

DATA SHARING AGREEMENT

This agreement records the terms upon which eSchools will process the School Data for the purpose of providing its services to the School.

eSchools means eSchools Ltd a company registered in the United Kingdom under number 06841441 whose registered office is at George Court, Bartholomew's Walk, Ely, Cambridgeshire, CB7 4JW (eSchools).

BY CONTINUING TO USE OUR SERVICES AND BY GRANTING ACCESS TO ESCHOOLS TO SOME OR ALL OF THE SCHOOL DATA, THE SCHOOL AGREES TO THE TERMS OF THIS DATA SHARING AGREEMENT.

TERMS AND CONDITIONS

1. Definitions

1.1. In this Agreement the following definitions shall apply

"Agreement"	means this Data Sharing Agreement
"Confidential Information"	means all confidential information (however recorded or preserved) disclosed by the School to eSchools in connection with this Agreement which is either labelled as such or else which could be reasonably considered confidential because of its nature and the manner of its disclosure;
"Data"	has the meaning given in the DPA as amended or replaced from time-to-time;
"Data Controller"	has the meaning given in the DPA as amended or replaced from time-to-time;

“Data Processor”	has the meaning given in the DPA as amended or replaced from time-to-time;
“Data Protection Laws”	means the DPA, and all applicable laws and regulations relating to the processing of personal data and privacy applicable in the United Kingdom from time-to-time.
“DPA”	means the Data Protection Act 1998;
“Good Industry Practice”	means using standards practices methods and procedures conforming to the law and exercising that degree of skill and care diligence prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;
“Management Information System” or “MIS”	means the School’s database which holds the School Data
“Personal Data”	has the meaning given in the DPA as amended or replaced from time-to-time.
“Personal Data Breach”	means the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Personal Data transmitted, stored or otherwise processed
“processed” or “processing”	has the meaning given in the DPA as amended or replaced from time-to-time;
“Services”	Means the services performed by eSchools and as described in your schools eSchools agreement.
“School”	means the school or establishment using eSchools services.
“School Data”	means Personal Data relating to students, parents and guardians, and staff at the School, and other data regarding the school, including timetable, call and year group information;

“Wonde”	means Wonde Ltd, a partner of eSchools who specialise in securely reading and writing of data including School Data.
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- 1.2. A reference to **writing** or **written** includes faxes, emails and writing in any electronic form.

2. General Provisions

- 2.1. By continuing to use eSchools, and by granting access to eSchools to some or all of the School Data, the School agrees to the terms of this Agreement.
- 2.2. The School and eSchools acknowledge that, for the purposes of Data Protection Legislation, eSchools is a Data Processor and the School is a Data Controller in respect of the School Data comprising Personal Data.
- 2.3. eSchools shall comply with all applicable Data Protection Laws in respect of the processing of the School Data.
- 2.4. eSchools shall not process any School Data other than on the instructions of the School (unless such processing shall be required by any law to which eSchools is subject).
- 2.5. The School hereby instructs and authorises eSchools to process School Data for the purpose of providing its services to the school, to allow students, parents and guardians, and staff of the School to access certain School Data using eSchools, and as otherwise reasonably necessary for the provision of the Services by eSchools to the School.
- 2.6. The School warrants and represents that it has obtained all consents from individuals (including students, parents and guardians, and staff at the School) whose Personal Data the School supplies to eSchools as part of the School Data which are necessary (whether under Data Protection Laws or otherwise) for the lawful processing of the School Data by the School and eSchools for the purposes set out in this clause 2. The School shall indemnify eSchools against all costs, claims, damages, expenses, losses and liabilities incurred by eSchools arising out of or in connection with any failure (or alleged failure) by the School to obtain such consents.
- 2.7. The School and eSchools confirm that:
- 2.7.1. the processing of School Data by eSchools will comprise the collection or extraction of School Data from the MIS, the organisation and re-categorisation of that School Data by Wonde, the transfer of the School Data to eSchools and the transfer of the School Data to parents and guardians, students and staff of the School who are permitted to access eSchools;

2.7.2. the purpose of the processing of School Data by eSchools is to enable eSchools to provide the Services; and

2.7.3. the data that will be processed by eSchools will be School Data, and the data subjects will be students of the School, their parents and guardians, and staff of the School.

3. Term of the Agreement

3.1. This Agreement shall commence on the date that the School first approves the transfer of School Data by Wonde to eSchools, and shall continue in full force unless and until the School removes eSchools from their Wonde account at which point this Agreement shall automatically terminate.

3.2. Upon termination of this Agreement, clauses 2.6, 5 and 9 shall continue to apply.

4. Transfer of School Data

4.1. The School hereby consents to eSchools accessing School Data held on the Management Information System through Wonde, for the purpose of extracting and transferring such School Data to eSchools.

4.2. Prior to leaving the School premises by electronic means (via HTTPS) the School Data will be encrypted by Wonde and eSchools.

5. Ownership of the School Data and Confidential Information

5.1. The School Data shall always remain the property of the School.

5.2. eSchools shall have no responsibility to maintain the security of any School Data held or controlled by the School.

5.3. eSchools shall keep all Confidential Information and School Data confidential and shall not:-

5.3.1.1. use any Confidential Information or School Data except for the purpose of performing the services it provides to the School; or

5.3.1.2. disclose any Confidential Information in whole or in part to any third party, except as expressly permitted by this Agreement, or as required for the purpose of any services provided by eSchools to the School, or to the extent required by law.

6. Security of the Data

- 6.1. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing to be carried out by eSchools, as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, eSchools shall in relation to the School Data implement appropriate technical and organisational measures to ensure a level of security appropriate to that risk.
- 6.2. In assessing the appropriate level of security, eSchools shall take account in particular of the risks that are presented by processing of the School Data, in particular from a Personal Data Breach.

7. Permission to use Sub-contractor

- 7.1. eSchools may appoint a sub-contractor to carry out any or all of its processing activities in accordance with the terms of this clause 7.
- 7.2. The School hereby authorises eSchools to appoint third parties to provide electronic data storage and transmission services to eSchools in connection with the processing of the School Data. eSchools shall notify the School of any changes to the identity of such third parties from time-to-time.
- 7.3. Save as permitted by clause 7.2, eSchools shall not appoint any sub-contractor in connection with the processing of the School Data without the prior written permission of the School.
- 7.4. Where eSchools appoints a sub-contractor pursuant to this clause 7, it shall ensure that the arrangement between it and the sub-contractor is governed by a written contract including terms which offer at least the same level of protection for the School Data as those set out in this Agreement, and meet the requirements of Data Protection Laws.
- 7.5. eSchools shall ensure that each sub-contractor appointed by it performs the obligations under clauses 2.4, 6.1, 10, 11 as they apply to processing of the School Data carried out by that sub-contractor, as if they were a party to this Agreement in place of eSchools. eSchools remain liable for the acts and omissions of any sub-contractor in respect of the processing of the School Data.

8. Insurance

eSchools maintains a policy of insurance in respect of public liability in respect of the services provided by eSchools and the processing of the School Data, and shall produce a copy of such policy to the School if requested to do so.

9. Deletion or return of School Data

- 9.1. eSchools shall within a reasonable period of either a written request from the School, or the termination of this Agreement, delete and procure the deletion of all copies of the School Data.
- 9.2. Subject to clause 9.3, the School may in its absolute discretion by written notice to eSchools at any time require eSchools to:
 - 9.2.1. delete and use all reasonable endeavours to procure the deletion of all other copies of School Data processed by eSchools or any of its sub-contractors.

eSchools shall use all its reasonable endeavours to comply with any such written request within 14 days of receiving such request.
- 9.3. eSchools and its sub-contractors may retain School Data to the extent required by any applicable law, provided that eSchools and its sub-contractors shall ensure the confidentiality of all such School Data retained, and shall ensure that such School Data is only processed as necessary for the purpose(s) specified by the applicable laws requiring its storage and for no other purpose.
- 9.4. eSchools shall, within 7 days of request from the School, provide written confirmation to the School that it has fully complied with this clause 9.

10. Audit and Information Rights

- 10.1. Subject to clauses 10.2, eSchools shall:
 - 10.1.1. make available to the School on request all information necessary to demonstrate eSchools' compliance with this Agreement; and
- 10.2. The information and audit rights of the School under clause 10.1 shall apply only to the extent required by Data Protection Laws.

11. Data Subject Rights and Associated Matters

- 11.1. Taking into account the nature of the processing conducted by eSchools, eSchools shall (and shall use all reasonable endeavours to procure that its subcontractors shall) assist the School by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the School's obligations, eSchools, to respond to requests to exercise data subject rights under the Data Protection Laws .
- 11.2. eSchools shall:
 - 11.2.1. promptly notify the School if it or any sub-contractor receives a request from a data subject under any Data Protection Law in respect of School Data; and
 - 11.2.2. not, and shall use all reasonable endeavours to ensure that the sub-contractor does not, respond to that request except on the written instructions of the School or as required by any applicable laws to which

eSchools or the sub-contractor is subject.

- 11.3.** eSchools shall notify the School without undue delay upon eSchools becoming aware of a Personal Data Breach in respect of any School Data processed by eSchools, providing the School with sufficient information to allow the School to meet any obligations to report, or inform the individuals to which the Personal Data related, of such Personal Data Breach under Data Protection Laws.
- 11.4.** eSchools shall co-operate with the School and take such reasonable commercial steps as are directed by the School to assist in the investigation, mitigation and remediation of each such Personal Data Breach referred to in clause 11.3.
- 11.5.** eSchools shall provide reasonable assistance to the School with any data protection impact assessments, and prior consultations with competent data privacy authorities, which the School reasonably considers to be required under any Data Protection Laws, in each case solely in relation to processing of Personal Data comprised in the School Data, by and taking into account the nature of the processing and information available to eSchools.

12. Liability

- 12.1.** eSchools shall have no liability to the School, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, for or in connection with:
 - 12.1.1. loss, interception or corruption of any data;
 - 12.1.2. loss, interception or corruption of any data resulting from any negligence or default by any provider of telecommunications services to eSchools or the School;
 - 12.1.3. damage to reputation or goodwill;
 - 12.1.4. any indirect or consequential loss.
- 12.2.** In all other circumstances, eSchools maximum liability to the School, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, in connection with the Services shall be limited to £2 million.
- 12.3.** Nothing in this clause shall limit the liability of eSchools for any death or personal injury caused by its negligence, fraud or fraudulent misrepresentation, or any other matter for which liability cannot be limited or excluded as a matter of law.

13. Rights of Third Parties

No person who is not a party of this Agreement shall have any rights under this Agreement, whether pursuant to The Contracts (Rights of Third Parties) Act 1999 or otherwise.

14. Variation

Any variation to the terms of this Agreement shall be made in writing between eSchools and the School.

15. Governing Law

- 15.1.** This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual dispute or claims) shall be governed by and construed in accordance with the laws of England and Wales.
- 15.2.** The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual dispute or claims).