

OPERATOR ADDENDUM

THIS ADDENDUM (the "Addendum") by and between Xello, Inc. (the "Company") and the Board of Control of School Association for Special Education in DuPage County ("SASED"), an Illinois special education cooperative (the "Customer" or the "District"), is incorporated in and effective simultaneously with the attached Terms of Service Agreement (the "Agreement") and modifies the Agreement (and all supplement terms and conditions, order forms, and policies, practices, or procedures applicable to or employed by the Company under the Agreement) as follows:

1. **Customer Data.** The Company shall cause each officer, director, employee, and other representative (collectively, the "Authorized Representatives") who shall have access to any "Customer Data," which is defined as all student Personally Identifiable Information ("PII") and other non-public information, including student data, metadata, and user content, of the District students (hereinafter "Customer Data"), whether provided by a student, a student's parent, school personnel, or gathered by the Company during the term of the Agreement to maintain in strict confidence and trust all Customer Data, including the following:
 - a. "Student data" includes personally identifiable information or other material or information that is linked to such personally identifiable information that is created by or provided by a student or the student's parent in the course of the student's use of the Company's services for school purposes. The types of student data that may be collected as part of using the Company's services include student work, student names, student e-mails, grade and age.
 - b. With respect to any Customer Data that could be considered "education records" as defined under the Family Educational Rights and Privacy Act ("FERPA") and/or "school student records" as defined under the Illinois School Student Records Act ("ISSRA"), the Company acknowledges that for the purposes of this Agreement it will be designated as a "school official" with "legitimate educational interests" in the education records, as those terms have been defined under FERPA and ISSRA and their implementing regulations and is performing an institutional service or function for which the Customer would otherwise use employees, under the direct control of the school, with respect to the use and maintenance of Customer Data. The Company agrees to abide by the FERPA and ISSRA limitations and requirements imposed on school officials. The Company will collect and use Customer Data only for the purpose of fulfilling

its duties under the Agreement for the Customer and the Customer's end users' benefits, and will not share Customer Data with or disclose it to any third party except as provided for in this Addendum, required by law, or authorized in writing by the Customer. The Company will not use Customer Data (including metadata) for advertising or marketing purposes unless such use is specifically authorized by this Addendum or otherwise authorized in writing by the Customer.

- c. With respect to Customer Data that could be considered "education records" Customer shall have the right to access such information for educational purposes and Company will not implement controls to restrict Customer's access to its education records.
- d. With respect to the Company's collection, use or disclosure of personal information from students, as governed by applicable laws, the Company agrees that the Company's use of the personal information and any other Customer Data will be solely for the benefit of the Customer's students and for the school system, and that the operator will not collect personal information from students for any purpose other than the Customer's purpose, including any other commercial purpose, and will not amass a profile about a student, except in furtherance of Customer's purposes.
- e. With respect to the Company's collection, disclosure, or use of personal information as governed by this Addendum and all applicable laws referenced herein, the Company agrees that such collection, disclosure or use of any Customer Data shall be exclusively in furtherance of Customer's school purposes, unless otherwise permitted by law or requested by a student or the student's parent or unless done to allow or improve operability and functionality of the Company's service. If the Company discloses Customer Data to a third party, the following conditions must be met: 1) the Customer must have a contract with the third party; 2) the disclosure must be in furtherance of providing the contracted service; 3) the third party must not further disclose Customer Data; and 4) the third-party must implement and maintain reasonable security procedures and practices that meet or exceed industry standards. The Company will provide the customer with a list of any third parties to whom the Company is currently disclosing Customer Data or has disclosed Customer Data. The Company will provide this list within 14 business days of January 1 and within 14 business days of July 1. Customer Data does not include information that has been de-identified

such that the resulting data cannot reasonably be used to identify an individual student.

- f. The identity of Authorized Company Representatives having access to Customer Data will be documented and access will be logged.

2. **Limited Warranty.** For the purposes of this Addendum, a "Defect" is defined as a failure of the Company's Products to substantially conform to the then-current Company's User Guides materials. For as long as the Agreement is in place, the Company warrants that the Company's Products will not contain Defects. If the Services do not perform as warranted, the Company will use reasonable efforts, consistent with industry standards, to cure the Defect in accordance with the Company's then current support call process. Should the Company be unable to cure the Defect or provide a replacement product within five business days, the Customer shall be entitled to a refund of its fees paid for the Services, as depreciated on a straight-line basis over a 12 month period commencing on the date the Customer first has access to the Company's Products through the date of termination.
3. **Compliance with Law.** Company shall comply with all applicable local, county, Illinois, and federal laws and regulations, including those regarding the provision of educational software, copyright, student records/educational records, and student confidentiality, including FERPA, ISSRA, COPPA, PPRA, the Illinois Student Online Personal Protection Act ("SOPPA"), and the Illinois Children's Privacy Protection and Parental Empowerment Act ("ICPPEA"), to the extent applicable.
4. **Ownership.** All Customer Data will remain Customer's property and Customer shall retain full control over all such Data shared with or collected by the Company.
5. **Security.** Company agrees to employ reasonable security measures that meet or exceed industry standards and otherwise comply with all applicable federal and state laws and regulations regarding data security and privacy for provision of service, including testing its servers for viruses at reasonable intervals and maintaining backup copies of all content. Company agrees to store and process the Customer Data in a manner that is no less protective than those methods used to secure the Company's own data. This includes appropriate administrative, physical, and technical safeguards to secure the data from unauthorized access, disclosure, use, and loss, and includes maintaining adequate backup copies of the data. Company shall maintain

complete and accurate records of these security measures and produce such records to Customer for purposes of audit upon reasonable prior notice during normal business hours. The Customer reserves the right at its sole discretion to perform audits of the Company's storage of Customer Data at the Customer's expense to ensure compliance with the terms of the Agreement and this Addendum. The Company shall reasonably cooperate in the performance of such audits.

6. **Security Breach.** In the event of a "Security Breach," which means an unauthorized disclosure, access, alteration, use, or acquisition of computerized data of Customer Data or circumstances that could have resulted in such unauthorized disclosure, access, alteration or use, or that compromises the security, confidentiality or integrity of Customer Data, the Company shall promptly, and in no event later than 30 calendar days after the determination that a Security Breach has occurred, institute the following:
 - i. Provide the Customer with the name and contact information for an employee of the Company who shall serve as the Company's primary security contact and shall be available to assist customer twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a Security Breach;
 - ii. Notify the Customer of a Security Breach by immediately contacting **Melinda McGuffin** by telephone at **630-955-8112** and by e-mail with a read receipt at technology@sased.org and, if that person is different from the contact person identified in this paragraph, by contacting the Company's primary business contact within the District by telephone and email as soon as practicable, but no later than twenty-four (24) hours after the Company becomes aware of a Security Breach; and
 - iii. Promptly following the Company's notification to the Customer of a Security Breach, the parties shall coordinate with each other to investigate the Security Breach. The Company agrees to fully cooperate with the Customer in the handling of the matter, including, without limitation:
 - a. Assisting with any investigation;
 - b. Facilitating interviews with the Company's employees and other involved in the matter;
 - c. Making available all relevant records, logs, files, data reporting and

other materials required to comply with applicable law, regulation, or as otherwise reasonably required by the Board; and

- d. Assisting the District with any notifications the District deems necessary related to the security breach. The Company shall not, unless required by law, provide any notices to any individual or entity without prior written permission from the District.

The Company shall reimburse and indemnify the Customer for any costs imposed on the Customer or reasonably undertaken by the Customer at its discretion associated with a Security Breach, including reimbursement of fees paid by the Customer related to providing credit monitoring to affected individuals and payment of legal fees, audit costs, fines, and other fees undertaken by the Customer as a result of the security breach.

7. **Return/Destruction of Customer Data.** Upon expiration of the term of the Agreement, upon the earlier termination of the Agreement for any reason, or upon the Customer's request, the Company covenants and agrees that it promptly shall deliver to the Customer and shall return to the Customer all Customer Data. If the Customer is not willing to receive Customer Data within a reasonable time (not to exceed 6 months) or if it is not feasible to return the Data to the Customer, then the Company shall destroy the data within 6 months. The non-disclosure obligations of the Company and its Authorized Representatives regarding the information contained in the Customer Data shall survive termination of the Agreement.
8. **Data Storage.** The Company shall not transmit to or store any Customer Data on a server or other data storage medium located outside the United States of America.
9. **Infringement.** The Company warrants that no third party has any claim to any trademark, patent, or proprietary interest in any services the Company provides to the Customer. The Company will defend, hold harmless, and indemnify the Customer from any claims brought by a third party against the Customer to the extent based on an allegation that the Company Products infringe any U.S. patent, copyright, trademark, trade secret or other proprietary right of a third party. If the Customer's use of the Company's products is restricted as the result of a claim of infringement, the Company shall do one of the following: (i) substitute other equally suitable product; (ii) modify the allegedly infringing Company product to avoid the infringement; (iii) procure for the Customer the right to continue to use the Company products free of the restrictions caused by the infringement; or (iv) take back such Company products and

refund to the Customer the license fee previously paid for the Company products depreciated on a straight line basis over 12 months and terminate the Customer's license to use the Company's product.

10. **Governing Law.** The Agreement and this Addendum shall be construed under the laws of Illinois and jurisdiction of the Circuit Court of DuPage County, Illinois or the federal district court for the Northern District of Illinois, Eastern Division, exclusive of its choice of laws provision.
11. **Access to Data by the Customer.** Any Customer Data in the possession or under the control of the Company shall be made available to the Customer upon request by the Customer. The Company shall be responsible to provide copies of or access to Customer Data in the possession or under the control of the Company to the Customer within a reasonable time frame and in all cases within time frames that will allow timely compliance by the Customer with any statutorily or court ordered deadline. This includes requests under the Illinois Freedom of Information Act ("FOIA"), requests for student records under FERPA or ISSRA, requests for records in discovery in state or federal court or administrative proceedings, or any other request.
12. **Taxes.** The Customer is a tax exempt organization. Federal excise tax does not apply to the Customer and State of Illinois Sales Tax does not apply. The amounts to be paid to the Company hereunder are inclusive of all other taxes that may be levied, including sales, use, nonresident, value-added, excise, and similar taxes levied or imposed upon the work. The Company shall be responsible for any taxes levied or imposed upon the income or business privileges of the Company.
13. **Customer Payments.** The Customer shall make payments to the Company in accordance with the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1. If the Customer is late in making a payment it shall make interest payments at the maximum amount permitted under the Illinois Local Government Prompt Payment Act, 50 ILCS 505/4.
14. **Indemnification and Insurance.** Company agrees to indemnify, defend and hold harmless Customer and its officers, directors, employees, agents, attorneys and assigns, against any third party claims, demands, actions, arbitrations, losses and liabilities resulting from damage caused by Company employees, contractors, or subcontractors in performing the obligations under the Agreement or this Addendum.

Company shall maintain liability insurance evidencing that the Company has workers compensation insurance as required by law and general liability insurance with a minimum limit of \$2,000,000. All insurers shall be licensed by the State of Illinois and rated A+-VII or better by A.M. Best or comparable rating service. The comprehensive general liability shall name the Customer, its Board, Board members, employees, agents, and successors as an additional insured with a waiver of subrogation in favor of the Customer. The Company shall provide the Customer with certificates of insurance and/or copies of policies reasonably acceptable to the Customer evidencing the existence of the coverage described above, including form and deductibles, during the duration of the Agreement. The failure to provide acceptable insurance or certificate of insurance shall be deemed a breach of the Agreement and the Customer may immediately terminate the Agreement. Such certificates of insurance shall indicate that should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered to the Customer in accordance with the policy provisions, but in no event less than thirty (30) days prior to cancellation of coverages.

15. **No Indemnification or Limitation of Liability by Customer.** Any provision included in the Agreement that requires the Customer to indemnify the Company or any other party is deleted and shall not apply to the Customer. Any provision in the Agreement that limits the Company's liability is deleted.
16. **Warranties.** The Company warrants that the product is fit for the purposes for which it is being provided to the Customer, that title to the product is free and clear, and that Customer's use of the product for its intended purposes does not infringe on the intellectual property rights of any third party. The Customer agrees to use the product only for its intended purpose. Any provision in the Agreement that imposes a warranty on the Customer is deleted.
17. **Employee and Subcontractor Qualifications.** The Company shall ensure that its employees and subcontractors who have potential access to Customer Data have undergone appropriate background screening to the Customer's satisfaction and possess all needed qualifications to comply with the terms of this Addendum and the Agreement including all terms relating to Customer Data, student data privacy, and intellectual property protection, and shall be responsible for any failure of such individuals to comply with such obligations.
18. **Renewal of Agreement and Addendum; Posting of Agreement and Addendum.** The

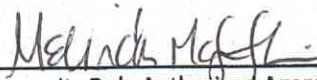
parties may renew the Agreement and this Addendum in writing. Unless otherwise specifically agreed in writing, any renewal of the Agreement shall be deemed a renewal of this Addendum. Any provisions in the Agreement that provide for an automatic renewal of the Agreement are deleted. Customer shall post a copy of the Agreement and this Addendum, as well as any renewals, on its website.

19. **Termination.** The Customer may immediately terminate the Agreement if the Customer makes the determination that the Company has breached a material term of this Addendum.
20. **Terms and Conditions.** This Addendum constitutes the Terms of Use between the Company and Customer and supersedes all other prior or present understandings, either verbal or in written, regarding the subject matter of the Agreement. Any changes to the Company's Terms of Use shall be ineffective and inapplicable with respect to the Customer unless Customer affirmatively consents in writing to be bound by such changes. In the event of a conflict between the terms and provisions of the Agreement and this Addendum, this Addendum shall be controlling.
21. **Privacy Policies.** Access by students or parents/guardians to the Company's programs or services governed by the Agreement or to any Customer Data stored by the Company shall not be conditioned upon agreement by the parents/guardians to waive any of the student data confidentiality restrictions or a lessening of any of the confidentiality or privacy requirements contained in this Addendum.
22. **Effective Date.** The Agreement shall be deemed dated and become effective on the date of the last signature of the parties' duly authorized representatives as set forth below.

Xello, Inc.

School Association for Special Education
in DuPage County ("SASED").

By: 
Its Duly Authorized Agent

By: 
Its Duly Authorized Agent

Printed Name: LISA DUNN

Date: 10/29/2020

Title: CUSTOMER SUCCESS
OPERATIONS MANAGER

Address: TORONTO, ONTARIO, M4S 1Y5
1867 YONGE ST.
SUITE #700

Printed Name: Melinda McGuffin

Title: Executive Director

Address: 2900 Ogden Avenue, Lisle IL
60532

Date: 10/29/2020