

**DATE**

**Soundbitelearning UK Limited**

**and**

**TYPE SCHOOL NAME HERE**

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**Data Sharing Agreement**

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## **Parties:**

- (1) **Soundbitelearning UK Limited** (company number 05921961) whose registered office is at Newcastle Enterprise Centres, 6 Charlotte Square, Newcastle upon Tyne, NE1 4XF ("we" or "us");
- (2) **SCHOOL NAME OR MAT NAME** ("you" or "your");

## **Background**

- (A) We provide education services through learning modules known as gcsepod which are an accessible and affordable learning product relevant to the main UK GCSE examination boards.
- (B) Under a separate order form and the licence terms provided with such order form or (if none are provided) the standard licence terms of which can be found at <https://www.gcsepod.com/terms-and-conditions/> (the "**Licence**") and which are expressly incorporated herein by reference, you have (or where a multi-academy trust signed, that multi-academy trust has) agreed to license from us the right to use gcsepod with your students. In order to maximise use of gcsepod, staff members (for example, teachers) also require access to gcsepod.
- (C) To enable the provision of gcsepod to your students and staff members (together the "**Users**") under the Licence, you wish us to input the User Data (as defined below) into gcsepod on your behalf, and to process Data on your behalf, on the terms set out in this agreement.
- (D) This agreement is drafted to reflect the requirements of the GDPR (insofar as they are currently understood at August 2017) as well as the DPA. Insofar as the DPA and the GDPR apply 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 GDPR.
- (E) In consideration of the mutual benefits of good data protection standards, and the payments to be made pursuant to the Licence, the parties hereby agree as follows.

### **1. Definitions**

- 1.1. The following definitions apply in this agreement:

**"Additional Data"** means any Personal Data supplied by you, or supplied by and/or generated by your Users, in addition to User Data.

**"Confidential Information"** means all confidential information (however recorded or preserved) disclosed or made available, directly or indirectly, by a party or its Representatives to the other party (or its Representatives) including but not limited to:

- (a) any information relating to:
  - (i) the business, affairs or intentions of the disclosing party;

- (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
- (iii) the customer, clients, suppliers, students or staff members of the disclosing party; and
- (iv) any information or analysis derived from the Confidential Information

but not including any information that:

- (b) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this agreement);or
- (c) was, is or becomes available to the receiving party on a non-confidential basis prior to disclosure by the disclosing party; or
- (d) was lawfully in the possession of the receiving party before the information was disclosed to it by the disclosing party; or
- (e) the parties agree in writing is not confidential or may be disclosed.

<b>"Data Controller" or "Controller"</b>	has the meaning given to it in Data Protection Legislation.
<b>"Data Extractor"</b>	has the meaning given to it in clause 3.1.
<b>"Data Processor" or "Processor"</b>	has the meaning given to it in Data Protection Legislation.
<b>"Data Protection Legislation"</b>	means the DPA, the GDPR and all applicable laws and regulations relating to Processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or other applicable regulatory authority, and any legislation or regulations superseding or varying that legislation or those regulations from time to time.
<b>"Data Subject"</b>	has the meaning given to it in Data Protection Legislation.
<b>"Data"</b>	means User Data and Additional Data.
<b>"DPA"</b>	means the Data Protection Act 1998.
<b>"European Law"</b>	means European Union or European Member State law (as referred to in the GDPR) 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.

<b>"GDPR"</b>	means the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016).
<b>"Personal Data"</b>	has the meaning given to it in Data Protection Legislation.
<b>"Process"</b>	has the meaning given to it in Data Protection Legislation, and "Processing" and "Processed" shall be construed accordingly.
<b>"Representatives"</b>	means a party's employees, agents, contractors, officers, representatives or advisers.
<b>"Restricted Country"</b>	means any third country or international organisation as described in the GDPR (but excluding any of England, Scotland, Wales and Northern Ireland, if they leave the European Union).
<b>"User Data"</b>	has the meaning given to it in clause 2.1.

## 2. **Nature of Data Collected**

- 2.1. Subject to clause 2.2 below, to enable us to set-up gcsepod for your Users on your behalf, you shall provide to us the information as set out in Schedule 1 (User Data) in respect of each User (the "**User Data**").
- 2.2. Using a setting on our website, you can choose at any time to opt-in to functionality which allows you to run extended student reports through gcsepod. Where you choose to enable this functionality, it will switch on the feed of User Data listed as "Optional" at Schedule 1 (User Data). The name of the person approving or revoking the additional data collection will be recorded on our website, along with the date they made the approval or revoked access. You may revoke access to those User Data at any time by opting-out on our website. Once the access is revoked, those User Data will be deleted from our servers.
- 2.3. Additional Data will be collected or generated through your Users' use of gcsepod.

## 3. **Process of Sharing Data**

- 3.1. The primary method by which you will share User Data with us is via your selected third party data extractor (the "**Data Extractor**"). We will agree with you which Data Extractor you will use for the provision of the data export and import services. Your Data Extractor may change from time to time by agreement between us in accordance with clause 14, which agreement may be made by email exchange between us. We will provide a list of the third party data extractors that we currently partner with at your request.
- 3.2. The User Data is collected by the Data Extractor from your MIS and securely delivered into gcsepod.
- 3.3. You acknowledge that you shall, at your own cost, enter into a contract with the relevant Data Extractor for the provision of the data export and import services. Under no circumstances shall we be liable to you for any loss, damage, claims,

demands, actions, costs, charges, expenses and liabilities of whatsoever nature arising out of or in connection with the provision of the data export services by the Data Extractor.

- 3.4. A manual upload can be used if you are unable or unwilling to use one of our listed data extractors. If manual upload is used to register Users, when you wish to add new Users you should provide the User Data to us in CSV file format by secure means (for example, by secure FTP).
- 3.5. We will not check any of the Data you provide. It is your responsibility to check all Data and ensure that it is accurate and, where necessary, kept up-to-date.
- 3.6. You shall:
  - 3.6.1. in respect of the Data, ensure that your privacy notices are clear and provide sufficient information to the 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 (e.g. notice about what Data is collected via gcsepod and reported on) and the fact we will use the Data to create statistical reports;
  - 3.6.2. be responsible for obtaining all necessary consents and permissions required for the sharing and use of the Data; and
  - 3.6.3. otherwise comply with all applicable Data Protection Legislation in relation to the Data with respect to which you are a Data Controller.

#### 4. **Purpose of Collection and Sharing Data**

- 4.1. The Data is shared by you with us in order to enable you and your Users to use gcsepod for the purposes of educational provision, to allow you to monitor individual and group use of gcsepod and to measure progress of students who are using (or have, in the past, used) gcsepod.
- 4.2. We use the Data to run statistical reports within gcespod for our own use (for example, showing which assignments are the most popular with students, which we would use for improving gcsepod). 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.
- 4.3. 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 you agree, to send you updates about gcsepod or to send you information about complementary products that may be of interest to you.
- 4.4. The Data will not be used by us for marketing of other products and will not be shared with or sold to any third party save as is permitted or required by law or is necessary for the provision of gcsepod 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.

5. **Data Protection Conditions**

- 5.1. Subject to clause 5.5, where Personal Data are 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.
- 5.2. Details of the Processing we carry out on your behalf under this agreement are set out at Part 1 of Schedule 2 (Details of Data Processing) and details of each of our responsibilities for Processing are set out at Part 2 of Schedule 2 (Details of Data Processing). We each agree to update Schedule 2 (Details of Data Processing) as necessary during the term of this agreement to reflect any changes in Processing. Each updated version of Schedule 2 (Details of Data Processing) shall form part of this agreement.
- 5.3. We shall:
- 5.3.1. 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 European Law to which we are subject; in such a case, we shall inform you of that legal requirement before Processing, unless that European Law prohibits such information on important grounds of public interest;
  - 5.3.2. ensure that persons authorised to Process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
  - 5.3.3. take all measures required pursuant to Article 32 GDPR;
  - 5.3.4. comply with the following conditions for engaging another Processor (a "**Sub-Processor**"):
    - 5.3.4.1. 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; and
    - 5.3.4.2. 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;

- 5.3.5. 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 the GDPR;
  - 5.3.6. assist you in ensuring compliance with the obligations pursuant to Articles 32 to 36 GDPR taking into account the nature of Processing and the information available to us;
  - 5.3.7. 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;
  - 5.3.8. make available to you all information necessary to demonstrate compliance with the obligations laid down in Article 28 GDPR 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 GDPR, other Data Protection Legislation or other data protection provisions in European Law; and
  - 5.3.9. 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.
- 5.4. In the event that there is a change in applicable Data Protection Legislation in England 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 clause 5 and corresponding definitions and any other affected clauses and Schedules during the term of the agreement if variation is required to ensure our ongoing compliance with applicable Data Protection Legislation.
- 5.5. 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 gcsepod. Each of us shall, as a Controller, be responsible for observing our 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.

6. **Roles and Responsibilities**

- 6.1. We and you shall appoint a single point of contact who will work together to solve problems relating to Users.
- 6.2. The points of contact are:
  - 6.2.1. Us: gcsepod Account Manager  
 Email: [support@gcsepod.com](mailto:support@gcsepod.com)  
 Telephone: 0191 2111 999;

6.2.2. You: gcsepod Lead for **SCHOOL NAME OR MAT NAME**

## 7. **Confidentiality**

7.1. Each party shall keep the other party's Confidential Information confidential and shall not:

7.1.1. use or exploit the other party's Confidential Information in any way except for the purposes of performing its obligations under this agreement or the Licence;

7.1.2. directly or indirectly disclose, or make available any Confidential Information in whole or in part to any person except as permitted by clause 7.2.

7.2. Either party may disclose the other's confidential information:

7.2.1. to its Representatives who need to know such information for the purposes of carrying out its obligations under any agreement between the parties. Each party will procure that those Representatives to whom it discloses the other party's confidential information comply with this clause 7 and shall be liable for the actions or omissions of the Representatives in relation to the Confidential Information as if they were the actions or omissions of the party; and

7.2.2. as may be required by law (including pursuant to the Freedom of Information Act 2000), a court of competent jurisdiction or any governmental or regulatory authority.

7.3. Each party reserves all rights in its Confidential Information. The disclosure of Confidential Information by one party does not give the other party or any other person any licence or other right in respect of any Confidential Information beyond the rights expressly set out in this agreement.

## 8. **Term and Termination**

8.1. Either party can suspend this agreement for up to 30 days, or such longer period as may be agreed between the parties, in the event of a security breach/Personal Data breach. Where such security breach/Personal Data breach is caused by a fault of ours, then you shall be entitled to a pro rata refund of the licence fees for the period during which this agreement is suspended.

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

8.3. Upon termination of the Licence, we shall return all User Data to you or destroy it as you direct (acting reasonably).

## 9. **Force Majeure**

Neither party will be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control.

10. **Severance**

- 10.1. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 10.2. If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

11. **Background**

Paragraphs (B), (D) and (E) of the Background (recitals) are operative; they form part of the agreement and shall have effect as if set out in full in the body of this agreement.

12. **Third Party Rights**

- 12.1. A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from the Contracts (Rights of Third Parties) Act 1999.
- 12.2. The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

13. **Notice**

- 13.1. Any notices given under this agreement must be in writing and must be served by hand or post to the addresses set out at the start of this agreement. Notices:
- 13.1.1. by post will be effective upon the earlier of actual receipt, or 2 working days after mailing; and
- 13.1.2. by hand will be effective upon delivery.

14. **Variation**

We may need to vary the terms of this agreement from time to time or ask you to confirm acceptance of a new agreement. This may be, by way of non-exhaustive examples, where you decide to change your Data Extractor; where you change the data fields provided to us, or issue us with new instructions outside the scope of this agreement; or where there is a change in applicable Data Protection Legislation as envisaged in clause 5.4. Where this happens, we will issue you with a new or updated agreement and will ask you to confirm that you accept its terms. Where your failure to accept the terms means that it is likely that you or we are in breach of Data Protection Legislation, we may refuse to continue to Process Personal Data on your behalf until you have accepted them.

15. **Governing Law and Jurisdiction**

This agreement shall be governed by and construed in accordance with the laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to settle any dispute arising out of or in connection with the agreement.

16. **Acceptance**

- 16.1. By clicking accept or otherwise signing this agreement using the online process on the Data Extractor's website, you confirm that you are duly authorised in accordance with applicable legal and governance arrangements to accept the terms of this agreement on behalf of the school or, where applicable, the multi-academy trust.

## Schedule 1 - User Data

### Mandatory Data

Data Type	Why
Student data	
MIS ID	Used as a unique identifier with single sign on for ADFS and Moodle. Prevents duplicate records being created.
Date of birth	Combined with additional information, creates a unique identifier for self-activation of accounts. Used when a student needs to recover a lost/forgotten password. Also used in reporting for staff members.
Surname	Combined with additional information, creates a unique identifier for self-activation of accounts. Used when a student needs to recover a lost/forgotten password. Also used in reporting for staff members and to set assignments and monitor usage.
Forename	Combined with additional information, creates a unique identifier for self-activation of accounts. Used when a student needs to recover a lost/forgotten password. Also used in reporting for staff members and to set assignments and monitor usage.
Admission number	Used as a unique identifier to support the movement of data and prevent duplicates (for example if a school chooses to move MIS system).
Staff data	
Title	Used to set naming conventions.
Surname (preferred)	Used to identify staff members for reporting.
Forename (preferred)	Used to identify staff members for reporting.
Main work email	Used to identify a staff member on activation of their account. Used in reporting as an identifier and can be used to reset lost/forgotten passwords. Can be used as an opt-in only notification system.
Primary email address	Used when work email data field is unpopulated. See above.
Teaching/non-teaching staff	Used to differentiate between teaching and non-teaching staff.
Date of leaving	Used to make a decision about whether to import data about the particular staff member.
Role text	Used to identify staff by their job roles.

Staff Code	Used as a unique identifier for single sign-on integration with Frog and Realsmart.
Group data	
Group name	Identifies the name of a group stored in the school's MIS so that staff members can report on groupings of students. Used to set assignments for particular groups.
Group type	Identifies group type to help identification for user.
Group ID	Unique identifier for a group.
Registration group	Identifies registration group types to help identification for the user.
Year Group	Identifies year group types to help identification for the user.
Class name	Identifies class group types to help identification for the user.
Subject name	Identifies a subject to append to class group and teacher information.

#### Optional data

Data Type	Why
Student data extended	
Pupil premium indicator	Used to help school measure impact of key demographics.
Gifted	Used to help school measure impact of key demographics.
English as an additional language	Used to help school measure impact of key demographics.
Gender	Used by staff members to analyse usage.
Primary email address	Used as a unique identifier for certain integrations (e.g. Office 365 and Firefly VLE).
Unique pupil number	Used as a unique identifier for Moodle, Frog and Realsmart VLE integration. Also used if a school creates custom groups via CSV upload.

## Schedule 2- Details of Data Processing

### Part 1: Processor

Requirement in Article 28(3) GDPR	Details for this agreement
The subject matter and duration of the Processing	<p>The provision of education services through learning modules known as gcsepods.</p> <p>The duration of the Processing will be for the period set out in clause 8.</p>
The nature and purpose of the Processing	<p>The Processing activity is the population of gcsepod with the Personal Data you transfer to us from your MIS, which will allow you to offer gcsepod to your Users.</p> <p>In particular, the Personal Data will be Processed:</p> <ul style="list-style-type: none"> <li>(i) for the set up and management of individual user accounts;</li> <li>(ii) to achieve the purpose of gcsepod (i.e. provide learning, homework and revision resources for users);</li> <li>(iii) to verify, monitor and manage usage of gcsepod to ensure correct functioning and resolve technical issues and complaints;</li> <li>(iv) to monitor progress and usage;</li> <li>(v) to provide feedback on progress and usage to you and Users; and</li> <li>(vi) to assess trends in learning.</li> </ul>
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, passwords, or naming playlists).</p>
The categories of Data Subjects	<p>The Personal Data concerns the following categories of Data Subject:</p> <ul style="list-style-type: none"> <li>(i) employees who use gcsepod; and</li> <li>(ii) students.</li> </ul>

<p>The Controller's obligations and rights</p>	<p>You shall:</p> <ul style="list-style-type: none"> <li>(i) ensure that all Data are Processed lawfully, fairly and in a transparent manner in relation to Users;</li> <li>(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;</li> <li>(iii) ensure that all Data are adequate, relevant and limited to what is necessary in relation to the purposes for which they are Processed;</li> <li>(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;</li> <li>(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 gcsepod that are no longer required for your purposes;</li> <li>(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;</li> <li>(vii) be able to demonstrate your compliance with paragraphs (i)..(vi);</li> <li>(viii) ensure that you have a legal basis for your Processing of the Data;</li> <li>(ix) obtain all necessary consents and permissions required for the sharing and use of the Data under this agreement;</li> <li>(x) not Process special categories of Data unless a relevant condition applies (such as explicit consent);</li> </ul>
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	<ul style="list-style-type: none"> <li>(xi) ensure that you have provided Users with a privacy policy which covers your use of Data within gcespod and our associated services;</li> <li>(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;</li> <li>(xiii) communicate to us any rectification or erasure of Data and any restrictions on Processing;</li> <li>(xiv) ensure any automated individual decision-making, including profiling, by you, complies with applicable requirements;</li> <li>(xv) maintain records of your Processing activities;</li> <li>(xvi) cooperate with the Information Commissioner;</li> <li>(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;</li> <li>xviii) if required, notify data breaches to the relevant supervisory authority and/or Data Subjects without undue delay;</li> <li>(xix) if required, carry out a data protection impact assessment of the Processing activities to be carried out by us;</li> <li>(xx) if required, designate a data protection officer.</li> </ul> <p>You shall have the rights to enforce the obligations on us as your Processor, as set out in clause 5.3.</p>
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**Part 2: Responsibilities**

Responsibilities under Article 82	Details for this agreement
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<p>Your responsibilities for Processing as Controller</p>	<ul style="list-style-type: none"> <li>• Your contractual relationship with the Data Extractor.</li> <li>• The compliance of Data with Data Protection Legislation.</li> <li>• The compliance of your Processing under this agreement as a Controller, including where you instruct us to provide analytic services.</li> <li>• The security of your IT systems.</li> <li>• Not introducing viruses to gcsepod.</li> <li>• Not permitting an attack to be made on gcsepod through your systems or Users' devices.</li> <li>• Not permitting other unauthorised or malicious access to gcsepod through your systems or Users' devices.</li> <li>• Selecting and maintaining secure passwords for gcsepod.</li> <li>• Keeping Users' login credentials to gcsepod confidential and secure.</li> <li>• And otherwise complying with your Controller obligations set out in Part 1 of this Schedule 2.</li> </ul>
<p>Our responsibilities for Processing as Processor</p>	<ul style="list-style-type: none"> <li>• Our contractual relationship with the Data Extractor.</li> <li>• The following security measures: <ul style="list-style-type: none"> <li>○ access to administrative functions is restricted to authorised individuals in the office and operatives in specific remote locations through the firewall;</li> <li>○ database access restricted to internal servers only with a proxy for remote management;</li> <li>○ web traffic is transferred over HTTPS;</li> <li>○ passwords are stored using one-way encryption; and</li> <li>○ Servers are kept up to date with the latest security fixes.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"><li>• And otherwise complying with our Processor obligations set out in clause 5.3.</li></ul>
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