

UK Data Processing Agreement: Mote Technologies Limited

This agreement is dated _____

PARTIES

- (1) **THE GOVERNING BODY OF** _____ **SCHOOL of** _____ (**'the School'**) acting by _____ (**Head of School**) and _____ (**Chairperson of the School**)
- and
- (2) **MOTE TECHNOLOGIES LIMITED** incorporated and registered in England and Wales with company number 12870112 whose registered office is at The Old Mill, Kings Mill, Kings Mill Lane, South Nutfield, Surrey RH1 5NB (**'the Processor'**)

BACKGROUND

- (A) The School and the Processor have entered into an agreement dated _____ (**'the Services Agreement'**) for the School to use the Processor's **Mote System ('the System')**. As part of that system, the Processor is required to process personal data on behalf of the School.
- (B) For the purposes of that processing, the parties acknowledge that the School is the Data Controller and the Processor is the Data Processor within the meaning of the Data Protection Legislation.
- (C) The parties have agreed to enter in to this data processing agreement to govern the processing of the School's data by the Processor.

AGREED TERMS:

1. DEFINITIONS

Law: means any law, regulation, 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 Processor is bound to comply

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

Data Protection Legislation: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018, and; (iii) all applicable Laws about the processing of personal data and privacy;

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

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

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the 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.

DPA 2018: Data Protection Act 2018

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

LED: Law Enforcement Directive (*Directive (EU) 2016/680*)

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 Processor related to this Agreement

2. COMMENCEMENT AND DURATION

- 2.1 This Agreement will commence on _____ and continue until terminated in accordance with the provisions of this Agreement.
- 2.2 The Processor will process the Personal Data in accordance with this Agreement for the duration of this Agreement.
- 2.3 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination of this agreement shall remain in full force and effect.

3. DATA PROTECTION

- 3.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the School is the Controller and the Processor is the Processor. The only processing that the Processor is authorised to do by the School is listed in Schedule One and may not be determined by the Processor.
- 3.2 The Processor shall notify the School immediately if it considers that any of the School's instructions infringe the Data Protection Legislation.
- 3.3 The Processor 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:
- (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.
- 3.4 The 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 One unless the Processor is required to do otherwise by Law. If it is so required, the Processor 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:
 - 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 the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule One
 - (d) take all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - i. are aware of and comply with the Processor's duties under this clause;
 - ii. are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - iii. 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

- iv. have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (e) not transfer Personal Data outside of the EU unless the following conditions are fulfilled:
 - i. the School or the 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 School;
 - ii. the Data Subject has enforceable rights and effective legal remedies;
 - iii. the 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 endeavours to assist the School in meeting its obligations); and
- (f) at the written direction of the School, delete Personal Data (and any copies of it) to the School on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

3.5 The Processor shall notify the School 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.

3.6 The Processor's obligation to notify under clause 3.5 shall include the provision of further information to the School in phases, as details become available.

3.7 Taking into account the nature of the processing, the Processor 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 3.5 (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.

3.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with clause 3.5. This requirement does not apply where the Processor 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.

3.9 The Processor shall make available to the controller all information necessary to demonstrate compliance with the obligations laid down in this agreement and will contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller.

- 3.10 The Processor shall designate a data protection officer if required by the Data Protection Legislation.
- 3.11 The School hereby authorizes Processor to engage the Sub-processors listed at www.justnote.me/subprocessors. Processor must enter into a written agreement with all Sub-processors. Processor must obtain sufficient guarantees from all Sub-processors that they will implement appropriate technical and organizational measures in such a manner that the Processing will meet the requirements of Data Protection Law and this DPA.
- 3.12 The Processor shall inform the School of any intended changes concerning the addition or replacement of sub-processors, thereby giving the School the opportunity to object to such changes. The School must not act unreasonably in objecting to any proposed subprocessors.
- 3.13 The Processor shall remain fully liable for all acts or omissions of any Sub-processor.

4. FREEDOM OF INFORMATION

- 4.1 The Processor acknowledges that the School is subject to the requirements of the FOIA and the EIRs.
- 4.2 The Processor acknowledges that the School may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) provided to the School by the Processor in accordance with this Agreement without consulting or obtaining consent from the Processor. The School shall take reasonable steps to notify the Processor of a Request For Information to the extent that it is permissible and reasonably practical for it to do so but the School shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.
- 4.3 Notwithstanding any other term of this agreement, the Processor consents to the publication of this agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.
- 4.4 The School shall, prior to publication, consult with the Processor on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decisions in its absolute discretion. The Processor shall assist and co-operate with the School to enable the School to comply with any FOIA and EIR obligations and to publish this agreement.

5. TERMINATION

- 5.1 Either party to this agreement may terminate this agreement by providing one month's written notice to the other party.
- 5.2 If the Processor breaches any provision of this agreement, or any of the Processors data protection obligations under the data protection legislation, the School may terminate this agreement with immediate affect
- 5.3 If the School elects for destruction of the Personal Data the Processor shall as soon as reasonably practicable ensure that all Personal Data is permanently deleted from the Processor's System and will provide the School with a certificate confirming the deletion of the data

6. GENERAL

- 6.1 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 6.2 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 6.3 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 6.4 This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- 6.5 This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

6.6 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

6.7 This agreement and the documents referred to in it constitute the entire agreement between the parties in relation to the matters dealt with by this Agreement.

Signed by:

For and on behalf of the **School**

Signature: _____

Name: _____

Position: _____

Date: _____

Signature: _____

Name: _____

Position: _____

Date: _____

For and on behalf of the **Processor**

Signature: _____

Name: _____

Position: _____

Date: _____

Schedule One
Schedule of Processing, Personal Data and Data Subjects

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

Description	Details
Subject matter of the processing	System to allow communication with data subject or, where appropriate, data subject's parent, carer or interested adult
Duration of the processing	For the duration of this Agreement plus any additional period required to allow for destruction of deletion
Nature and purposes of the processing	<p>The nature of the processing includes collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, alignment or combination, restriction, erasure or destruction of data.</p> <p>The purpose of the processing is to provide services to the School. The services consist of a communication system between the School and its data subjects / parents of data subjects.</p>
Type of Personal Data	<p>Name (first and last)</p> <p>Email address</p> <p>Familial links (Mother / Father etc)</p>
Categories of Data Subject	<p>Students on roll at the School</p> <p>Parents / Carers of such Students</p>
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	The Processor will retain the data for the duration of the processing under this Agreement. Upon expiry or termination of this Agreement, the Processor will securely and permanently destroy the personal data within 30 working days and will provide confirmation of such destruction to the School.

Schedule Two Sub-processors

1. The School hereby authorizes the Processor to engage the Subprocessors as documented at www.justmote.me/subprocessors (which may be updated from time to time in accordance with clause 3.12). The Processor must enter into a written agreement with all Subprocessors as set forth in Section 2.6 (“Service Processors”) above. The Processor must obtain sufficient guarantees from all Subprocessors that they will implement appropriate technical and organizational measures in such a manner that the Processing will meet the requirements of Data Protection Law and this DPA.
2. The Processor will maintain a list of all current sub-processors on its website, with links to their Privacy Policies and Terms of Service.
3. If the Processor wishes to propose a new sub-processor for approval, it must provide written notice to the School detailing the identity of the proposed sub-processor, the nature of the sub-processing and confirmation that a written contract in relation to the sub-processing is in place between the Processor and the sub-processor. The School must not unreasonably refuse or delay approval. The School may at any time and upon reasonable notice request copies of the contracts between the Processor and its approved sub-processors in relation to the sub-processing.