clause 8.1.1 then APPA shall ensure that no Personal Data that it is processing on behalf of the Customer is transferred to such subcontractor and the Contract shall automatically terminate one month after receipt of such objection by APPA on a no fault basis for either party; or

- (b) does not object to the appointment of any subcontractor within the timescale referred to in clause 8.1.1 then they are deemed to have agreed to the engagement of that subcontractor.

- 8.3 Those subcontractors approved as at the commencement of this Agreement are as set out in clause 7.2 above and, additionally, Microsoft Inc who together provide hosting services for our platform and app who are both US companies but who keep

all personal data on servers at data centres respectively based in the UK and throughout the EEA (and who do not transfer such data to the US at any time).

- 8.4 Where the subcontractor fails to fulfil its obligations under such written agreement, APPA remains fully liable to the Customer for the subcontractor's performance of its agreement obligations.
- 8.5 The Parties consider APPA to control any Personal Data controlled by or in the possession of its subcontractors.

9 SENSITIVE PERSONAL DATA

- 9.1 APPA does not expect to regularly process sensitive personal data on behalf of the Customer but where it is requested to do so by the Customer from time to time, the Customer shall ensure that prior to making such request it has sufficient consent to the processing from the relevant data subject including (but not limited to) ensuring that the consent is freely given (so giving of the consent must not be a pre-condition of the data subject being entitled to use APPA's platform an app), specific and informed (so the data subject must be advised that the data will be sent to APPA and its sub-processors, why it has been sent, and what data will be send) and an unambiguous indication of consent.
- 9.2 If the consent referred to in clause 9.1 is withdrawn at any time then the Customer must notify APPA immediately, following which APPA will cease processing such sensitive personal data.
- 9.3 The Customer shall indemnify APPA against any losses, claims, damages, liabilities, fines, sanctions, interests, penalties, costs, charges, expenses, compensation paid to data subjects, demands and legal and other professional costs (calculated on a full indemnity basis and each case whether or not arising from any investigation by, or imposed by, a supervisory authority) arising out of or in connection with any breach by the customer of its obligations under clauses 9.1 or 9.2.

10 COMPLAINTS, DATA SUBJECT REQUESTS AND THIRD PARTY RIGHTS

- 10.1 APPA will, at no additional cost, take such technical and organisational measures as may be appropriate, and promptly provide such information to the Customer as the Customer may reasonably require, to enable the Customer to comply with:
- 10.1.1 the rights of Data Subjects under the Data Protection Legislation, including subject access rights, the rights to rectify and erase personal data, object to the processing and automated processing of personal data, and restrict the processing of personal data; and

10.1.2 information or assessment notices served on the Customer by any supervisory authority under the Data Protection Legislation.

11 DATA RETURN AND DESTRUCTION

11.1 At the Customer's request, APPA will give the Customer a copy of or access to all or part of the Customer's Personal Data in its possession or control in the format and on the media reasonably specified by the Customer.

11.2 On termination of the Contract for any reason or expiry of its term, APPA will securely delete or destroy or, if directed in writing by the Customer, return and not retain, all or any Personal Data related to this Agreement in its possession or control.

11.3 If any law, regulation, or government or regulatory body requires APPA to retain any documents or materials that APPA would otherwise be required to return or destroy, it will notify the Customer in writing of that retention requirement, giving details of the documents or materials that it must retain, the legal basis for retention, and establishing a specific timeline for destruction once the retention requirement ends.

12 AUDIT

12.1 APPA shall, in accordance with the Data Protection Legislation, make available to the Customer such information that is in its possession or control as is necessary to demonstrate APPA's compliance with the obligations placed on it under this Agreement and to demonstrate compliance with the obligations on each party imposed by Article 28 of the GDPR (and under any equivalent provisions of any Data Protection Legislation), and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose (subject to a maximum of one audit request in any 12 month period under this clause 12).

This agreement has been entered into on the date stated at the beginning of it.

SIGNED by a director for
and on behalf of **APPA SCOTLAND LTD:**

A handwritten signature in blue ink, appearing to read 'J F Forbes Hamilton', written in a cursive style.

Forbes Hamilton
Director APPA Scotland Ltd