

DATA PROCESSING AGREEMENT (DPA)

Parties to this agreement:

(A) The *Customer*

and

(B) Tes Global Limited, ('Tes', 'we', 'us', 'EduCare') incorporated and registered in England and Wales with company number 02017289 whose registered office is at 26 Red Lion Square, London, WC1R 4HQ.

1. Background and Scope

- 1.1. EduCare is a trading name of Tes and a part of the Tes Global Limited group of companies.
- 1.2. Tes provides the EduCare E-learning Services and its MyEduCare platform enabling the Customers to easily manage training and awareness to employees and agents (Learners).
- 1.3. Other than where specified in clause 11 of this agreement, in the provision of E-learning Services and MyEduCare, Tes will act as a Data Processor and the Customer is the Data Controller.
- 1.4. Nothing documented herein shall relieve the Customer of their own direct responsibilities and liabilities under any Data Protection Law of the European Union, United Kingdom or other jurisdiction to which they are subject.
- 1.5. In any event that any clauses of this agreement contradict any previous agreements or terms entered into between the two parties, the terms in this agreement shall supersede those previously agreed.

2. Definitions

- 2.1. **MyEduCare** – Means the platform directly provided to organisations to manage, track and otherwise maintain their Learners access to, and completion of, the relevant e-learning services.
- 2.2. **E-learning Services** - Means any and all e-learning course materials, reports, certificates, badges and other online resources provided to the Customer as a part of their Licence in the Main Agreement.
- 2.3. **Applicable Data Protection Law** - where the Customer is established in the European Economic Area, means the EU Regulation 2016/679 (General Data Protection Regulation [GDPR]) and any

applicable national laws made under it, which includes, but is not limited to, The United Kingdom's Data Protection Act 2018.

- 2.4. Main Agreement** – means the terms accepted by the Customer in the delivery of the products referenced in clause 1.2.
- 2.5. Customer** – means the organisation or institution who has confirmed the terms of the Main Agreement.
- 2.6. Data Controller, Data Processor, Data Subject, Personal Data, processing, Data Protection Officer, Rights of the Data Subject and appropriate organisational and technical measures** – the preceding terms have the same meanings as given in the GDPR.
- 2.7. In writing** – for the avoidance of doubt, includes the provision of instructions in any written format including email.

3. Registration as a Data Controller

- 3.1.** As defined under Regulation 2 of the Data Protection (Charges and Information) Regulations 2018 Tes is registered as a Data Controller under the registration reference Z7430756.
- 3.2.** As an independent Data Controller the *Customer* recognises and confirms that, unless exempt, they are registered as a Data Controller as defined under Regulation 2 of the Data Protection (Charges and Information) Regulations 2018.

4. Processing Obligations

- 4.1.** Tes acts as a Data Processor on behalf of the Data Controller in the provision of the E-learning Services and MyEduCare platform for the purposes of:
 - 4.1.1. Learning Management System**
 - 4.1.2. Customer Relationship Management**
 - 4.1.3. Employee Onboarding**
 - 4.1.4. Customer setup**
 - 4.1.5. Usage Reporting**
- 4.2.** In the provision of the services detailed in 4.1, the Tes agrees to:
 - 4.2.1.** Process the personal data only on the documented instructions, provided herein, of the Controller, including with regard to transfers of personal data to a third country or an international organisation, as provided in Clause 10 of this agreement, unless required to do so by Union or Member State law to which the Processor is subject; in any case, the Processor shall inform the Controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest.

- 4.2.2.** Take into account the nature of the processing, to assist the Controller through appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Controller's obligation to respond to requests for exercising the data subject's rights. In particular, Tes shall:
- 4.2.2.1.** Notify the Controller without delay if it receives a request from a Data Subject to enforce their Data Subject Rights in respect of Controller Personal Data; and
 - 4.2.2.2.** Ensure that they do not respond to that request except on the documented instructions of the Controller or as required by any Applicable Data Protection Law to which Tes is subject, in which case Tes shall, to the extent permitted by Applicable Data Protection Law, inform the Controller of that legal requirement before Tes responds to the request.
- 4.2.3.** In the event of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted, stored or otherwise processed, Tes shall notify the Controller without undue delay after becoming aware of the personal data breach.
- 4.2.3.1.** In addition, Tes shall, insofar as is possible, co-operate with the Controller as required in assisting the Controller with their investigation, reporting, mitigation and remediation of any personal data breach.
- 4.2.4.** Where requested by the Controller, Tes shall provide such assistance and information as is reasonably requested in the completion of a Data Protection Impact Assessment where such an assessment is carried out by the Controller.
- 4.2.5.** Upon request, Tes, and where appropriate their representatives, shall cooperate with the Information Commissioners Office or other relevant Supervisory Authorities in the performance of their tasks.
- 4.2.5.1.** Tes understands that in cooperating with the Information Commissioners Office, or other relevant Supervisory Authorities, it may be subject to their investigative and corrective powers.
 - 4.2.5.2.** Tes understands that should it fail to meet its obligations under any applicable Data Protection Law of the European Union or United Kingdom to which they are subject, we may be subject to administrative fines, penalties and compensation claims.
 - 4.2.5.3.** Any cooperation provided by Tes with the Information Commissioners Office, or other relevant Supervisory Authority, in no way confirms any liability for any supposed or accused breach of any Applicable Data Protection Law

4.2.6. For the avoidance of doubt, nothing within this agreement relieves either the Processor or Controller of their own direct responsibilities and liabilities under all Applicable Data Protection Laws.

5. Audit and Inspection Rights

5.1. Tes shall, where acting as a processor and in accordance with Applicable Data Protection Laws, make available to the Customer in their capacity as Controller only, any information which is reasonably required to demonstrate compliance with Applicable Data Protection Laws.

5.1.1. In providing that reasonable assistance, Tes shall, upon reasonable notice and at no cost to itself, allow for and contribute to audits, including inspections, conducted by the Controller or another auditor mandated by the Controller.

5.1.2. The Controller shall, within one working day of the completion of any report, or their receipt of a report from their mandated auditor, provide said report or other document created in conjunction with any audit or inspection, as permitted under clause 5.1.1 at no cost to the Processor in a machine readable format free from any and all redactions or omissions thereby enabling the Processor the reasonable opportunity to provide further evidence or query any position provided by the individual or organisation appointed to undertake such a task on behalf of the Controller.

5.2. In any event that any instruction provided by the Controller infringes any Applicable Data Protection Law Tes shall, in a reasonable time frame, notify the Controller of said infringement.

5.2.1. With reference to Clause 5.2 above, should the Controller fail to take action on any infringing instruction as notified to the Controller by Tes, Tes reserves the right not to act on such an instruction and, upon reasonable written notice, terminate any agreement to provide the E-learning Services and MyEduCare platform where any agreement cannot be met.

6. Confidentiality

6.1. Tes shall ensure that all employees and contractors authorised to process personal data on behalf of the Controller have committed themselves to a level of confidentiality appropriate to the activities which they are employed or engaged to undertake.

7. Erasure of Personal Data

7.1. The Controller can, at any time, request externally from the E-learning Services and MyEduCare platform any personal data processed by Tes on behalf of the Controller.

- 7.2.** At the termination of the commercial agreement, Tes shall, after a period of three calendar months, erase all personal data processed as a Processor on behalf of the Customer in the E-learning Services and MyEduCare platform.
- 7.3.** Notwithstanding the timeframe defined in clause 7.2 above, Tes shall, upon receipt of a written request from the Controller, erase any, or all, personal data processed as a Processor on behalf of the Customer in the E-learning Services and MyEduCare platform.
- 7.4.** The obligations provided in 7.2 and 7.3 shall not apply in totality where the personal data is separately processed in conjunction with the services defined in Clause 11 of this agreement.

8. Security

- 8.1.** The Processor shall implement and maintain technical and organisational security measures appropriate to the risks apparent to the rights and freedoms of data subjects whose personal data, as provided in Annex 1, is processed by the Processor on behalf on the Controller.
- 8.2.** In assessing the appropriate level of security, Tes has taken account of the risks that are presented by processing of personal data, in particular from a Personal Data Breach.

9. Authorisation to Appoint Sub-Processors

- 9.1.** The Controller hereby provides general authorisation for the appointment of sub-processors for the processing of personal data by the Processor on behalf of the Controller including, but not limited to, the currently undertaken processing of personal data by the Processor.
- 9.2.** The Controller recognises that Tes processing may be, in part, supported by the Tes Global Limited Group of companies to ensure the E-learning Services and MyEduCare are provided in a robust and reliable manner.
- 9.3.** In the event that the processor wishes to change or appoint any new sub-processors to process personal data on behalf of the Controller, the processor shall, with regards to the general authorisation provided in Clause 9.1 above, inform the Controller of any intended changes concerning the addition or replacement of sub-processors thereby permitting the Controller the ability to object to such appointment and the Controller agrees that such objection shall be reasoned and provided in writing within two weeks of such notification by the Processor.
- 9.4.** Where the Processor engages any sub-processor for the carrying out of processing activities on behalf of the Controller, the Processor shall enter into a written agreement which provides the same, or greater, data protection obligations as set out in this agreement with each sub-processor engaged.

9.5. Where any appointed sub-processor fails to fulfil their data protection obligations defined in clause 9.3 above, the Processor shall remain fully liable to the Controller for the fulfilment of its obligations under this Data Processing Agreement and for the performance of the subcontractor's obligations.

10. International Transfers

10.1. The Controller acknowledges and authorises the processor to process personal data outside of the European Economic Area in third countries or with international organisations who:

10.1.1. Are located within a third country that has ensured an adequate level of protection for the personal data; or,

10.1.2. In the absence of an adequacy decision as provided in Clause 10.1.1 above, the appointed sub-processor has provided appropriate safeguards for such a transfer of personal data.

11. Separate Controllers

11.1. Outside of the services described in Clause 4.1, Tes acts as a separate Data Controller in the provision of the EduCare E-learning Services and MyEduCare to the Customer for:

11.1.1. The Webshop function available to individuals enabling them to quickly purchase individual access to the E-learning Services and MyEduCare platform.

11.1.2. Service update emails sent by Tes to individuals whose data is processed on the MyEduCare platform.

11.2. Where Tes Provides the services defined in Clause 11.1.1 and 11.1.2, Tes is under no direct obligation to the Customer as it operates as a separate Data Controller.

12. Term and Termination

12.1. This agreement shall continue in full force and effect from the date the agreement is made on until Tes has been notified in writing that the Customer no longer requires access to the E-learning Services and MyEduCare.

12.2. Any updates, amendments or annexes made to this agreement shall be provided to the Customer in writing by Tes.

12.3. In any event that the Applicable Data Protection Laws, and where applicable and ancillary laws, change in a way that renders the Agreement no longer adequate for the purpose of governing lawful data processing between the two parties', the parties agree that they shall negotiate, in good faith, to review the Agreement in light of the new legislation.

13. Governing Laws

13.1. The two parties agree that this agreement shall be governed by, and construed exclusively, in accordance with the laws and courts of England.

14. Waiver

14.1. No failure or delay by either party to exercise any right or remedy provided within this Agreement, or as provided by law, constitutes any waiver of those rights or remedies nor any other right or remedy due, nor does it prevent or restrict either party from further exercising that or any other right or remedy. No single or partial exercise of such right or remedy prevents or restricts either party from further exercising that or any other right or remedy.

15. Severance

15.1. In any event that any provision of this agreement is deemed to be invalid or unenforceable, then the remainder of this agreement shall remain valid and in force. The invalid or unenforceable provision shall be amended as necessary, and in good faith, to ensure its validity and enforceability, while preserving each parties' intentions as closely as possible, or, if this is not possible, construed in a manner as if the invalid or unenforceable part had never been contained therein.

This agreement is entered into and becomes a binding part of the Agreement with effect from the date set out in the Main Agreement.

Annex 1 – Processing Instructions

The Controller authorises the Processor to process certain Personal Data for the provision of the EduCare E-learning Services and MyEduCare specified below.

The purpose of this Annex is to define the specific details of the Processing of Personal Data. The provisions of the Data Processing Agreement between the Parties shall apply.

1. Data Subjects

The Personal Data transferred concern the following categories of Data Subjects:

- 1.1. Customer Employees and Agents (Learners)

2. Categories of Data

The Personal Data transferred concern the following categories of data:

- 2.1. Contact data – email address**
- 2.2. Personal Identification data – First name, Last name**
- 2.3. Employment Information data – Department, Employer, Job title/role, Business Location, GDC Number (Where relevant)**
- 2.4. User Account Information – Account ID, Username, Admin Name**
- 2.5. Education and Skills data – Course Data**