

# **INFORMATION SHARING AGREEMENT**

**Literacy Assessment Online**

**BETWEEN THE FOLLOWING**

**Edukey Education Ltd, Clients schools**

**Commencement Date**

## SUMMARY SHEET

<b>Title of Document</b>	<b>Information Sharing Agreement for MIS integration of Literacy Assessment Online</b>
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<b>Purpose</b>	To set out the terms on which the information uploaded to the System (as defined in the purchase order) by Client schools is shared and processed by Edukey Education Ltd.
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<b>Parties</b>	Client school (as set out in the Purchase Order) Edukey Education Ltd
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<b>Date agreement comes into force</b>	<b>Commencement Date</b>
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<b>Agreement drawn up by:</b>	Duncan Wilson
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<b>Governing law of agreement</b>	England & Wales
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### 1. INTRODUCTION, DEFINITIONS AND INTERPRETATION

1.1 This Information Sharing Agreement sets out the terms and conditions upon which data relating to schools and students is collected and processed for the purpose of the System.

1.2 Definitions

**Agreement:** means the agreement between Edukey and the School upon which terms Edukey supplies the System and the Services and which consists of Edukey's terms and conditions, the purchase order, this Information Sharing Agreement and the Privacy Policy.

**Applicable Law:** means as applicable and binding on the School, Edukey and/or the Services:

- (a) any law, statute, regulation, byelaw or subordinate legislation in force from time to time to which a party is subject and/or in any jurisdiction that the Services are provided to or in respect of;
- (b) the common law and laws of equity as applicable to the parties from time to time;
- (c) any binding court order, judgement or decree; or
- (d) any applicable direction, policy, rule or order that is binding on a party and that is made or given by any regulatory body having jurisdiction over a party or any of that party's assets, resources or business;

**Appropriate Safeguards:** means such legally enforceable mechanism(s) for transfers of Personal Data as may be permitted under the Privacy and Data Protection Requirements from time to time;

**Data Controller:** has the meaning given to that term (or to the term 'controller') in the DPA or, from 25 May 2018, the GDPR (and related terms such as control have corresponding meanings);

**Data Extractor:** has the meaning given to it in clause 5.2.2

**Data Processor:** has the meaning given to that term (or to the term 'processor') in the DPA or, from 25 May 2018, the GDPR (and related terms such as process have corresponding meanings);

**Data Protection Losses:** means all liabilities, including all

- (a) costs (including legal costs), claims, demands, actions, settlements, interest, charges, procedures, expenses, losses and damages (including relating to material or non-material damage) and
- (b) to the extent permitted by Applicable Law:
  - (i) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority;
  - (ii) compensation which is ordered by a Supervisory Authority to be paid to a Data Subject;
  - (iii) the reasonable costs of compliance with investigations by a Supervisory Authority.

**Data Subject:** has the meaning given to that term in the DPA or, from 25 May 2018, the GDPR.

**Data Subject Request:** means a request made by a Data Subject to exercise any rights of Data Subjects under the Privacy and Data Protection Requirements.

**GDPR:** means the General Data Protection Regulation (EU) 2016/679.

**GDPR Date:** means from when the GDPR applies on 25 May 2018.

**International Recipient:** has the meaning given in clause 7 of this Information Sharing Agreement.

**Personal Data:** has the meaning given to that term in the DPA or, from 25 May 2018, the GDPR.

**Personal Data Breach:** means any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Protected Data.

**Privacy Policy:** means the privacy policy of Edukey from time to time.

**Privacy and Data Protection Requirements:** means: the Data Protection Act 1998 (until repealed) (“DPA”), the Data Protection Directive (95/46/EC) (until repealed) and, from 25 May 2018, the GDPR or any equivalent provision which may replace the GDPR following the formal political separation of the United Kingdom from the European Union; the Regulation of Investigatory Powers Act 2000; the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699); the Electronic Communications Data Protection Directive (2002/58/EC); the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003); and all applicable laws and regulations which may be in force from time to time relating to the processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or any other supervisory authority, and the equivalent of any of the foregoing in any relevant jurisdiction;

**Processing:** has the meaning given to that term in the DPA or, from 25 May 2018, the GDPR (and related terms such as process have corresponding meanings);

**Processing Instructions:** has the meaning given to that term in clause 4.1;

**Protected Data:** means Personal Data received from, uploaded to or transferred to the System by or on behalf of the School in connection with the System and/or the performance of Edukey’s obligations under the Agreement.

**School:** means the client school or education institution that Edukey provides the System to.

**Sub-Processor:** means another Data Processor engaged by Edukey for carrying out processing activities in respect of the Protected Data on behalf of the School.

**Supervisory Authority:** means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Privacy and Data Protection Requirements.

**System:** means the software/computer system as set out in the purchase order.

### 1.3 Interpretation

1.3.1 references to any Applicable Laws (including to the Data Protection Laws and each of them) and to terms defined in such Applicable Laws shall be replaced with or incorporate (as the case may be) references to any Applicable Laws replacing, amending, extending, re-enacting or consolidating such Applicable Law (including the GDPR and any new Data Protection Laws from time to time) and the equivalent terms defined in such Applicable Laws, once in force and applicable;

1.3.2 a reference to a law includes all subordinate legislation made under that law.

## **2. POLICY STATEMENTS AND PURPOSE**

2.1 The purpose of this Information Sharing Agreement is to allow the population of Literacy Assessment Online with student details as exist in the School's MIS

2.2 By synchronising with the School's MIS the data entry into Literacy Assessment Online is automated and accurately reflects the School's data.

### **3. PARTNERS**

- 3.1 The parties agree that for the Protected Data, the School shall be the Data Controller and Edukey shall be the Data Processor.
- 3.2 Edukey shall process the Protected Data in compliance with:
  - 3.2.1 the obligations of Data Processors under the Privacy and Data Protection Requirements in respect of the performance of its obligations under the Agreement; and
  - 3.2.2 the terms of the Agreement.
- 3.3 The School shall comply with:
  - 3.3.1 all Privacy and Data Protection Requirements in connection with the processing of Protected Data, the Services and the exercise and performance of its respective rights and obligations under this Agreement, including maintaining all relevant regulatory registrations and notifications as required under the Privacy and Data Protection Requirements; and
  - 3.3.2 the terms of the Agreement.
- 3.4 The School warrants, represents and undertakes, that:
  - 3.4.1 all data sourced by the School for use in connection with the System and the Services, prior to such data being provided to or accessed by Edukey for the performance of the Services under the Agreement, shall comply in all respects, including in terms of its collection, storage and processing (which shall include the School providing all of the required fair processing information to, and to the extent necessary, obtaining all necessary consents from, Data Subjects), with Privacy and Data Protection Requirements;
  - 3.4.2 all instructions given by it to Edukey in respect of Personal Data shall at all times be in accordance with the Privacy and Data Protection Requirements; and
  - 3.4.3 it is satisfied that:
    - (a) Edukey's processing operations are suitable for the purposes for which the School proposes to use the System and Services and engage Edukey to process the Protected Data;
    - (b) Edukey has sufficient expertise, reliability and resources to implement technical and organisational measures that meet the requirements of the Privacy and Data Protection Requirements.

- 3.4.4 the School shall not withhold or delay its agreement to any change requested by Edukey in order to ensure the System (and system functionality requirements) and Services and Edukey (and each Sub-Processor) can comply with the Privacy and Data Protection Requirements.

<b><u>4. INSTRUCTIONS AND DETAILS OF PROCESSING</u></b>
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- 4.1 Insofar as Edukey processes Protected Data on behalf of the School, Edukey:
- 4.1.1 unless required to do otherwise by Applicable Law, shall (and shall take steps to ensure each person acting under its authority shall) process the Protected Data only on and in accordance with the School's documented instructions as set out in this clause 4, as updated from time to time in accordance with the terms and conditions (**Processing Instructions**);
  - 4.1.2 if Applicable Law requires it to process Protected Data other than in accordance with the Processing Instructions, shall notify the School of any such requirement before processing the Protected Data (unless Applicable Law prohibits such information on important grounds of public interest); and
  - 4.1.3 shall promptly inform the School if Edukey becomes aware of a Processing Instruction that, in Edukey's , infringes the Privacy and Data Protection Requirements, provided that:
    - (a) this shall be without prejudice to clauses 3.3 and 3.4;
    - (b) to the maximum extent permitted by mandatory law, Edukey shall have no liability howsoever arising (whether in contract, tort (including negligence) or otherwise) for any losses, costs, expenses or liabilities (including any Data Protection Losses) arising from or in connection with any processing in accordance with the School's Processing Instructions following the School's receipt of that information; and
    - (c) this clause 4.1.3 shall only apply from the GDPR Date.

## 5. PROCESS

5.1 It is, however, incumbent on the School to recognise that any information shared must be justified for the purpose of the System and the Services.

### 5.2 INFORMATION TO BE SHARED

5.2.1 The data shared is as follows (table of fields)

#### **Student data**

Student ID

UPN

Email (token)

Legal Surname

Legal Forename

Preferred Surname

Preferred Forename

DOB

SEN Status

Ethnicity (token)

EAL

Language code

Current NC Year

Gender

FSM Eligible

In LEA Care

Gifted and Talented

Entry Date

Pupil Premium

FSM Ever 6

Medical Needs

SEN Needs

Guest students (token)

Medical (token)

5.2.2 The primary method by which you will share Protected Data with us is via your selected third party data extractor (Data Extractor). We will agree with you which Data Extractor you will use for the provision of the data export and import services. Your Data Extractor may change from time to time by agreement between us. Agreement may be made by email exchange between us. We will



provide a list of the third party data extractors that we currently partner with at your request.

- 5.2.3 The Protected Data is collected by the Data Extractor from your MIS and securely delivered into the System.
- 5.2.4 You acknowledge that you shall, at your own cost, enter into a contract with the relevant Data Extractor for the provision of the data export and import services. Under no circumstances shall we be liable to you for any loss, damage, claims, demands, actions, costs, charges, expenses and liabilities of whatsoever nature arising out of or in connection with the provision of the data export services by the Data Extractor.
- 5.2.5 A manual upload can be used if you are unable or unwilling to use one of our listed data extractors. If manual upload is used for Protected Data you should provide the Protected Data to us by secure means (for example, by using our secure file transfer setup).

### 5.3 **TECHNICAL AND ORGANISATIONAL MEASURES**

- 5.3.1 Edukey shall implement and maintain, at its cost and expense, the technical and organisational measures:

- (a) in relation to the processing of Protected Data by Edukey, as set out below; and
- (b) from the GDPR Date, taking into account the nature of the processing, to assist the School insofar as is possible in the fulfilment of the School's obligations to respond to Data Subject Requests relating to Protected Data

- 5.3.2 See Edukey\_Data\_Security.pdf
- 5.3.3 All data to be encrypted, transferred via SSL.
- 5.3.4 The School must not send unencrypted files

### 5.4 **ENSURING DATA QUALITY AND ACCURACY**

- 5.4.1 The School is responsible for the quality of the data they are sharing.
- 5.4.2 Before sharing data, the School will check that the information being shared is accurate and up to date to the best of their knowledge. If sensitive data is being

shared which could harm the Data Subject if it was inaccurate, then particular care must be taken.

## **5.5 INFORMATION USE, REVIEW, RETENTION AND DELETION**

5.5.1 Parties undertake that information shared under this Information Sharing Agreement will only be used for the specific purpose for which it was shared, in line with this Information Sharing Agreement. Save as set out in this Information Sharing Agreement it will not be shared for any other purpose.

5.5.2 Edukey shall not engage any Sub-Processor for carrying out any processing activities in respect of the Protected Data without the School's written authorisation of that specific Sub-Processor (such authorisation not to be unreasonably withheld, conditioned or delayed) [provided that the School authorises the appointment of any of the Sub-Processors listed below:]

Groupcall - MIS integration

Wonde – MIS integration

Amazon Web Services – sending email

Sendgrid – sending email

Mailgun – sending email

Rackspace – datacentre

5.5.3 Edukey shall:

(a) prior to the relevant Sub-Processor carrying out any processing activities in respect of the Protected Data, appoint each Sub-Processor under a written contract containing materially the same obligations as under this Information Sharing Agreement that is enforceable by Edukey;

(b) ensure each such Sub-Processor complies with all such obligations; and

(c) remain fully liable for all the acts and omissions of each Sub-Processor as if they were its own.

5.5.4 From the GDPR Date, Edukey shall ensure that all persons authorised by it (or by any Sub-Processor) to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential (except where

disclosure is required in accordance with Applicable Law, in which case Edukey shall, where practicable and not prohibited by Applicable Law, notify the School of any such requirement before such disclosure).

5.5.5 The retention period for the information shared is until notified by the school or within 30 days of account closure.

5.5.6 The following destruction process will be used when the information is no longer required:

- Printouts to be kept minimal & be shredded
- Hard deletion for electronic data after 14 days

5.5.7 On termination of the Agreement or on the written request of the School then all Protected Data will be deleted within 30 days of account closure and an export provided to the school if requested.

## **6. ASSISTANCE WITH SCHOOL'S COMPLIANCE**

6.1 It is not anticipated that Edukey will receive any Data Subject Requests but if it does then Edukey shall refer all Data Subject Requests it receives to the School within three Business Days of receipt of the request, provided that if the number of Data Subject Requests exceeds 10 per calendar month, the School shall pay Edukey' Charges calculated on a time and materials basis at Edukey's rates [set out in Schedule 2] (Charges) for recording and referring the Data Subject Requests in accordance with this clause 6.1.

6.2 From the GDPR Date, Edukey shall provide such reasonable assistance as the School reasonably requires (taking into account the nature of processing and the information available to Edukey) to the School in ensuring compliance with the School's obligations under Data Protection Laws with respect to:

- 6.2.1 security of processing;
- 6.2.2 data protection impact assessments (as such term is defined in the Privacy and Data Protection Requirements);
- 6.2.3 prior consultation with a Supervisory Authority regarding high risk processing; and
- 6.2.4 notifications to the Supervisory Authority and/or communications to Data Subjects by the School in response to any Personal Data Breach,

provided the School shall pay Edukey's Charges for providing the assistance in this clause 6.2, such Charges to be calculated on a time and materials basis at Edukey's rates [set out in Schedule 2 (Charges)].

## **7. INTERNATIONAL DATA TRANSFERS**

The School agrees that Edukey may transfer Protected Data to countries outside the [European Economic Area (EEA)] (an International Recipient), provided all transfers by Edukey of Protected Data to an International Recipient (and any onward transfer) shall (to the extent required under Privacy and Data Protection Requirements) be effected by way of Appropriate Safeguards and in accordance with Privacy and Data Protection Requirements.

## **8. RECORDS, INFORMATION AND AUDIT**

- 8.1 Edukey shall maintain, in accordance with Privacy and Data Protection Requirements binding on Edukey, written records of all categories of processing activities carried out on behalf of the School.
- 8.2 Edukey shall, in accordance with the Privacy and Data Protection Requirements, make available to the School such information as is reasonably necessary to demonstrate Edukey's compliance with its obligations under Article 28 of the GDPR (and under any data protection laws equivalent to that Article 28), and allow for and contribute to audits, including inspections, by the School (or another auditor mandated by the School) for this purpose, subject to the School:
  - 8.2.1 giving Edukey reasonable prior notice of such information request, audit and/or inspection being required by the School;
  - 8.2.2 ensuring that all information obtained or generated by the School or its auditor(s) in connection with such information requests, inspections and audits is kept strictly confidential (save for disclosure to the Supervisory Authority or as otherwise required by Applicable Law);
  - 8.2.3 ensuring that such audit or inspection is undertaken during normal business hours, with minimal disruption to Edukey's business, the Sub-Processors' business and the business of other customers of Edukey; and
  - 8.2.4 paying Edukey's reasonable costs for assisting with the of information and allowing for and contributing to inspections and audits.

## **9. BREACH NOTIFICATION**

9.1 In respect of any Personal Data Breach involving Protected Data, Edukey shall, without undue delay:

9.1.1 notify the School of the Personal Data Breach; and

9.1.2 provide the School with details of the Personal Data Breach.

## **10. LIABILITY, INDEMNITIES AND COMPENSATION CLAIMS**

10.1 The School shall indemnify and keep indemnified Edukey in respect of all Data Protection Losses suffered or incurred by, awarded against or agreed to be paid by, Edukey and any Sub-Processor arising from or in connection with any:

10.1.1 non-compliance by the School with the Data Protection Laws;

10.1.2 processing carried out by Edukey or any Sub-Processor pursuant to any Processing Instruction that infringes any Data Protection Law; or

10.1.3 breach by the School of any of its obligations under this Information Sharing Agreement,

except to the extent Edukey is liable under clause 10.2.

10.2 Edukey shall be liable for Data Protection Losses (howsoever arising, whether in contract, tort (including negligence) or otherwise) under or in connection with this information Sharing Agreement:

10.2.1 only to the extent caused by the processing of Protected Data under this Information Sharing Agreement and directly resulting from Edukey's breach of this Information Sharing Agreement; and

10.2.2 in no circumstances to the extent that any Data Protection Losses (or the circumstances giving rise to them) are contributed to or caused by any breach of this Information Sharing Agreement by the School (including in accordance with clause 4.1.3(b)).

10.3 If a party receives a compensation claim from a person relating to processing of Protected Data, it shall promptly provide the other party with notice and full details of such claim. The party with conduct of the action shall:

10.3.1 make no admission of liability nor agree to any settlement or compromise of the relevant claim without the prior written consent of the other party (which shall not be unreasonably withheld or delayed); and

10.3.2 consult fully with the other party in relation to any such action, but the terms of any settlement or compromise of the claim will be exclusively the decision of the party that is responsible under this Information Sharing Agreement for paying the compensation.

10.4 The parties agree that the School shall not be entitled to claim back from Edukey any part of any compensation paid by the School in respect of such damage to the extent that the School is liable to indemnify Edukey in accordance with clause 10.1.

10.5 This clause 10 is intended to apply to the allocation of liability for Data Protection Losses as between the parties, including with respect to compensation to Data Subjects, notwithstanding any provisions under Data Protection Laws to the contrary, except:

10.5.1 to the extent not permitted by Applicable Law (including Data Protection Laws); and

10.5.2 that it does not affect the liability of either party to any Data Subject.

## 11. GENERAL

11.1 All involved parties accept responsibility for its execution and agree to ensure that staff are trained so that requests for information and the process of sharing itself are sufficient to meet the purpose of this agreement.