

SPAG.com Terms and Conditions – Appendix 1

Data Control and Processing

Background

- (A) We provide you with support for the education services that you provide by licensing to you our SPAG.com product and associated services such as training and implementation activities leading to commissioning of your use of SPAG.com.
- (B) You have (or where a multi-academy trust signed, that multi-academy trust has) agreed to license from us the right to use SPAG.com with your students to the extent this is accommodated within the licence that you have subscribed for. In order to maximise use of SPAG.com, staff (for example teachers) also require access.
- (C) To enable the provision of access to SPAG.com for your students and staff members and Parents (together the "Users") under the Licence, you wish us to process Data on your behalf, on the terms set out in this agreement.
- (D) This appendix is drafted to reflect the requirements of Data Protection Legislation (insofar as they are currently understood at May 2018). Insofar as Data Protection Legislation applies to each party's Processing, each party will be responsible for compliance with the DPA up to 24 May 2018, and after that, for compliance with the Data Protection Obligations as defined below together with or alternatively any revised legislation.
- (E) We hereby agree the following additional terms and conditions which are supplemental to the terms and conditions of business that we have in place. These supplemental terms are defined to assure, both for you and ourselves, compliance with the very specific and detailed requirements for third party processing of personal data as set out in GDPR and Data Protection Legislation more generally.

1. **Definitions**

- 1.1. The following definitions apply in this appendix:

"Additional Data"	means any Personal Data supplied by you, or supplied by and/or generated by your Users, in addition to User Data.
"Article"	means an article of the General Data Protection Regulation .
"Associated Products"	means any software and applications that we provide to you and/or to pupils under the terms and conditions of this Agreement.
"Data Controller" or "Controller"	has the meaning given to it in Data Protection Legislation.
"Data Extraction"	Any permission given by you which constitutes an authority for School Explained to access your information systems and extract data in respect of a Data Subject

"Data Processor" or "Processor"	has the meaning given to it in Data Protection Legislation.
"Data Protection Legislation"	means the General Data Protection Regulation, the UK Data Protection Bill 1998 as the same may be implemented from time to time and all other applicable laws and regulations relating to the Control and Processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner, and any legislation or regulations superseding or varying that legislation or those regulations from time to time.
"Data Subject"	has the meaning given to it in Data Protection Legislation.
"Data"	means User Data and Additional Data.
"Directly Provided Data"	means User Data that you provide to us in the alternative to you facilitating access to the User Data through a Data Extractor.
"European Law"	means European Union or European Member State law (as referred to in the Data Protection Obligations) or such other law as may be designated in its place when England (whether with Scotland, Wales and/or North Ireland or not), leaves the European Union.
"General Data Protection Regulation"	EU regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)
"Personal Data"	has the meaning given to it in Data Protection Legislation.
"Process"	has the meaning given to it in Data Protection Legislation and "Processing" and "Processed" shall be construed accordingly.
"Representatives"	means a party's employees, agents, contractors, officers, representatives or advisers.
"Restricted Country"	means any third country or international organisation as described in the Data Protection Obligations (but excluding any of England, Scotland, Wales and Northern Ireland, if they leave the European Union).
"User Data"	has the meaning given to it in paragraph 3.1.

2. **References to Legislation**

Any reference to legislation shall be a reference to legislation applicable to and regulating the possession, access to, use, transfer and processing of Personal Data at the relevant time. These terms and conditions expressly acknowledge the UK Government intention to apply the terms of the Data Protection Bill in substitution for Data Protection Obligations should the same receive Royal Assent and the former be repealed.

3. **Nature of Data Collected**

- 3.1. to facilitate us assisting you in providing access to SPAG.com you may from time to time provide to us the information as set out in Part 1 of the Schedule to this Appendix in respect of each User (the "User Data"). You may do so either:-

- 3.1.1. through the provision of User Data as Directly Provided Data having regard in doing so the provisions of Paragraph 3.2 below; or
- 3.1.2. through the medium of arrangements that you authorise with a Data Extractor acting on your behalf having regard to the provisions of Paragraph 7 below.
- 3.2. In relation to Directly Provided Data you undertake to transfer that User Data in compliance with Data Protection Legislation taking appropriate steps to maintain the security of the User Data during the course of its transfer to us. in compliance with Data Protection Legislation. You will take steps that are in themselves secure to share with us password or other access
- 3.3. Additional Data will be collected or generated through your Users' use of SPAG.com.

4. **Process of Sharing Data**

- 4.1. We will not check any of the Data you provide to us. It is your responsibility to check all Data and ensure that it is accurate and, where necessary, kept up-to-date.
- 4.2. You shall:
 - 4.2.1. in respect of the Data, ensure that your privacy notices are clear and provide sufficient information to Users for them to understand what of their Personal Data you are sharing with us, the circumstances in which it will be shared, the purposes for the data sharing, the features of any analytics you use and the fact we may use the Data to create statistical reports;
 - 4.2.2. be responsible for obtaining and maintaining accurately and current all necessary consents and permissions required for the sharing and use of the Data; and
 - 4.2.3. otherwise comply with all applicable Data Protection Legislation in relation to the Data with respect to which you are a Data Controller.
- 4.3. Where you authorise access to your Data on a basis that requires us to receive the Data through the services of a data extraction service that you have contracted with we reserve the right to require the agreement of that third party to a data sharing agreement that assures each of us in that relationship that we are fully compliant with our data protection obligations.

5. **Purpose of Collection and Sharing Data**

- 5.1. The Data is shared by you with us in order to enable you and Users to use SPAG.com for the purposes of educational provision, to allow you to monitor individual [and group] use and to measure progress of students in various ways that you determine and which we facilitate through SPAG..
- 5.2. We use the Data to run statistical reports for our own use (for example, showing which Applications are the most popular with students), which we would use in relation to the continuing development of our products and services). You consent to our use of the Data for such purposes, and agree that our use of the Data is necessary and proportionate given the negligible/zero impact on Users and the benefit they will receive from product improvements and enhancements.
- 5.3. We also collect individual contacts data for your staff which is used to manage the relationship we have with you and to provide service updates (where necessary). This includes, where the relevant person agrees but only for so long as that agreement is in place, to send you updates about our the products and services you accept from us or to send you information about complementary products that may be of interest to you.
- 5.4. The Data will only be used by us to inform you of developments in our products and to inform you of new products that we have developed likely to be of interest to you. The Data will not be shared with or sold to any third party save as required by law or is necessary for the provision of our services to you as

outlined in this agreement. When information is shared we will ensure such sharing is necessary and proportionate for the purpose for which the information is shared.

6. Use of SubProcessors

- 6.1. Where we provide you with off-site data storage facilities we do so under sub-contracting arrangements in order to assure the quality of the service we provide you with. The service is currently provided through Fasthosts Internet Limited ("Fasthosts"). In turn, Fasthosts procures the availability of storage that is exclusively dedicated for use by us under arrangements that meet internationally recognised data storage and security standards from Fasthosts.
- 6.2. We may from time to time make alternative arrangements for the availability of data storage services. We will comply with our Data Protection Obligations as they will apply in such circumstances including compliance with the requirements we have to have regard to any right of objection that you or a User may be entitled to have. In the event that any successor provider of data storage is accredited under any accreditation scheme or code of conduct approved by the Information Commissioners Office you agree that any objection you or a User may make is likely to be considered unreasonable.

7. Access to Data via Data Extractors

- 7.1. You may from time to time authorise to work with your appointed Data Extractor to undertake Data Extraction. In doing so you warrant that:-
- 7.1.1. You have an agreement with that party that is compliant with the requirements of Data Protection Laws;
- 7.1.2. You have provided that party with a documented instruction that authorises the processing activities that enable us to receive the data we require in order to meet our obligations under this Agreement; and
- 7.1.3. In the event that any Data Extraction may only be lawfully carried out by us and any further processing activities undertaken with a lawful consent in place you hold in documentary form evidence of the giving of that consent in terms that fully comply with Data Protection Legislation.
- 7.2. We may from time to time request from you and you will provide evidence of your compliance with the warranties set out at Paragraph 8.1 above.

8. Data Protection Conditions

- 8.1. Subject to paragraph 8.5, where Personal Data is Processed in connection with the exercise of each of our rights and obligations under this agreement, we each acknowledge that you are the Controller and that we are the Processor.
- 8.2. Details of the Processing we carry out on your behalf under this agreement are set out at Part 2 of the Schedule to this Addendum and details of each of our responsibilities for Processing are set out at Part 3 of the Schedule to this Addendum. We each agree to update Schedule 2 as necessary during the term of the Licence to reflect any changes in Processing. Each updated version of the Schedule shall form part of this Agreement.
- 8.3. We shall:
- 8.3.1. process the Personal Data only in accordance with documented instructions from you. Those instructions include to perform our obligations under this agreement, and not to transfer Personal Data to a Restricted Country, unless required to do so by any legal obligation we become subject to. In such a case, we shall inform you of that legal requirement before Processing, unless we are for any reason prohibited from doing so on important grounds of public interest;

- 8.3.2. ensure that persons authorised to Process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - 8.3.3. take all measures required pursuant to Article 32 Data Protection Obligations;
 - 8.3.4. comply with the following conditions for engaging another Processor (a "**Sub-Processor**"):
 - 8.3.4.1. subject to the existing arrangements that we have in place referred to at Paragraph 6 above we shall not engage a Sub-Processor without your prior specific or general written authorisation. In the case of general written authorisation, we shall inform you of any intended changes concerning the addition or replacement of Sub-Processors, thereby giving you the opportunity to object to such changes (but with you taking into account the circumstances (if relevant) described at Paragraph 6.2 above); and
 - 8.3.4.2. where we engage a Sub-Processor for carrying out specific Processing activities on your behalf, the same data protection obligations as set out in this agreement and in Data Protection Legislation shall be imposed on that Sub-Processor by way of a contract (if not directly imposed by Data Protection Legislation), in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the Processing will meet the requirements of Data Protection Legislation. Where that Sub-Processor fails to fulfil its data protection obligations, we shall remain fully liable to you for the performance of that Sub-Processor's obligations;
 - 8.3.5. taking into account the nature of the Processing, assist you by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of your obligation to respond to requests for exercising the Data Subject's rights laid down in Chapter III of GDPR;
 - 8.3.6. assist you in ensuring compliance with the obligations pursuant to Articles 32 to 36 taking into account the nature of Processing and the information available to us;
 - 8.3.7. at your choice, delete or return all the Personal Data to you after the end of the provision of services relating to Processing, and delete existing copies unless European Law requires storage of the Personal Data;
 - 8.3.8. make available to you all information necessary to demonstrate compliance with the obligations laid down in Article 28 Data Protection Obligations and allow for and contribute to audits, including inspections, conducted by you or another auditor mandated by you, and shall immediately inform you if, in our opinion, an instruction infringes the Data Protection Obligations, other Data Protection Legislation or other data protection provisions in European Law; and
 - 8.3.9. procure that any person acting under our authority who has access to Personal Data, shall not Process the Personal Data except on instructions from you, unless required to do so by European Law.
- 8.4. In the event that there is a change in applicable Data Protection Legislation during the term of this agreement, and/or, if applicable, there is a change during the term of this agreement in the available mechanisms used to transfer Personal data to a Restricted Country, we each agree to take such reasonable and appropriate steps and to negotiate in good faith such variation to this paragraph 8 and corresponding definitions and any other affected paragraph and Schedules during the term of the agreement if variation is required to ensure our ongoing compliance with applicable Data Protection Legislation.
- 8.5. We shall act as Controller in respect of your contact details which we Process for the purpose of account management and direct marketing and our Processing of Personal Data for statistical purposes in order to improve our products and services. Each of us shall, as a Controller, be responsible for observing our Data Control and Processing – SPAG.com Terms and Conditions Appendix 1

respective obligations under Data Protection Legislation which arise under or in connection with our respective Processing. We shall be in no way responsible for your Processing as Controller under this agreement and you shall be in no way responsible for our Processing as Controller for account management and product improvement.

9. **Roles and Responsibilities**

9.1. We and you shall appoint a single point of contact who will work together to solve problems relating to Registered Users.

9.2. The points of contact are:

9.2.1. Us: Managing Director, c/o support@spag.com

9.2.2. You: the representative for Your organisation specified on the online SPAG.com order form or subsequently advised to us in writing or by email.

10. **Term and Termination**

10.1. This Addendum shall continue for the term of the Agreement (including any renewal period) and shall terminate only when we cease to Process any Data on your behalf.

10.2. Upon termination of the Agreement all user data will be destroyed.

Schedule 1: User Data

Data Type	Why
Student data	
Surname	Helps teachers identify a child on the system. It is also combined with the student's forename to create a username for the student.
Forename	Helps teachers identify a child on the system. It is also combined with the student's surname to create a username for the student.
Staff data	
Surname	Used for correspondence relating to the administration of the school account.
Forename	Used for correspondence relating to the administration of the school account.
Primary Email Address	Used to receive the welcome email and also used for receiving username and password reminders. Also used for all correspondence relating to the administration of the school account.
Invoicing Email	Used to send an invoice to and for all correspondence relating to payment of the licence.
Class data	
Class name	Used to identify all Pupils in a Class. Used in reporting

Schedule 2: Processing Responsibilities

Requirement in Article 28(3) DATA PROTECTION OBLIGATIONS	Details for this agreement
The subject matter and duration of the Processing	<p>The provision of education services through SPAG.com</p> <p>The duration of the Processing will be for the period set out in clause 10.</p>
The nature and purpose of the Processing	<p>The Processing activity is the population of a SPAG.com account with the Personal Data You transfer to us, which will allow You to offer SPAG.com to Registered Users.</p> <p>In particular, the Personal Data will be Processed:</p> <ul style="list-style-type: none"> • for the set up and management of individual user accounts; • to achieve the purpose of SPAG.com (i.e. provide learning, homework and revision resources for users); • to verify, monitor and manage usage of SPAG.com to ensure correct functioning and resolve technical issues and complaints; • to monitor progress and usage; • to provide feedback on progress and usage to You and Users; and • to assess trends in learning. <p>SPAG.com processes data in order to prepare to enter into contracts with SPAG.com subscribers and in order to perform our contractual obligations arising from such contracts.</p> <p>Personal Data may also be used strictly in accordance with the provisions of our Privacy Statement in relation to keeping subscribers informed about our Products and Services.</p>
The type of Personal Data	<p>The Personal Data concerns the categories of data listed at Schedule 1 (User Data) and any further Personal Data supplied by You, or supplied by and/or generated by Your Users (for example, when creating usernames or passwords).</p>
The categories of Data Subjects	<p>The Personal Data concerns the following categories of Data Subject:</p> <p>(i) employees who use SPAG.com; and</p> <p>(ii) pupils</p>
The Controller's obligations and rights	<p>You shall:</p> <ul style="list-style-type: none"> (i) ensure that all Data are Processed lawfully, fairly and in a transparent manner in relation to Users; (ii) ensure that all Data collected for specified, explicit and legitimate purposes and not further Processed in a manner that is incompatible with those purposes; (iii) ensure that all Data are adequate, relevant and limited to what is necessary in relation to the purposes for which they are Processed; (iv) ensure all Data are accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that Data that are inaccurate, having regard to the purposes for which it is Processed, are erased or rectified without delay;

- (v) ensure that all Data are kept in a form which permits identification of Users for no longer than is necessary for the purposes for which the Data are Processed; you shall delete Data within Learning Ladders that are no longer required for your purposes;
 - (vi) ensure that all Data are Processed in a manner that ensures appropriate security of the Data, including protection against unauthorised or unlawful Processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures;
 - (vii) be able to demonstrate your compliance with paragraphs (i)..(vi);
 - (viii) ensure that you have a legal basis for your Processing of the Data;
 - (ix) obtain all necessary consents and permissions required for the sharing and use of the Data under this agreement;
 - (x) not Process special categories of Data unless a relevant condition applies (such as explicit consent);
 - (xi) ensure that you have provided Users with a privacy policy which covers your use of Data within Learning Ladders and our associated services;
 - (xii) deal with all requests (including but not limited to, subject access requests, requests for rectification, erasure, restriction, portability or objections) from Data Subjects relating to Data of which you are Controller;
 - (xiii) communicate to us any rectification or erasure of Data and any restrictions on Processing;
 - (xiv) ensure any automated individual decision-making, including profiling, by you, complies with applicable requirements;
 - (xv) maintain records of your Processing activities;
 - (xvi) cooperate with the Information Commissioner;
 - (xvii) implement appropriate technical and organisational measures to ensure and to be able to demonstrate that processing is performed in accordance with applicable data protection requirements and to ensure a level of security appropriate to the risk;
 - (xviii) if required, notify data breaches to the relevant supervisory authority and/or Data Subjects without undue delay;
 - (xix) if required, carry out a data protection impact assessment of the Processing activities to be carried out by us;
 - (xx) if required, designate a data protection officer.
- You shall have the rights to enforce the obligations on us as your Processor, as set out in clause 8.3.

Schedule 3: Controller Responsibilities

Responsibilities under Article 82	Details for this agreement
<p>Your responsibilities for Processing as Controller</p>	<ul style="list-style-type: none"> • The provision by you of Personal Data that is accurate and your responsibility to advise us of updates to the Personal Data promptly when any of that Personal Data becomes inaccurate. • The compliance of Data with Data Protection Legislation. • The compliance of your Processing under this agreement as a Controller, [including where you instruct us to provide analytic services]. • The security of your IT systems. • Not introducing viruses to the Learning Platform environment. • Not permitting an attack to be made on the Learning Platform through your systems or Users' devices. • Not permitting other unauthorised or malicious access to the Learning Platform through your systems or Users' devices. • Selecting and maintaining secure passwords for access to the Learning Platform • Keeping Users' login credentials confidential and secure. • And otherwise complying with your Controller obligations as Data Protection Obligations
<p>Our responsibilities for Processing as Processor</p>	<ul style="list-style-type: none"> • The following security measures: <ul style="list-style-type: none"> ○ restricted SSH access allowing only our office through the firewall; ○ database access restricted to internal servers only with a proxy for remote management; ○ web traffic is transferred over HTTPS; ○ security updates are immediately applied to servers and software when available. • And otherwise complying with our Processor obligations set out in clause 8.3.