Agreement on joint responsibility

pursuant to Art. 26 GDPR

between

mycelia gGmbH
Prinzenstraße 85C
10969 Berlin

referred to below as "**provider**"

and

Institution according to Terms of Use OEB Platform

in the following, "**institution**"

hereinafter also referred to collectively as the "**parties**"

Preamble

The Open Educational Badges platform (referred to as the 'OEB platform' below), accessible at www.openbadges.education, is designed to enable the creation, awarding and collection of open badges and learning paths for institutions on the one hand and learners (badge recipients) on the other. The aim is to make visible the skills acquired or taught in different learning settings and areas of competence and to strengthen the autonomy of learners. The platform is being implemented by mycelia gGmbH.

By registering on the OEB platform, the institution has accepted the terms of use. When using the OEB platform, personal data of learners is processed by the parties as joint controllers within the meaning of Art. 4 No. 7, Art. 26 GDPR. This agreement serves to implement the obligation arising from this in accordance with Art. 26 (1) sentence 2 GDPR.

1. Subject matter of the contract

1.1 This contract constitutes an agreement pursuant to Art. 26 GDPR governing the processing of personal data under the joint responsibility of the parties (hereinafter referred to as the 'Agreement'). This Agreement applies to all activities in which

employees of the parties or processors commissioned by them process personal data on behalf of the controllers.

1.2 The cooperation between the parties entails that the parties jointly determine the purposes and essential elements of the means of processing certain personal data (hereinafter referred to as "Data" or "Data Processing"). Subject to any other provisions of this Agreement or individual arrangements, the parties therefore act as joint controllers within the meaning of Article 4(7) and Article 26 of the GDPR.

1.3 This agreement governs the data protection rights and obligations of the parties in the course of their cooperation and, in particular, specifies the distribution and fulfilment of tasks and obligations under applicable data protection law (in particular the GDPR) between the parties with regard to data processing.

2. Subject matter, purpose, means and scope of data processing

2.1 The purpose of data processing is to enable the provision of Open Educational Badges ('OEB') as described in detail in the Terms of Use.

2.2 Data processing shall be carried out in accordance with the provisions set out in **Annex 1** to this agreement regarding the purposes, means and scope. It shall relate to the type of data specified in **Annex 1** and the categories of data subjects specified therein.

2.3 **Appendix 1** to this agreement also conclusively specifies which party or whether all parties jointly have determined the categories of data subjects, the type of personal data, the means and purposes of processing.

2.4 The parties shall ensure that only personal data that is absolutely necessary for the lawful issuance of badges and for compliance with the terms of use is collected. In all other respects, all parties shall observe the principle of data minimisation within the meaning of Article 5(1)(c) GDPR.

2.5 The parties agree that data processing shall take place exclusively in a member state of the European Union (EU). Any transfer to a third country must be agreed between the parties and may generally only take place if the specific requirements of Art. 44 ff. GDPR are met.

3. Phases of data processing / Competence and responsibility

3.1 Responsibilities with regard to data processing are divided between the parties according to processing phases as follows:

- The institution is responsible for collecting personal data for the purpose of transferring it to the OEB platform.
- The provider is responsible for storing the data on the OEB platform.
- The provider is responsible for hosting and backing up the data.

- The institution is responsible for checking whether one or more badges should be awarded to badge recipients.
- The educational institution is responsible for awarding and withdrawing badges.
- The institution is responsible for changing and deleting the data of badge recipients.
- The provider is responsible for the final deletion of data after deletion by an institution.
- The provider is responsible for deleting data after a period specified by the provider.

3.2 The data shall be stored in a structured, commonly used and machine-readable format.

4. Information for data subjects

4.1 The parties shall ensure compliance with the information obligations under Articles 13 and 14 GDPR within the scope of the processing phases for which they are responsible. The other parties are free to provide information in accordance with Articles 13 and 14 GDPR outside the scope of the processing phases for which they are responsible.

4.2 The necessary information must be provided to data subjects free of charge in a precise, transparent, comprehensible and easily accessible form, using clear and plain language in German.

4.3 The parties shall make the essential contents of this agreement available to the data subjects in accordance with Article 26(2) sentence 2 GDPR.

4.4 The information to be provided in accordance with this section shall be published on the website of the respective party in an easily accessible form at all times.

4.5 Before collecting personal data, the institution is obliged to indicate in the information provided in accordance with Articles 13 and 14 of the GDPR any subsequent processing that may be carried out by its provider.

4.6 The institution shall provide all necessary information for this purpose and shall be solely responsible for the accuracy and completeness of the information and its compliance with data protection regulations.

5. Fulfilment of other rights of data subjects

5.1 The parties are independently responsible for fulfilling requests to exercise the other rights of data subjects under Articles 15 et seq. GDPR ('data subject rights') within the scope of the processing phases for which they are responsible.

5.2 Notwithstanding the above provision, the parties agree that data subjects may contact either party in order to exercise their respective data subject rights.

5.3 If a data subject right relates to a processing phase that does not fall within the area of responsibility of the party contacted, the party contacted undertakes to inform the responsible party of the data subject right asserted and to provide the latter with all information necessary to fulfil the data subject right.

6. Security and confidentiality of processing

6.1 The parties shall ensure that all technical and organisational measures are implemented in such a way that data processing is carried out in accordance with the requirements of applicable data protection regulations, in particular the GDPR, and that the rights of the data subjects are protected.

6.2 As the technical and organisational measures are subject to technical progress and further development as well as legal changes, the parties are permitted to implement alternative and adequate measures, provided that an appropriate level of security is maintained. If the provider determines that the technical and organisational measures implemented by the institution are insufficient or that technical advances or legal changes require further measures, it shall inform the institution. In the event of such information, the institution undertakes to conscientiously examine and implement any necessary measures. If the institution decides against implementing further measures, it shall provide the provider with a written explanation of its decision.

6.3 The parties shall ensure, within their respective areas of responsibility in accordance with Clause 3.1, that all employees involved in data processing maintain the confidentiality of the data in accordance with Articles 28(3), 29 and 32 GDPR for the duration of their employment and after termination of their employment, and that they are bound to data secrecy and instructed in the relevant data protection provisions before commencing their work.

6.4 The parties shall independently ensure that they comply with all statutory data retention obligations. To this end, they shall take appropriate data security measures (Art. 32 et seq. GDPR). This applies in particular in the event of termination of the cooperation.

7. Procedure in the event of data breaches

7.1 The parties shall be responsible, within their respective areas of responsibility in accordance with Clause 3.1 of this Agreement, for investigating and handling all breaches of personal data protection within the meaning of Art. 4 No. 12 GDPR ('data security incident'), including the fulfilment of any reporting obligations to the competent supervisory authority pursuant to Art. 33 GDPR or to the data subjects pursuant to Art. 34 GDPR.

7.2 The institution shall immediately notify the provider of any data security incident detected in connection with the joint project.

7.3 In the event of a notification pursuant to Art. 33, 34 GDPR to another party, the parties shall cooperate in accordance with Section 8.1 of this agreement and in the investigation and elimination of data security incidents to the extent necessary and reasonable, in

particular by immediately providing each other with all relevant information in this context. In this context, 'immediately' means, in view of the 72-hour period specified in Art. 33 GDPR, that any known information about a data security incident shall be forwarded without delay.

8. Other joint and mutual obligations

8.1 The parties are obliged to appoint a competent and reliable data protection officer in accordance with Art. 37 GDPR, provided that the legal requirements for such an appointment are met.

8.2 The parties shall require all persons involved in data processing to sign a written confidentiality agreement with regard to the data.

8.3 The parties shall include the data processing in their respective procedure directories in accordance with Art. 30 (1) GDPR and note it there as a procedure under joint responsibility, provided that the legal requirements for an appointment obligation are met.

8.4 The parties shall inform each other immediately and fully if errors or irregularities in data processing or violations of the provisions of this agreement or applicable data protection law, in particular the GDPR, are discovered.

8.5 The parties shall each appoint a permanent contact person and their deputy for all questions arising in connection with this agreement.

9. Central point of contact for supervisory authorities

9.1 mycelia gGmbH is the central point of contact for the supervisory authority responsible under Articles 55 and 56 of the GDPR in connection with all enquiries or measures relating to this agreement.

9.2 The parties shall notify each other immediately if a data protection supervisory authority contacts them in connection with this agreement.

9.3 If a supervisory authority contacts a party other than mycelia gGmbH directly, the supervisory authority shall be referred to the provisions of Section 10.1 of this agreement.

10. Liability

10.1 The parties shall be liable to affected persons in accordance with the statutory provisions.

10.2 The parties shall indemnify each other internally from any liability insofar as they each bear a share of the responsibility for the cause of the liability. The areas of responsibility specified in clause 3.1 of this agreement shall be decisive in this regard. This also applies with regard to a fine imposed on a party for a violation of data protection regulations,

provided that the party fined has first exhausted all legal remedies against the fine notice. If the respective party is then still liable for all or part of a fine that does not correspond to its internal share of responsibility for the violation, the other party is obliged to indemnify it against the fine to the extent that the other party shares responsibility for the violation sanctioned by the fine. Claims for recourse and indemnity arise and must be asserted as soon as the obligation to pay has been established on the merits; they subsist regardless of whether the relevant liability has already been settled in full, provided that it is due.

11. Final provisions

11.1 The agreement shall come into effect between the parties upon countersigning the Terms of Use.

11.2 The provisions of the Terms of Use shall apply to the term and termination of the agreement. In the event of any conflict between this agreement and other agreements between the parties, in particular the Terms of Use, the provisions of this agreement shall prevail.

11.3 Should individual provisions of this agreement be invalid or contain a loophole, the remaining provisions shall remain unaffected. The parties undertake to replace the invalid provision with a provision that comes closest to the purpose of the invalid provision and best meets the requirements of Art. 26 GDPR.

11.4 German law, including the GDPR, shall apply.

Appendix 1

Purpose, means and scope of data processing

- See also 3.1.
- Workflow from collection of learner data to awarding of the badge
- The provider processes the first name, surname and email address of learners for the purpose of awarding learners a badge and a PDF certificate for the purpose set by the institution that collected the data
- In the case of awarding a badge via QR code, learners independently provide their surname, first name and email address to the institution. The data is then processed in the same way as if it had been collected by the institution itself.