

# West Exmoor Federation



## Services and Data Protection Agreement

**Version 1.0**

Document Date: December 2018  
West Exmoor Federation  
(Lynton CE Primary)  
(Parracombe CE Primary)  
(Kentisbury Primary)

If you require help in the interpretation of this document, contact DPO, Vikki Brown

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**Devon County Council maintained schools can complete this template and issue it to third parties who will have access to their data which contains confidential, personal or sensitive business information.**

This Agreement is made on

## **THIS AGREEMENT IS BETWEEN**

(1) West Exmoor Federation whose address is

(Lynton CE Primary EX35 6AF)  
(Parracombe CE Primary EX31 4QJ)  
(Kentisbury Primary EX31 4NG)

And:

(2) **[enter third party's name]** [a company registered in England and Wales with company number **[xxxxxxx]** and] whose address is **[enter address]** (the "Provider").

### **BACKGROUND:-**

- (A) The School wishes to appoint the Provider for the purpose of **[enter description]** (the "Purpose"). To that end, the School and the Provider **[have entered]** **[intend to enter]** into the Contract.
- (B) This Agreement sets out the terms on which the Provider will process Data while performing the Services to the School under the Contract.
- (C) This Agreement is supplemental to the Contract.

**THE PARTIES** agree as follows:-

## **1. DEFINITIONS AND INTERPRETATION**

1.1. In this Agreement the definitions and rules of interpretation in this clause will apply, unless the context otherwise requires or permits:-

1.1.1. **Agreement:** means these terms and conditions.

1.1.2. **Completion:** means the time immediately following the completion of the Purpose.

- 1.1.3. **Contract:** means the contract for Services made between the Parties for [enter description of the contract and any contract reference number if applicable] dated [enter date OR, if not yet entered into, enter on or around the date of this Agreement].
- 1.1.4. **Controller** has the meaning given in the GDPR.
- 1.1.5. **Data Loss Event:** any event that results, or may result, in unauthorised access to Personal Data held by the Provider 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.
- 1.1.6. **Data Processing Operations:** the processing of Personal Data relating to employees and officers of the School, its service providers, service users and/or other third parties, as necessary for the provision of the Services during the term of the Contract, and for such periods after the term of the Contract as are required for compliance with applicable laws, together with such ancillary processing of Personal Data relating to employees and officers of the School, its service providers, service users and/or other third parties as is necessary for the performance of the Provider's obligations under the Contract, or the administration of this Agreement.
- 1.1.7. **Data Protection Legislation:** (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 subject to Royal Assent to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.
- 1.1.8. **Data Protection Impact Assessment:** an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
- 1.1.9. **Data Protection Officer** has the meaning given in the GDPR.
- 1.1.10. **Data Subject** has the meaning given in the GDPR.
- 1.1.11. **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.
- 1.1.12. **DPA 2018:** means the Data Protection Act 2018.
- 1.1.13. **GDPR:** the General Data Protection Regulation (Regulation (EU) 2016/679).
- 1.1.14. **Intellectual Property Rights:** means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or

otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other similar rights.

- 1.1.15. **Law(s)**: means any law, statute, 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, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Provider is bound to comply.
- 1.1.16. **LED**: Law Enforcement Directive (Directive (EU) 2016/680)
- 1.1.17. **Parties**: means the parties to this Agreement and **Party** means either of them.
- 1.1.18. **Personal Data** has the meaning given in the GDPR.
- 1.1.19. **Personal Data Breach** has the meaning given in the GDPR.
- 1.1.20. **Processor** has the meaning given in the GDPR and **Process, Processed** and **Processing** shall be construed accordingly.
- 1.1.21. **Provider Personnel** means all directors, officers and employees of the Provider engaged in the performance of the Provider's obligations under this Agreement.
- 1.1.22. **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.
- 1.1.23. **Services**: means the services to be provided to the School for the Purpose under the Contract.
- 1.1.24. **Sub-processor**: any third party appointed to process Personal Data on behalf of the Provider related to this Agreement.
- 1.1.25. **Working Day** means any day other than a Saturday, Sunday or public holiday in England and Wales.

- 1.2. Words in the singular include the plural and in the plural include the singular. Clause headings will not affect the interpretation of this agreement.
- 1.3. References to clauses are, unless otherwise provided, references to the clauses of this agreement.
- 1.4. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.5. Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2. DATA PROTECTION**

- 2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the School is the Controller and the Provider is the Processor. Unless otherwise agreed in writing, the Data Processing Operations is the only processing that the Provider is authorised to do by the School.
- 2.2 The Provider shall notify the School immediately if it considers that any of the School's instructions infringe the Data Protection Legislation.
- 2.3 The Provider shall provide all reasonable assistance to the School in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the School, include:
  - (i) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (ii) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - (iii) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (iv) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

2.4 The Provider 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 the Data Processing Operations, unless the Provider is required to do otherwise by Law. If it is so required the Provider shall promptly notify the School before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the School as appropriate to protect against a Data Loss Event having taken account of the:
  - (a) nature of the data to be protected;
  - (b) harm that might result from a Data Loss Event;
  - (c) state of technological development; and
  - (d) cost of implementing any measures;
- (c) ensure that:
  - (i) the Provider Personnel do not process Personal Data except in accordance with this Agreement (and in particular the Data Processing Operations);
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Provider Personnel who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Provider's duties under this clause;
    - (B) are subject to appropriate confidentiality undertakings with the Provider 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 School 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 School has been obtained and the following conditions are fulfilled:
  - (i) the School or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance

with GDPR Article 46 or LED Article 37) as determined by the School;

- (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Provider 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 endeavours to assist THE SCHOOL in meeting its obligations); and
  - (iv) the Provider complies with any reasonable instructions notified to it in advance by the School with respect to the processing of the Personal Data;
- (e) at the written direction of the School, delete or return Personal Data (and any copies of it) to the School on termination of the Agreement unless the Provider is required by Law to retain the Personal Data.

2.5 Subject to clause 2.6, the Provider shall provide written notice to the School's [insert job title] (e-mail: [insert e-mail address]) 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.

2.6 The Provider's obligation to notify under clause 2.5 shall include the provision of further information to the School in phases, as details become available.

2.7 Taking into account the nature of the processing, the Provider shall provide the School with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 2.5 (and insofar as possible within the timescales reasonably required by the School) including by promptly providing:



- (a) the School with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the School to enable the School to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the School, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the School following any Data Loss Event;
- (e) assistance as requested by the School with respect to any request from the Information Commissioner's Office, or any consultation by the School with the Information Commissioner's Office.

2.8 The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Provider employs fewer than 250 staff, unless:

- (a) the School determines that the processing is not occasional;
- (b) the School 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 School determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

2.9 The Provider shall allow for audits of its Data Processing activity by the School or the School's designated auditor.

2.10 The Provider shall designate a data protection officer if required by the Data Protection Legislation.

2.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Provider must:

- (a) notify the School in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the School;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 2 such that they apply to the Sub-processor; and
- (d) provide the School with such information regarding the Sub-processor as the School may reasonably require.

- 2.12 The Provider shall remain fully liable for all acts or omissions of any Sub-processor.
- 2.13 Either Party 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 (in either case in accordance with Articles 28(6), 28(7), and 28(8) of the GDPR which shall apply when incorporated by attachment to this Agreement).
- 2.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The School may on not less than 30 Working Days' notice to the Provider amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 2.15 The Provider shall indemnify the School against all liabilities, costs, expenses, damages, and losses (and all other reasonable professional costs and expenses) suffered or incurred by the School arising out of or in connection with:
- (a) any breach of the obligations contained within this clause 2 (Data Protection); or
  - (b) any failure to comply with its obligations as a Processor under the Data Protection Legislation.

### **3. RIGHTS OF THE SCHOOL**

- 3.1 The School is entitled, on giving at least five working days' notice to the Provider, to inspect or appoint representatives to inspect all facilities, equipment, documents and electronic data relating to the processing of the Data.
- 3.2 The requirement under clause 3.1 to give notice will not apply if the School believes that the Provider is in breach of any of its obligations under this Agreement.

### **4. WARRANTIES**

- 4.1 Each Party warrants to the other that it is duly authorised to enter into this Agreement.
- 4.2 The Provider warrants that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.

## **5. INTELLECTUAL PROPERTY RIGHTS**

- 5.1 The Provider agrees and acknowledges that any Intellectual Property Rights in the Data belongs to the School and that the Provider does not acquire any rights, title or interest in such Data, save as granted under this Agreement.
- 5.2 The School hereby grants the Provider a royalty free licence to process the Data under this Agreement. For the avoidance of doubt, this licence shall terminate automatically on termination of this Agreement.

## **6. TERM**

- 6.1 This Agreement will commence on the date of this Agreement.


## **7. TERMINATION**

- 7.1 This Agreement will terminate automatically upon Completion or termination of the Contract (whichever is earlier).
- 7.2 Termination of this Agreement will not affect any rights, remedies or obligations of the Parties that have accrued or become due prior to termination.

## **8. GENERAL**

- 8.1 Neither Party shall assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the other Party.
- 8.2 A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- 8.3 This Agreement will be governed and construed in accordance with the laws of England and Wales.
- 8.4 The Parties irrevocably agree that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter.

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

Signed by 	Executive Headteacher [JOB TITLE]
on behalf of West Exmoor Federation	
Signed by [                    ]	.....
on behalf of <b>[Enter name of Provider]</b>	[JOB TITLE]

A copy of this agreement should be held by both parties.