



Ffrindiau Yn Cyd Ddysgu
Friends Together, Learning Together



DATA PROCESSING AGREEMENT

Date policy was adopted by Governing Body	Sept 2022
Policy review date	Sept 2023

DEFINITIONS AND INTERPRETATION

1.

1.1 In this agreement:

Data Protection Legislation (i) the General Data Protection Regulation (*Regulation (EU) 2016/679*), the Law Enforcement Directive (*Directive (EU) 2016/680*) and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 2018 (subject to Royal Assent), to the extent that it relates to the processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.

Law: means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Data Processor is bound to comply

Controller, Processor, Data Subject, Personal Data, Processing, Personal Data Breach, Data Protection Officer take the meaning given in the GDPR.

Data means any information of whatever nature that, by whatever means, is provided to the Data Processor by the Data Controller (whether this be in connection with the Framework Agreement, any Service Contract or otherwise), is accessed by the Data Processor on the authority of the Data Controller or is otherwise received by the Data Processor on the Data Controller's behalf, for the purposes of the Processing specified in clause 2 and shall include, without limitation, any Personal Data;

Framework Agreement means the non-exclusive Framework Agreement dated **3rd September 2022** under which the Data Processor will supply to the Data Controller **Ysgol Rhiw-Bechan** services as and when required at the absolute discretion of the Data Controller;

Mini Competition means the call off procedure as defined in the Framework Agreement;

Services means processing of the Data by the Data Processor in connection with and for the purposes of the provision of Powys LA School services to be provided by the Data Processor to the Data Controller under the Framework Agreement and/or any Service Contract;

Service Contract means the agreement for the provision of school services between the Data Controller and the Data Processor as may be awarded by the Data Controller to the Data Processor if successful following a Mini Competition under the Framework Agreement.

Agreement: this contract

Data Processor Personnel: means all directors, officers, employees, agents, consultants and Data Processors of the Data Processor and/or of any Sub-Data Processor engaged in the performance of its obligations under this Agreement

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Data Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

Data Subject Access Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

Sub-processor: any third Party appointed to process Personal Data on behalf of the Data Processor related to this Agreement

- 1.2 In this agreement any reference, express or implied, to an enactment (which includes any legislation in any jurisdiction) includes references to:
- (a) that enactment as re-enacted, amended, extended or applied by or under any other enactment (before, on or after the date of this agreement);
 - (b) any enactment which that enactment re-enacts (with or without modification); and
 - (c) any subordinate legislation made (before, on or after the date of this agreement) under that enactment, as re-enacted, amended, extended or applied as described in clause 1.2(a), or under any enactment referred to in clause 1.2(b).
- 1.3 In this agreement:
- (a) references to a person include an individual, a body corporate and an unincorporated association of persons;
 - (b) references to a party to this agreement include references to the successors or assignees (immediate or otherwise) of that party.
- 1.4 Clauses 1.1 to 1.3 apply unless the contrary intention appears.

AGREEMENT

BETWEEN:

- (1) **Ysgol Rhiw-Bechan**, which has its principal administrative offices at **Tregynon** (the "Data Controller"); and
- (2) **Powys County Council Schools Data Controller** having its registered office at **Powys County Council** (the "Data Processor").

BACKGROUND

- (A) The Data Controller and the Data Processor entered into a non-exclusive Framework Agreement dated [INSERT] under which the Data Processor will supply to the Data Controller [INSERT] services as and when required at the absolute discretion of the Data Controller.
- (B) This agreement is to ensure the protection and security of data passed from the Data Controller to the Data Processor for processing or accessed by the Data Processor on the authority of the Data Controller for processing or otherwise received by the Data Processor for processing on the Data Controller's behalf. For the avoidance of doubt, this agreement applies to all data passed from the Data Controller to the Data Processor in connection with the Framework Agreement or any Service Contract which may be entered into between the Data Controller and Data Processor;
- (C) The Parties acknowledge that the only processing that the Data Processor is authorised to do is listed in Schedule A by the Data Controller and may not be determined by the Data Processor
- (D) Data Protection Legislation places certain obligations upon a data controller to ensure that any Data Processor it engages provides sufficient guarantees to ensure that the processing of the data carried out on its behalf is appropriate and secure;

Commented [HD1]: This wording can only apply as part of a tender for a Framework Agreement and business (service) contracts off that agreement

IT IS AGREED

2. APPLICATION OF THIS AGREEMENT

- 2.1 The Data Processor shall notify the Data Controller immediately if it considers that any of the Data Controller's instructions infringe the Data Protection Legislation.
- 2.2. The Data Processor shall provide all reasonable assistance to the Data Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Data Controller, include:
 - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;

- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

2.3 The Data Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with Schedule A, unless the Data Processor is required to do otherwise by Law. If it is so required the Data Processor shall promptly notify the Data Controller before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place technical and organisational measures, which have been reviewed and approved by the Data Controller as appropriate to secure personal data against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that :
 - (i) the Data Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule A);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Data Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Data Processor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Data Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Data Controller or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Data Controller has been obtained and the following conditions are fulfilled:
 - (i) the Data Controller or the Data Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Data Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Data Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavors to assist the Data Controller in meeting its obligations); and
 - (iv) the Data Processor complies with any reasonable instructions notified to it in advance by the Data Controller with respect to the processing of the Personal Data;

2.4 Subject to clause 2.5, the Data Processor shall notify the Data Controller immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 2.5 The Data Processor's obligation to notify under clause 2.4 shall include the provision of further information to the Data Controller in phases, as details become available.
- 2.6 Taking into account the nature of the processing, the Data Processor shall provide the Data Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 2.4 (and insofar as possible within the timescales reasonably required by the Data Controller) including by promptly providing:
- (a) the Data Controller with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Data Controller to enable the Data Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Data Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Data Controller following any Data Loss Event;
 - (e) assistance as requested by the Data Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Data Controller with the Information Commissioner's Office.
- 2.7 The Data Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Data Processor employs fewer than 250 staff, unless:
- (a) the Data Controller determines that the processing is not occasional;
 - (b) the Data Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Data Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 2.8 The Data Processor shall allow for audits of its Data Processing activity by the Data Controller or the Data Controller's designated auditor. To verify the Data Processor's compliance with this agreement, the Data Processor will allow the Data Controller and/or its agents access to any premises where Personal Data is being processed. Such access will be during normal business hours and subject to not less than five days' notice unless the Data Controller has a reasonable, objective belief that the Data Processor is in material breach of this agreement, in which case access will be granted at any reasonable time.

- 2.9 The Data Processor shall designate a data protection officer if required by the Data Protection Legislation.
- 2.10 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Data Processor must:
- (a) notify the Data Controller in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Data Controller;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause, such that they apply to the Sub-processor; and,
 - (d) provide the Data Controller with such information regarding the Sub-processor as the Data Controller may reasonably require.
- 2.11 The Data Processor shall remain fully liable for all acts or omissions of any Sub-processor.
- 2.12 The Data Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 2.13 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Data Controller may on not less than 30 Working Days' notice to the Data Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 2.14 This agreement shall apply to:
- (a) all Data sent from the date of this agreement by the Data Controller to the Data Processor for Processing;
 - (b) all Data accessed by the Data Processor on the authority of the Data Controller for Processing from the date of this agreement; and
 - (c) all Data otherwise received by the Data Processor for Processing on the Data Controller's behalf in relation to the services.
- 2.15 The Data Processor will supply the Data Controller with such access, and such information in such format, as the Data Controller may request, and otherwise assist the Data Controller generally in verifying the Data Processor's compliance with this agreement. Such access may include access to:
- (a) the Data Processor's employees (including its senior management, management supervising the day to day provision of the Services, call centre, information systems, risk and security staff);
 - (b) records, documents and other information; and
 - (c) the systems (including back-up and disaster recovery systems) used (or which may be used) by the Data Processor to provide the Services.
- 2.16 In the event that the Data Processor receives a request for any information contained in the data pursuant to Freedom of Information Act 2000, or the Environmental Information Regulations 2004, not to respond to the person making such request but to inform the Data Controller within two (2) working

days, and the Data Processor further agrees to assist the Data Controller with all such requests for information which may be received from any person within such timescales as may be prescribed by the Data Controller;

3. OBLIGATIONS OF THE DATA CONTROLLER

- 3.1 In consideration of the obligations undertaken by the Data Processor in clause 2, the Data Controller agrees that it shall ensure that it complies at all times with Data Protection Legislation and, in particular, the Data Controller shall ensure that any disclosure of Personal Data made by it to the Data Processor is lawful.

4. TERMINATION

- 4.1 This agreement shall terminate automatically upon termination or expiry of the Data Processor's obligations in relation to the Services, and on termination of this agreement the Data Processor shall forthwith deliver to the Data Controller or destroy, at the Data Controller's sole option, all the Data Controller's Data in its possession or under its control, unless the Data Processor is required by Law to retain the Personal Data.

- 4.2 The Data Controller shall be entitled to terminate this Agreement forthwith by notice in writing to the Data Processor if:-

- (a) the Data Processor acts in relation to the Data or any other data in a way which does not comply with the spirit of the principles of the Data Protection Legislation;
- (b) the Data Processor is in a material or persistent breach of this Agreement which, in the case of a breach capable of remedy, shall not have been remedied within twenty one (21) days from the date of receipt by the Data Processor of a notice from the Data Controller identifying the breach and requiring its remedy;
- (c) the Data Processor become insolvent, has a receiver, administrator, or administrative receiver appointed over the whole or any part of its assets, enters into any compound with creditors, or has an order made or resolution passed for it to be wound up; or
- (d) the Framework Agreement expires or terminates.

5. INTELLECTUAL PROPERTY

- 5.1 All intellectual property and other rights in the Data, all amendments or additions to the Data, and databases and other compilations including any of such, belong to the Data Controller. The Data Processor may use all such rights only under this agreement.
- 5.2 The Data Controller grants the Data Processor a license to use, edit, create databases from, copy and store the Data solely to perform, and for the term of, this agreement.
- 5.3 The Data Processor hereby assigns (and will ensure that its employees and Sub processors assign) to the Data Controller all intellectual property rights

which currently, or may in future, exist in the Data and any amendments or additions to, and databases and other compilations of, the Data and, in each such case, so far as any of those vest in the Data Processor, its employees and Sub processors.

6. ENTIRE AGREEMENT

- 6.1 This agreement and any documents referred to in this agreement, the Framework Agreement and any Service Contracts shall constitute the entire understanding between the parties and shall supersede all prior agreements, negotiations and discussions between the parties. In particular the parties warrant and represent to each other that in entering into this agreement they have not relied upon any statement of fact or opinion made by the other, its officers, servants or agents which has not been included expressly in this agreement. Further, each party hereby irrevocably and unconditionally waives any right it may have:

- (a) to rescind this agreement by virtue of any misrepresentation;
- (b) to claim damages for any misrepresentation whether or not contained in this agreement;

save in each case where such misrepresentation or warranty was made fraudulently.

7. NOTICES

- 7.1 Notices shall be in writing and shall be sent to the other party marked for the attention of the person at the address set out below. Notices should be sent by first-class registered mail

If for the Data Controller: **Allyson Whitticase - Head Teacher Ysgol Rhiw-Bechan, Powys, SY17 5PS**

If for the Data Processor: **Debra Jarvis Data Protection Officer (Schools)**

8. VARIATION

Variations to this agreement will have effect when agreed in writing.

9. RIGHTS OF THIRD PARTIES

This agreement is not enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999.

10. WAIVER AND SEVERABILITY

- 10.1 No delay, act or omission by either party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.
- 10.2 The unenforceability of any part of this agreement will not affect the enforceability of any other part.

11. GOVERNING LAW AND JURISDICTION

This agreement will be governed by the laws of England and Wales and shall be subject to the exclusive jurisdiction of the Courts of both England and Wales.

IN WITNESS WHEREOF these presents consisting of this and preceding eight pages are subscribed by the parties as follows:

SUBSCRIBED for and on behalf of:

Ysgol Rhiw-Bechan

By Allyson Whitticase (Head-teacher)

its authorised signatory

on the day of

Before this witness:-

Witness.....

Authorised Signatory

Full Name.....

Address.....

.....

SUBSCRIBED for and on behalf of:

[**INSERT**]

By

its director/authorised signatory at

on the day of

Before this witness:-

Witness.....

Director/Authorised Signatory

Full Name.....

Address.....

.....

Schedule A Processing, Personal Data and Data Subjects

1. The Data Processor shall comply with any further written instructions with respect to processing by the Data Controller.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	<i>[This should be a high level, short description of what the processing is about i.e. its subject matter]</i>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the processing	<i>[Please be as specific as possible, but make sure that you cover all intended purposes. The nature of the processing means any operation such as: collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i>
Type of Personal Data	<i>Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>Describe how long the data will be retained for, how it be returned or destroyed</i>