



The Marlborough Science Academy

| The Marlborough Science Academy | |
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1. **Policy statement and objectives**

- 1.1 The objectives of this Data Protection Policy are to ensure that The Marlborough Science Academy (“TMSA”) and its directors (i.e. Governors), members and employees are informed about, and comply with, their obligations under the General Data Protection Regulation (“the GDPR”) and other data protection legislation. Throughout this document, where reference is made to the “Board of Directors” this is also known as the Academy’s Board of Governors.
- 1.2 TMSA is a Single Academy Trust and is the Data Controller for all the Personal Data processed by the Academy.
- 1.3 Everyone has rights with regard to how their personal information is handled. During the course of TSMA’s activities, TSMA will Process personal information about a number of different groups of people and recognises the need to treat it in an appropriate and lawful manner.
- 1.4 The type of information that TSMA may be required to handle include details of job applicants, current, past and prospective employees, students, parents / carers and other members of students’ families, directors, members suppliers and other individuals that TSMA communicates with. The information, which may be held on paper or digitally on a computer/server/cloud or other media, is subject to certain legal safeguards specified in the GDPR and other legislation. The GDPR imposes restrictions on how TSMA may use that information.
- 1.5 This policy does not form part of any employee’s contract of employment and it may be amended at any time. Any breach of this policy by members of staff will be taken seriously and may result in disciplinary action including dismissal in case of serious breaches. Breaches of the GDPR may expose TMSA to enforcement action by the Information Commissioner’s Office (ICO), including the risk of fines. Furthermore, certain breaches of the Act can give rise to personal criminal liability for TMSA’s employees. At the very least, a breach of the GDPR could damage TMSA’s reputation and may have serious consequences for TMSA and its stakeholders.

2. **Status of the policy**

- 1.1 This policy has been approved by the directors of TMSA. It sets out rules on data protection and the legal conditions that must be satisfied in relation to the obtaining, handling, processing, storage, transportation and destruction of personal information.

3. **Data Protection Officer**

- 3.1 The Data Protection Officer (the “DPO”) is responsible for ensuring TMSA is compliant with the GDPR and with this policy. This post is currently held by Richard Atterton, dpo@marlborough.herts.sch.uk. Any questions or concerns about the operation of this policy should be referred in the first instance to the DPO.
- 3.2 The DPO will play a major role in embedding essential aspects of the GDPR into TMSA’s culture, from ensuring the data protection principles are respected to preserving data subject rights, recording data processing activities and ensuring the security of processing.
- 3.3 The DPO should be involved, in a timely manner, in all issues relating to the protection of personal data. To do this, the GDPR requires that DPOs are provided with the necessary support and resources to enable the DPO to effectively carry out their tasks. Factors that should be considered include the following:

- 3.3.1 senior management support;
 - 3.3.2 time for DPOs to fulfil their duties;
 - 3.3.3 adequate financial resources, infrastructure (premises, facilities and equipment) and staff where appropriate;
 - 3.3.4 official communication of the designation of the DPO to make known the existence and function of the DPO within TMSA;
 - 3.3.5 access to other services, such as HR, IT and security, who should provide support to the DPO;
 - 3.3.6 continuous training so that DPOs can stay up to date with regard to data protection developments;
 - 3.3.7 where a DPO team is deemed necessary, a clear infrastructure detailing roles and responsibilities of each team member;
 - 3.3.8 whether TMSA should give the DPO access to external legal advice; to advise the DPO on their responsibilities under this Data Protection Policy.
- 3.4 The DPO is responsible for ensuring that TMSA's Processing operations adequately safeguard Personal Data, in line with legal requirements. This means that the governance structure within TMSA must ensure the independence of the DPO.
- 3.5 TMSA will ensure that the DPO does not receive instructions in respect of the carrying out of their tasks. This means that the DPO must not be instructed how to deal with a matter, such as how to investigate a complaint or what result should be achieved. Further, the DPO should report directly to the highest management level, i.e. the board of directors.
- 3.6 The requirement that the DPO reports directly to the board of directors ensures that TMSA's directors are made aware of the pertinent data protection issues. In the event that the TMSA management decides to take a certain course of action despite the DPO's advice to the contrary, the DPO should be given the opportunity to make their dissenting opinion clear to the board of directors and to any other decision makers.
- 3.7 A DPO appointed internally by TMSA is permitted to undertake other tasks and duties for the Academy, but these must not result in a conflict of interests with his or her role as DPO. It follows that any conflict of interests between the individual's role as DPO and other roles the individual may have within the Academy impinge on the DPO's ability to remain independent.
- 3.8 In order to avoid conflicts the DPO cannot hold another position within the Academy that involves determining the purposes and means of processing personal data. Senior management positions such as the Head Teacher, Director of Finance and Resources, Network Manager and People and Culture Manager are likely to cause conflicts. Some other positions may involve determining the purposes and means of processing, which will rule them out as feasible roles for DPOs.
- 3.9 In the light of this and in the event that TMSA decides to appoint an internal DPO, TMSA will take the following action in order to avoid conflicts of interests:
- 3.9.1 identify the positions incompatible with the function of DPO;

- 3.9.2 draw up internal rules to this effect in order to avoid conflicts of interests which may include, for example, allocating some of the DPO's other duties to other members of staff, appointing a deputy DPO and / or obtaining advice from an external advisor if appropriate;
 - 3.9.3 include a more general explanation of conflicts of interests; and
 - 3.9.4 include safeguards in the internal rules of the Academy and ensure that the job specification for the position of DPO or the service contract is sufficiently precise and detailed to avoid conflicts of interest.
- 3.10 Anyone who considers that the policy has not been followed in respect of Personal Data about themselves or others, should raise the matter with the DPO.

4. **Definition of terms**

- 4.1 **Biometric Data** means Personal Data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person, which allow or confirm the unique identification of that natural person, such as facial images;
- 4.2 **Consent** of the Data Subject means any freely given, specific, informed and unambiguous indication of the Data Subject's wishes by which they, by a statement or by a clear affirmative action, signifies agreement to the processing of Personal Data relating to them;
- 4.3 **Data** is information which is stored electronically or digitally, on a computer/server/cloud, or in certain paper-based filing systems or other media such as CCTV;
- 4.4 **Data Subjects** for the purpose of this policy include all living individuals about whom TMSA holds Personal Data. A Data Subject need not be a UK national or resident. All Data Subjects have legal rights in relation to their Personal Data.
- 4.5 **Data Controllers** means TMSA or a natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of Personal Data.
- 4.6 **Data Users** include employees, volunteers, governors whose work involves using Personal Data. Data Users have a duty to protect the information they handle by following our data protection and security policies at all times;
- 4.7 **Data Processors** means a natural or legal person, public authority, agency or other body which processes Personal Data on behalf of the Data Controller;
- 4.8 **Parent** has the meaning given in the Education Act 1996 and includes any person having parental responsibility or care of a child;
- 4.9 **Personal Data** means any information relating to an identified or identifiable natural person ('Data Subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
- 4.10 **Personal Data Breach** means 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;

- 4.11 **Privacy by Design** means implementing appropriate technical and organisational measures in an effective manner to ensure compliance with the GDPR;
- 4.12 **Processing** means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
- 4.13 **Sensitive Personal Data** means Personal Data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.

5. **Data protection principles**

5.1 Anyone processing Personal Data must comply with the enforceable principles of good practice. These provide that Personal Data must be:

- 5.1.1 processed lawfully, fairly and in a transparent manner in relation to individuals;
- 5.1.2 collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall not be considered to be incompatible with the initial purposes;
- 5.1.3 adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed;
- 5.1.4 accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that Personal Data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay;
- 5.1.5 kept in a form which permits identification of Data Subjects for no longer than is necessary for the purposes for which the Personal Data are processed; Personal Data may be stored for longer periods insofar as the Personal Data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes subject to implementation of the appropriate technical and organisational measures required by the GDPR in order to safeguard the rights and freedoms of individuals; and
- 5.1.6 Processed in a manner that ensures appropriate security of the Personal Data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.

5.2 Processed lawfully, fairly and in a transparent manner

- 5.2.1 The GDPR is intended not to prevent the processing of Personal Data, but to ensure that it is done fairly and without adversely affecting the rights of the Data Subject. The Data Subject must be told who the Data Controller is (in this case TMSA), who the Data Controller's representative is (in this case the DPO), the purpose for which the data is to be Processed by us, and the identities of anyone to whom the Data may be disclosed or transferred.

- 5.2.2 For Personal Data to be processed lawfully, certain conditions have to be met. These may include:
- 5.2.2.1 where TMSA have the Consent of the Data Subject;
 - 5.2.2.2 where it is necessary for compliance with a legal obligation;
 - 5.2.2.3 where processing is necessary to protect the vital interests of the Data Subject or another person;
 - 5.2.2.4 where it is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.
- 5.2.3 Personal data may only be processed for the specific purposes notified to the Data Subject when the data was first collected, or for any other purposes specifically permitted by the Act. This means that Personal Data must not be collected for one purpose and then used for another. If it becomes necessary to change the purpose for which the data is processed, the Data Subject must be informed of the new purpose before any processing occurs.

5.3 Sensitive Personal Data

- 5.3.1 TMSA will be processing Sensitive Personal Data about stakeholders and recognises that the law states that this type of Data needs more protection. Therefore, Data Users must be more careful with the way in which Sensitive Personal Data is processed.
- 5.3.2 When Sensitive Personal Data is being processed, as well as establishing a lawful basis (as outlined in paragraph 5.1 above), a separate condition for processing it must be met. In most cases the relevant conditions are likely to be that:
- 5.3.2.1 the Data Subject's explicit consent to the processing of such data has been obtained
 - 5.3.2.2 processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, where the essence of the right to data protection is respected and provision for suitable and specific measures to safeguard the fundamental rights and the interests of the Data Subject is made;
 - 5.3.2.3 processing is necessary to protect the vital interests of the Data Subject or of another natural person where the Data Subject is physically or legally incapable of giving consent;
 - 5.3.2.4 processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the Data Controller or of the Data Subject in the field of employment law in so far as it is authorised by Union or Member State law or a collective agreement pursuant to Member State law providing for appropriate safeguards for the fundamental rights and the interests of the Data Subject.
- 5.3.3 TMSA recognises that in addition to Sensitive Personal Data, it is also likely to Process information about its stakeholders which is confidential in nature, for example, information about family circumstances, child protection or

safeguarding issues. Appropriate safeguards must be implemented for such information, even if it does not meet the legal definition of Sensitive Personal Data.

5.4 Biometric Data

5.4.1 TSMA processes Biometric Data as part of an automated biometric recognition system, for example, for cashless catering or photo ID card systems where a student's photo is scanned automatically to provide him or her with services. Biometric Data is a type of Sensitive Personal Data.

5.4.2 Where Biometric Data relating to students is processed, TSMA must ensure that each parent of a child is notified of the school's intention to use the child's Biometric Data and obtain the written consent of at least one parent before the data is taken from the pupil and used as part of an automated biometric recognition system. TSMA must not process the Biometric Data if a pupil under 18 years of age where:

5.4.2.1 the child (whether verbally or non-verbally) objects or refuses to participate in the Processing of their Biometric Data;

5.4.2.2 no Parent has Consented in writing to the processing; or

5.4.2.3 a Parent has objected in writing to such processing, even if another Parent has given written Consent.

5.4.3 TSMA must provide reasonable alternative means of accessing services for those students who will not be using an automated biometric recognition system. TSMA will comply with any guidance or advice issued by the Department for Education on the use of Biometric Data from time to time.

5.4.4 TSMA must obtain the explicit Consent of staff, Governors, students or other Data Subjects before Processing their Biometric Data.

5.5 Criminal convictions and offences

5.5.1 There are separate safeguards in the GDPR for Personal Data relating to criminal convictions and offences.

5.5.2 It is likely that TSMA will Process Data about criminal convictions or offences. This may be as a result of pre-vetting checks which are required to be undertaken on staff and Governors or due to information which may be acquired during the course of their employment or appointment.

5.5.3 In addition, from time to time TSMA may acquire information about criminal convictions or offences involving students or Parents. This information is not routinely collected and is only likely to be processed by TSMA in specific circumstances, for example, if a child protection issue arises or if a parent / carer is involved in a criminal matter.

5.5.4 Where appropriate, such information may be shared with external agencies such as the child protection team at the Local Authority, the Local Authority Designated Officer and / or the Police. Such information will only be processed to the extent that it is lawful to do so and appropriate measures will be taken to keep the data secure.

5.6 Transparency

- 5.6.1 One of the key requirements of the GDPR relates to transparency. This means that TMSA must keep Data Subjects informed about how their Personal Data will be processed when it is collected.
- 5.6.2 One of the ways TSMA provides this information to individuals is through a privacy notice which sets out important information what is done with their Personal Data. TMSA has developed privacy notices for the following categories of people:
- 5.6.2.1 Students
 - 5.6.2.2 Parents/Carers
 - 5.6.2.3 Staff
 - 5.6.2.4 Governors
- 5.6.3 TMSA wishes to adopt a layered approach to keeping people informed about how their Personal Data is processed. This means that the privacy notice is just one of the tools used to communicate this information. TMSA employees are expected to use other appropriate and proportionate methods to tell individuals how their Personal Data is being processed if Personal Data is being processed in a way that is not envisaged by our privacy notices and / or at the point when individuals are asked to provide their Personal Data, for example, where Personal Data is collected about visitors to TSMA premises or if TSMA asks people to complete forms requiring them to provide their Personal Data.
- 5.6.4 TSMA will ensure that privacy notices are concise, transparent, intelligible and easily accessible; written in clear and plain language, particularly if addressed to a child; and free of charge.

5.7 Consent

- 5.7.1 TMSA must only process Personal Data on the basis of one or more of the lawful bases set out in the GDPR, which include Consent. Consent is not the only lawful basis and there are likely to be many circumstances when TSMA will process Personal Data and has justification for doing so is based on a lawful basis other than Consent.
- 5.7.2 A Data Subject consents to Processing of their Personal Data if they indicate agreement clearly either by a statement or positive action to the Processing. Consent requires affirmative action so silence, pre-ticked boxes or inactivity are unlikely to be sufficient. If Consent is given in a document which deals with other matters, then the Consent must be kept separate from those other matters.
- 5.7.3 In the event that TSMA is relying on Consent as a basis for Processing Personal Data about students, if a pupil is aged under 13, TSMA will need to obtain Consent from the Parent(s). In the event that TSMA requires Consent for Processing Personal Data about students aged 13 or over, TSMA will require the Consent of the pupil although, depending on the circumstances, TSMA should consider whether it is appropriate to inform Parents about this process. Consent is likely to be required if, for example, TSMA wishes to use a photo of a pupil on its website or on social media. Consent is also required is also required before any students are signed up to online learning platforms. Such Consent must be from the Parent is the pupil is aged under 13. When relying

on Consent, TSMA will make sure that the child understands what they are consenting to, and TSMA will not exploit any imbalance in power in the relationship.

5.7.4 Data Subjects must be easily able to withdraw Consent to Processing at any time and withdrawal must be promptly honoured. Consent may need to be refreshed if TSMA intends to Process Personal Data for a different and incompatible purpose which was not disclosed when the Data Subject first consented.

5.7.5 Unless TSMA can rely on another legal basis of Processing, Explicit Consent is usually required for Processing Sensitive Personal Data. Often TSMA will be relying on another legal basis (and not require Explicit Consent) to Process most types of Sensitive Data.

5.7.6 Evidence and records of Consent must be maintained so that TMSA can demonstrate compliance with Consent requirements.

6. Specified, explicit and legitimate purposes

6.1 Personal data should only be collected to the extent that it is required for the specific purpose notified to the Data Subject, for example, in the Privacy Notice or at the point of collecting the Personal Data. Any data which is not necessary for that purpose should not be collected in the first place.

6.2 TMSA will be clear with Data Subjects about why their Personal Data is being collected and how it will be processed. TSMA cannot use Personal Data for new, different or incompatible purposes from that disclosed when it was first obtained unless TSMA have informed the Data Subject of the new purposes and they have Consented where necessary.

7. Adequate, relevant and limited to what is necessary

7.1 TMSA will ensure that the Personal Data collected is adequate to enable TSMA to perform its functions and that the information is relevant and limited to what is necessary.

7.2 In order to ensure compliance with this principle, TMSA will check records at appropriate intervals for missing, irrelevant or seemingly excessive information and may contact Data Subjects to verify certain items of data.

7.3 TMSA employees must also give due consideration to any forms stakeholders are asked to complete and consider whether the all the information is required. TSMA may only collect Personal Data that is needed to operate as a school functions and should not collect excessive data. TSMA should ensure that any Personal Data collected is adequate and relevant for the intended purposes.

7.4 TMSA will implement measures to ensure that Personal Data is processed on a 'Need to Know' basis. This means that the only members of staff or Governors who need to know Personal Data about a Data Subject will be given access to it and no more information than is necessary for the relevant purpose will be shared. In practice, this means that TMSA may adopt a layered approach in some circumstances, for example, members of staff or Governors may be given access to basic information about a pupil or employee if they need to know it for a particular purpose but other information about a Data Subject may be restricted to certain members of staff who need to know it, for example, where the information is Sensitive Personal Data, relates to criminal convictions or offences or is confidential in nature (for example, child protection or safeguarding records).

7.5 When Personal Data is no longer needed for specified purposes, it must be deleted or anonymised in accordance with TMSA's data retention guidelines.

8. **Accurate and, where necessary, kept up to date**

8.1 Personal data must be accurate and kept up to date. Information which is incorrect or misleading is not accurate and steps should therefore be taken to check the accuracy of any Personal Data at the point of collection and at regular intervals afterwards. Inaccurate or out-of-date data should be destroyed.

8.2 If a Data Subject informs TMSA of a change of circumstances their records will be updated as soon as is practicable.

8.3 Where a Data Subject challenges the accuracy of their data, TMSA will immediately mark the record as potentially inaccurate, or 'challenged'. In the case of any dispute, TMSA shall try to resolve the issue informally, but if this proves impossible, disputes will be referred to the Data Protection for their judgement. If the problem cannot be resolved at this stage, the Data Subject should refer their complaint to the Information Commissioner's Office. Until resolved the 'challenged' marker will remain and all disclosures of the affected information will contain both versions of the information.

8.4 Notwithstanding paragraph 8.3, a Data Subject continues to have rights under the GDPR and may refer a complaint to the Information Commissioner's Office regardless of whether the procedure set out in paragraph 8.3 has been followed.

9. **Data to be kept for no longer than is necessary for the purposes for which the Personal Data are processed**

9.1 Personal data should not be kept longer than is necessary for the purpose for which it is held. This means that data should be destroyed or erased from our systems when it is no longer required.

9.2 It is the duty of the DPO, after taking appropriate guidance for legal considerations, to ensure that obsolete data are properly erased. TMSA has a retention schedule for all data.

10. **Data to be processed in a manner that ensures appropriate security of the Personal Data**

10.1 TMSA has taken steps to ensure that appropriate security measures are taken against unlawful or unauthorised processing of Personal Data, and against the accidental loss of, or damage to, Personal Data. Data Subjects may apply to the courts for compensation if they have suffered damage from such a loss.

10.2 The GDPR requires TMSA to put in place procedures and technologies to maintain the security of all Personal Data from the point of collection to the point of destruction.

10.3 TMSA will develop, implement and maintain safeguards appropriate to size, scope, available resources, the amount of Personal Data that TMSA owns or maintains on behalf of others and identified risks (including use of encryption and Pseudonymisation where applicable). TMSA will regularly evaluate and test the effectiveness of those safeguards to ensure security of our Processing of Personal Data.

10.4 Data Users are responsible for protecting the Personal Data TSMA holds. Data Users must implement reasonable and appropriate security measures against unlawful or unauthorised Processing of Personal Data and against the accidental loss of, or damage

to, Personal Data. Data Users must exercise particular care in protecting Sensitive Personal Data from loss and unauthorised access, use or disclosure.

- 10.5 Data Users must follow all procedures and technologies TMSA puts in place to maintain the security of all Personal Data from the point of collection to the point of destruction. Data Users must comply with all applicable aspects of our Staff Laptop Procedures and Data Protection Policy and not attempt to circumvent the administrative, physical and technical safeguards TMSA implements and maintains in accordance with the GDPR and relevant standards to protect Personal Data.
- 10.6 Maintaining data security means guaranteeing the confidentiality, integrity and availability of the Personal Data, defined as follows:
- 10.6.1 **Confidentiality** means that only people who are authorised to use the data can access it.
- 10.6.2 **Integrity** means that Personal Data should be accurate and suitable for the purpose for which it is processed.
- 10.6.3 **Availability** means that authorised users should be able to access the data if they need it for authorised purposes.
- 10.7 It is the responsibility of all members of staff and Governors to work together to ensure that the Personal Data TMSA holds is kept secure. TMSA relies on its staff and colleagues to identify and report any practices that do not meet these standards so that steps can be taken to address any weaknesses in TMSA's systems. Any suggestions, comments or concerns about security should be raised to the Headteacher or the DPO.
- 10.8 Please see TMSA Data Protection Policy for details for the arrangements in place to keep Personal Data secure:
- 10.9 Governors
- 10.9.1 Governors are likely to process Personal Data when they are performing their duties, for example, if they are dealing with employee issues, pupil exclusions or parent complaints. Governors should be trained on TMSA's data protection processes as part of their induction and should be informed about their responsibilities to keep Personal Data secure. This includes:
- 10.9.1.1 Ensure that Personal Data which comes into their possession as a result of their Governors duties is kept secure from third parties, including family members and friends;
- 10.9.1.2 Ensure they are provided with a copy of TMSA's Data Protection Policy.
- 10.9.1.3 Using a TMSA email account for any TMSA-related communications;
- 10.9.1.4 Ensuring that any TMSA-related communications or information stored or saved on an electronic device or computer is password protected and encrypted;
- 10.9.1.5 Taking appropriate measures to keep Personal Data secure, which includes ensuring that hard copy documents are securely locked away so that they cannot be access by third parties.

11. **Processing in line with Data Subjects' rights**

11.1 Data Subjects have rights when it comes to how TMSA handles their Personal Data. These include rights to:

- 11.1.1 withdraw Consent to Processing at any time;
- 11.1.2 receive certain information about the Data Controller's Processing activities;
- 11.1.3 request access to their Personal Data that TMSA holds;
- 11.1.4 prevent TMSA use of their Personal Data for direct marketing purposes;
- 11.1.5 ask TMSA to erase Personal Data if it is no longer necessary in relation to the purposes for which it was collected or Processed or to rectify inaccurate data or to complete incomplete data;
- 11.1.6 restrict Processing in specific circumstances;
- 11.1.7 challenge Processing which has been justified on the basis of TMSA's legitimate interests or in the public interest;
- 11.1.8 request a copy of an agreement under which Personal Data is transferred outside of the EEA;
- 11.1.9 object to decisions based solely on Automated Processing, including profiling (Automated Decision Making);
- 11.1.10 prevent Processing that is likely to cause damage or distress to the Data Subject or anyone else;
- 11.1.11 be notified of a Personal Data Breach which is likely to result in high risk to an individual's rights and freedoms;
- 11.1.12 make a complaint to the supervisory authority (the ICO); and
- 11.1.13 in limited circumstances, receive or ask for their Personal Data to be transferred to a third party in a structured, commonly used and machine readable format.

11.2 TMSA is required to verify the identity of an individual requesting data under any of the rights listed above. Members of staff should not allow third parties to persuade them into disclosing Personal Data without proper authorisation.

12. **Dealing with subject access requests**

12.1 The GDPR extends to all Data Subjects a right of access to their own Personal Data. A formal request from a Data Subject for information that TMSA holds about them must be made in writing. TMSA can invite a Data Subject to complete a form but may not insist that they do so.

12.2 It is important that all members of staff are able to recognise that a written request made by a person for their own information is likely to be a valid Subject Access Request, even if the Data Subject does not specifically use this phrase in their request or refer to the GDPR. In some cases, a Data Subject may mistakenly refer to the "Freedom of Information Act" but this should not prevent TMSA from responding to the request as being made under the GDPR, if appropriate. Some requests may contain a combination of a Subject Access Request for Personal Data under the GDPR and a request for

information under the Freedom of Information Act 2000 (“FOIA”). Requests for information under the FOIA must be dealt with promptly and in any event within 20 school days.

- 12.3 Any member of staff who receives a written request of this nature must immediately forward it to the DPO as the statutory time limit for responding is **one calendar month**. Under the Data Protection Act 1998 (DPA 1998), Data Controllers previously had 40 calendar days to respond to a request.

A further 2 month extension may be invoked if the SAR is considered complex using the definition of complex from the ICO.

- 12.4 As the time for responding to a request does not stop during the periods when the Academy is closed for the holidays, TSMA will attempt to mitigate any impact this may have on the rights of data subjects to request access to their data by implementing the following measures:

Incoming post will be checked on a regular basis and any DP issues will be flagged to the DPO (or nominated deputy) directly.

DPO mailbox will also be checked on a regular basis and the DPO (or nominated deputy) alerted directly.

- 12.5 A fee may no longer be charged to the individual for provision of this information (previously a fee of £10 could be charged under the DPA 1998).

- 12.6 TSMA may ask the Data Subject for reasonable identification so that they can satisfy themselves about the person’s identity before disclosing the information.

- 12.7 In order to ensure that people receive only information about themselves it is essential that a formal system of requests is in place.

- 12.8 Requests from students who are considered mature enough to understand their rights under the GDPR will be processed as a subject access request as outlined below and the data will be given directly to the pupil (subject to any exemptions that apply under the GDPR or other legislation). [As the age when a young person is deemed to be able to give Consent for online services is 13, TSMA will use this age as a guide for when students may be considered mature enough to exercise their own subject access rights]. In every case it will be for TMSA, as Data Controller, to assess whether the child is capable of understanding their rights under the GDPR and the implications of their actions, and so decide whether the Parent needs to make the request on the child’s behalf. A Parent would normally be expected to make a request on a child’s behalf if the child is younger than 13 years of age.

- 12.9 Requests from students who do not appear to understand the nature of the request will be referred to their Parents or carers.

- 12.10 Requests from Parents in respect of their own child will be processed as requests made on behalf of the Data Subject (the child) where the pupil is aged under 13 (subject to any exemptions that apply under the Act or other legislation). If the Parent makes a request for their child’s Personal Data and the child is aged 13 or older and / or TMSA considers the child to be mature enough to understand their rights under the GDPR, TMSA shall ask the pupil for their Consent to disclosure of the Personal Data if there is no other lawful basis for sharing the Personal Data with the Parent (subject to any enactment or guidance which permits TMSA to disclose the Personal Data to a Parent without the child’s Consent). If Consent is not given to disclosure, TMSA shall not disclose the Personal Data if to do so would breach any of the data protection principles.

- 12.11 It should be noted that the Education (Pupil Information) (England) Regulations 2005 do not apply to academies so the rights available to parents in those Regulations to access their child's educational records are not applicable to the Academy. Instead, requests from Parents for Personal Data about their child must be dealt with under the GDPR (as outlined above). This is without prejudice to the obligation on TMSA in the Education (Independent School Standards) Regulations 2014 to provide an annual report of each registered student's progress and attainment in the main subject areas taught to every parent (unless they agree otherwise in writing).
- 12.12 Following receipt of a subject access request, and provided that there is sufficient information to process the request, an entry should be made in TMSA's Subject Access log book, showing the date of receipt, the Data Subject's name, the name and address of requester (if different), the type of data required (e.g. Student Record, Personnel Record), and the planned date for supplying the information (not more than one calendar month from the request date). Should more information be required to establish either the identity of the Data Subject (or agent) or the type of data requested, the date of entry in the log will be date on which sufficient information has been provided.
- 12.13 Where requests are "manifestly unfounded or excessive", in particular because they are repetitive, TMSA can:
- 12.13.1 charge a reasonable fee taking into account the administrative costs of providing the information; or
 - 12.13.2 refuse to respond.
- 12.14 Where TMSA refuse to respond to a request, the response must explain why to the individual, informing them of their right to complain to the supervisory authority and to a judicial remedy without undue delay and at the latest within one month. Members of staff should refer to any guidance issued by the ICO on Subject Access Requests and consult the DPO before refusing a request.
- 12.15 Certain information may be exempt from disclosure so members of staff will need to consider what exemptions (if any) apply and decide whether you can rely on them. For example, information about third parties may be exempt from disclosure. In practice, this means that staff may be entitled to withhold some documents entirely or may need to redact parts of them. Care should be taken to ensure that documents are redacted properly. Staff are advised to seek further guidance or support from the DPO if unsure of which exemptions are applicable.
- 12.16 In the context of an Academy, a subject access request is normally part of a broader complaint or concern from a Parent or may be connected to a disciplinary or grievance for an employee. Members of staff should therefore ensure that the broader context is taken into account when responding to a request and seek advice if required on managing the broader issue and the response to the request.
13. **Providing information over the telephone**
- 13.1 Any member of staff dealing with telephone enquiries should exercise care in disclosing any Personal Data held by TMSA whilst also applying common sense to the particular circumstances. In particular the staff should:
- 13.1.1 Check the caller's identity to make sure that information is only given to a person who is entitled to it.
 - 13.1.2 Suggest that the caller submit a request in writing, if the staff are not sure about the caller's identity and where the caller's identity cannot be checked.

13.1.3 Refer to their line manager or the DPO for assistance in difficult situations. No-one should feel pressurised into disclosing personal information.

14. **Authorised disclosures**

14.1 TMSA will only disclose data about individuals if one of the lawful bases apply.

14.2 Only authorised and trained staff are allowed to make external disclosures of Personal Data. TMSA will regularly share Personal Data with third parties where it is lawful and appropriate to do so including, but not limited to, the following:

14.2.1 Local Authorities

14.2.2 the Department for Education

14.2.3 the Education & Skills Funding Agency

14.2.4 the Disclosure and Barring Service

14.2.5 the Teaching Regulation Agency

14.2.6 the Teachers' Pension Service

14.2.7 the Local Government Pension Scheme which is administered by SERCO

14.2.8 SERCO

14.2.9 HMRC

14.2.10 The Police or other law enforcement agencies

14.2.11 Herts for Learning

14.2.12 Optima Health

14.2.13 Our auditors

14.2.14 Our insurers

14.2.15 Referees – limited to name, address and DOB

14.2.16 Schoolcomms

14.2.17 Capita

14.2.18 NTL

14.3 Some of the organisations TMSA shares Personal Data with may also be Data Controllers in their own right' in which case they will be joint controllers of Personal Data along with TMSA and may be jointly liable in the event of any data breaches.

14.4 Data Sharing Agreements should be completed when setting up 'on-going' or 'routine' information sharing arrangements with third parties who are Data Controllers in their own right. However, they are not needed when information is shared in one-off circumstances but a record of the decision and the reasons for sharing information should be kept.

- 14.5 All Data Sharing Agreements must be signed off by the Data Protection Officer who will keep a register of all Data Sharing Agreements.
- 14.6 The GDPR requires Data Controllers to have a written contract in place with Data Processors which must include specific clauses relating to the way in which the data is Processed (“GDPR clauses”). A summary of the GDPR requirements for contracts with Data Processors is set out in Appendix 1. It will be the responsibility of TMSA to ensure that the GDPR clauses have been added to the contract with the Data Processor. Personal data may only be transferred to a third-party Data Processor if they agree to put in place adequate technical, organisational and security measures themselves.
- 14.7 In some cases Data Processors may attempt to include additional wording when negotiating contracts which attempts to allocate some of the risk relating to compliance with the GDPR, including responsibility for any Personal Data Breaches, onto TMSA. In these circumstances, the member of staff dealing with the contract should contact the DPO for further advice before agreeing to include such wording in the contract.
15. **Reporting a Personal Data Breach**
- 15.1 The GDPR requires Data Controllers to notify any Personal Data Breach to the ICO and, in certain instances, the Data Subject.
- 15.2 A notifiable Personal Data Breach must be reported to the ICO without undue delay and where feasible within 72 hours, unless the data breach is unlikely to result in a risk to the individuals.
- 15.3 If the breach is likely to result in high risk to affected Data Subjects, the GDPR, requires organisations to inform them without undue delay.
- 15.4 It is the responsibility of the DPO, or the nominated deputy, to decide whether to report a Personal Data Breach to the ICO.
- 15.5 TMSA has put in place procedures to deal with any suspected Personal Data Breach and will notify Data Subjects or any applicable regulator where TMSA is legally required to do so.
- 15.6 TMSA recognises that the Academy is closed or has limited staff available during school holidays, there will be times when the ability to respond to a Personal Data Breach promptly and within the relevant timescales will be affected. TMSA will consider any proportionate measures that can be implemented to mitigate the impact this may have on Data Subjects.
- 15.7 If a member of staff or Governor knows or suspects that a Personal Data Breach has occurred, TMSA’s internal procedures must be followed. In particular, the DPO and Headteacher must be notified immediately. All evidence relating to the potential Personal Data Breach should be preserved.
16. **Accountability**
- 16.1 TMSA must implement appropriate technical and organisational measures in an effective manner, to ensure compliance with data protection principles. TMSA is responsible for, and must be able to demonstrate, compliance with the data protection principles.
- 16.2 TMSA must have adequate resources and controls in place to ensure and to document GDPR compliance including:

- 16.2.1 appointing a suitably qualified DPO (where necessary) and an executive team accountable for data privacy;
- 16.2.2 implementing Privacy by Design when Processing Personal Data and completing Data Protection Impact Assessments (DPIAs) where Processing presents a high risk to rights and freedoms of Data Subjects;
- 16.2.3 integrating data protection into internal documents including this Data Protection Policy, related policies and Privacy Notices;
- 16.2.4 regularly training TMSA employees and Governors on the GDPR, this Data Protection Policy, related policies and data protection matters including, for example, Data Subject's rights, Consent, legal bases, DPIA and Personal Data Breaches. TMSA must maintain a record of training attendance by TMSA personnel; and
- 16.2.5 regularly testing the privacy measures implemented and conducting periodic reviews and audits to assess compliance, including using results of testing to demonstrate compliance improvement effort.

17. **Record keeping**

- 17.1 The GDPR requires TSMA to keep full and accurate records of all its Data Processing activities.
- 17.2 TSMA must keep and maintain accurate records reflecting its Processing including records of Data Subjects' Consents and procedures for obtaining Consents.
- 17.3 These records should include, at a minimum, the name and contact details of the Data Controller and the DPO, clear descriptions of the Personal Data types, Data Subject types, Processing activities, Processing purposes, third-party recipients of the Personal Data, Personal Data storage locations, Personal Data transfers, the Personal Data's retention period and a description of the security measures in place. In order to create such records, data maps should be created which should include the detail set out above together with appropriate data flows.

18. **Training and audit**

- 18.1 TSMA is required to ensure all personnel have undergone adequate training to enable compliance with data privacy laws. TSMA must also regularly test its systems and processes to assess compliance.
- 18.2 Members of staff must attend all mandatory data privacy related training.

19. **Privacy By Design and Data Protection Impact Assessment (DPIA)**

- 19.1 TSMA is required to implement Privacy by Design measures when Processing Personal Data by implementing appropriate technical and organisational measures (like Pseudonymisation) in an effective manner, to ensure compliance with data privacy principles.
- 19.2 This means that TMSA must assess what Privacy by Design measures can be implemented on all programs/systems/processes that Process Personal Data by taking into account the following:
 - 19.2.1 state of the art solutions;

- 19.2.2 cost of implementation;
 - 19.2.3 the nature, scope, context and purposes of Processing; and
 - 19.2.4 the risks of varying likelihood and severity for rights and freedoms of Data Subjects posed by the Processing.
- 19.3 TMSA is also required to conduct DPIAs in respect to high risk Processing.
- 19.3.1 TMSA should conduct a DPIA and discuss the findings with the DPO when implementing major system or business change programs involving the Processing of Personal Data including:
 - 19.3.1.1 use of new technologies (programs, systems or processes), or changing technologies (programs, systems or processes);
 - 19.3.1.2 Automated Processing including profiling and ADM;
 - 19.3.1.3 large scale Processing of Sensitive Data; and
 - 19.3.1.4 large scale, systematic monitoring of a publicly accessible area.
- 19.4 TMSA will also undertake a DPIA as a matter of good practice to help assess and mitigate the risks to students. If TMSA's processing is likely to result in a high risk to the rights and freedom of children then a DPIA should be undertaken.
- 19.5 A DPIA must include:
- 19.5.1 a description of the Processing, its purposes and TMSA's legitimate interests if appropriate;
 - 19.5.2 an assessment of the necessity and proportionality of the Processing in relation to its purpose;
 - 19.5.3 an assessment of the risk to individuals; and
 - 19.5.4 the risk mitigation measures in place and demonstration of compliance.
20. **CCTV**
21. TMSA uses CCTV in locations around the Academy site. This is to:
- 21.1.1 protect the academy buildings and their assets;
 - 21.1.2 increase personal safety and reduce the fear of crime;
 - 21.1.3 support the Police in a bid to deter and detect crime;
 - 21.1.4 assist in identifying, apprehending and prosecuting offenders;
 - 21.1.5 provide evidence for TMSA to use in its internal investigations and / or disciplinary processes in the event of behaviour by staff, students or other visitors on the Academy site which breaches or is alleged to breach TMSA's policies;
 - 21.1.6 protect members of the school community, public and private property; and

21.1.7 assist in managing the academy.

21.2 Please refer to the CCTV System policy for more information.

22. **Policy Review**

22.1 It is the responsibility of the directors to facilitate the review of this policy on a regular basis. Recommendations for any amendments should be reported to the DPO.

22.2 TSMA will continue to review the effectiveness of this policy to ensure it is achieving its stated objectives.

23. **Enquiries**

23.1 Further information about the School's Data Protection Policy is available from the DPO.

23.2 General information about the Act can be obtained from the Information Commissioner's Office: www.ico.gov.uk

23.3

Document Control

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Appendix 1 – GDPR Clauses

The GDPR requires the following matters to be addressed in contracts with Data Processors. The wording below is a summary of the requirements in the GDPR and is not intended to be used as the drafting to include in contracts with Data Processors.

1. The Processor may only process Personal Data on the documented instructions of the controller, including as regards international transfers. (Art. 28(3)(a))
2. Personnel used by the Processor must be subject to a duty of confidence. (Art. 28(3)(b))
3. The Processor must keep Personal Data secure. (Art. 28(3)(c) Art. 32)
4. The Processor may only use a sub-processor with the consent of the Data Controller. That consent may be specific to a particular sub-processor or general. Where the consent is general, the processor must inform the controller of changes and give them a chance to object. (Art. 28(2) Art. 28(3)(d))
5. The Processor must ensure it flows down the GDPR obligations to any sub-processor. The Processor remains responsible for any processing by the sub-processor. (Art. 28(4))
6. The Processor must assist the controller to comply with requests from individuals exercising their rights to access, rectify, erase or object to the processing of their Personal Data. (Art. 28(3)(e))
7. The Processor must assist the Data Controller with their security and data breach obligations, including notifying the Data Controller of any Personal Data breach. (Art. 28(3)(f)) (Art. 33(2))
8. The Processor must assist the Data Controller should the Data Controller need to carry out a privacy impact assessment. (Art. 28(3)(f))
9. The Processor must return or delete Personal Data at the end of the agreement, save to the extent the Processor must keep a copy of the Personal Data under Union or Member State law. (Art. 28(3)(g))
10. The Processor must demonstrate its compliance with these obligations and submit to audits by the Data Controller (or by a third party mandated by the controller). (Art. 28(3)(h))
11. The Processor must inform the Data Controller if, in its opinion, the Data Controller's instructions would breach Union or Member State law. (Art. 28(3))