

Data Processing Agreement: UK Schools

Introduction

This Data Processing Agreement (DPA) is supplementary to the existing Terms of Service for services between Focus on Sound Ltd (the Company) (Company Number 07636545) and the Customer (the school or establishment using the product). The Company is a MusicFirst company (the Digital Education Division of Wise Music Group Limited (company number 00884449)). The registered office is 14-15 Berners Street, London W1T 3LJ.

This DPA is applicable to Customers in the United Kingdom (the UK). Please contact us if you are a customer residing outside of the UK.

This is an agreement between the organisation subscribing to Focus on Sound Ltd's service. This DPA outlines the Company's and the Customer's rights, duties and obligations under the Data Protection Legislation. This DPA can be read alongside the Company's Privacy Notice for Schools.

Definitions and Interpretation

Capitalised terms used that are not defined in this DPA or in the Terms of Service have the meanings given to them in the EU General Data Protection Regulation 2016 (the GDPR). As background to their relationship:

- (a) The Customer acts as a Data Controller.
- (b) The Company acts as a Data Processor.
- (c) The Customer's students, members, employees and similar individuals associated with the Customer are Data Subjects.
- (d) The Customer wishes to use the Company's services, which entail the processing of personal data by the Data Processor.
- (e) The Parties seek to implement a Data Processing Agreement that complies with the requirements of the current legal framework in relation to data processing and with the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the GDPR) (as implemented by the Data Protection Act 2018 if the Customer is in the UK).

Terms used in this Agreement:

- (f) Agreement means this Data Processing Agreement (DPA)
- (g) Data Controller means the Customer
- (h) Customer Personal Data means any Personal Data Processed by the Company or one of its Subprocessors on behalf of the Customer pursuant to, or in connection with, the Terms of Service
- (i) Data Protection Legislation means the EU General Data Protection Regulation (GDPR) 2016/679; UK GDPR (as amended and incorporated in UK law under the UK European Union (Withdrawal) Act 2018 (if in force) and the UK Data Protection Act 2018.
- (j) Data Processor means the Company and its Subprocessors

Processing of Data

The subject matter and details of the Processing are described in Schedule 1.

By continuing to use the Product, and by providing the Company with Personal Data, the Customer agrees to the terms of this DPA and Terms of service

The Customer and the Company acknowledge that for the purposes of the Data Protection Legislation, the Company is the Data Processor and the Customer is the Data Controller in respect of the personal data described in Appendix 1.

The Company and the Customer shall each comply with the Data Protection Legislation in respect of the Processing of Personal Data.

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Processing of Customer Personal Data

The Company shall comply with all applicable Data Protection Legislation in the Processing of Customer Personal Data.

The Company shall not Process Customer Personal Data other than on the Customer's documented instructions, unless Processing is required under Applicable Laws, in which case the Company shall (to the extent permitted by Applicable Laws) inform the Customer of that legal requirement before the relevant Processing of that Customer Personal Data. The nature and purpose of the Processing is the collection, storage and manipulation of the Customer Personal Data, in connection with providing the Services to the Customer.

The Customer instructs the Company (and authorises the Company to instruct each Subprocessor) to Process the Customer Personal Data for the provision of the services and consistent with the Terms of Service.

The Customer warrants that it is (and at all relevant times it will remain) duly authorised to give instructions to the Company.

Obligations of the Customer

Lawful basis

The Customer shall have a lawful basis (pursuant to the Data Protection Legislation) for supplying all data to the Company in connection with the Customer's use of the product and the lawful Processing of the data by both the Customer and the Company for the purposes set out in this DPA.

Security

The customer shall take all reasonable and proportionate measures required to ensure the security of the Personal Data being Processed.

Indemnity

The Customer shall indemnify the Company against all costs, claims, damages, expenses, losses and liabilities incurred by the Company arising out of or in connection with any failure (or alleged failure) by the Customer to have a lawful basis for Processing Data.

Obligations of the Company

Processing on instructions

The company shall Process the Personal Data as a Data Processor as described in Appendix 1 and otherwise strictly in accordance with the instructions of the Customer, except where otherwise required by any law applicable to the Company. The Company shall inform the Customer if, in its opinion, any of the Customer's instructions would be in breach of the Data Protection Legislation.

Processor personnel

The Company shall take reasonable steps to ensure the reliability of any employee, agent or contractor who may have access to the Customer Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know or access the relevant Customer Personal Data, as strictly necessary for the purposes of providing the services, and to comply with Applicable Laws in the context of that individual's duties to the Processor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

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Security

Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Company shall, in relation to the Customer Personal Data, implement appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR. In assessing the appropriate level of security, the Company shall take account, of the risks that are presented by Processing, in particular from a Personal Data Breach

Subprocessors

To support the delivery of the services, the Company engages third party Subprocessors to provide certain infrastructure services. These currently consist of Amazon Web Services (hosting services), MusicFirst UK Ltd (Music First Application Cloud database) and SetSeed (programming services). The Company has entered into written Data Processing Agreements with each Subprocessor, providing at least the same level of protection as this DPA. The Company shall remain fully responsible for the performance and compliance of its Subprocessors.

The Company undertakes to inform the Customer of any intended addition or replacement of any Subprocessor by providing prior written notice to the Customer's business contact. If the Customer documents objective and valid reasons not to accept a proposed new Subprocessor, the Customer may object to the use of that Subprocessor. If the Company chooses not to propose an alternative new Subprocessor or if the parties cannot agree upon a mutually acceptable new Subprocessor, the Customer will be entitled to terminate its subscription to the Services upon 30 days' notice and to receive a refund of a pro-rated portion of any prepaid subscription fees.

If the Company engages any such new Subprocessor, the Company will enter into a written Data Processing Agreement with such Subprocessor providing at least the same level of protection as this Agreement.

The Customer authorises the Company to appoint and utilize the Subprocessors disclosed in this section, or hereafter appointed in accordance with this section of the Agreement.

Data Subjects Rights

Taking into account the nature of the Processing, the Company shall provide reasonable assistance to the Customer by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Customer's obligations, as reasonably understood by Customer, to respond to requests by Data Subjects seeking to exercise their rights under the Data Protection Legislation.

The Company shall promptly notify the Customer if it receives a request from a Data Subject under the Data Protection Legislation, in respect of Customer Personal Data. The Company will not respond to that request except on the documented instructions of the Customer or as required by Applicable Laws to which the Company is subject, in which case the Company shall to the extent permitted by Applicable Laws, inform the Customer of that legal requirement before the Company responds to the request.

The Customer shall have ultimate responsibility for responding to any Data Subjects' requests. The Customer shall reimburse the Company for its reasonable costs (if material) arising from assistance in responding to any such Data Subject requests.

Personal Data Breach

The Company shall notify the Customer without undue delay upon becoming aware of a Personal Data Breach affecting Customer Personal Data, providing the Customer with sufficient information to allow the Customer to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Legislation.

The Company shall co-operate with the Customer and take reasonable commercial steps as are directed by the Customer to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

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Data Protection Impact Assessment and Prior Consultation

The Company shall provide reasonable assistance to the Customer with any Data Protection Impact Assessments, and prior consultations with Supervising Authorities or other competent data privacy authorities, which the Customer reasonably considers to be required by Article 35 or 36 of the GDPR or equivalent provisions of any other Data Protection Legislation. In each case solely in relation to the Processing of Customer Personal Data by the Company, and taking into account the nature of the Processing and information available to the Company.

Deletion or return of data

The Company shall at the choice of the Customer, delete or return all Personal Data to the Customer after the end of the provision of services under this DPA and delete existing copies, unless Union or State law requires storage of the Personal Data.

Audit and inspection

The Company shall make available to the Customer upon request, all information necessary to demonstrate compliance with this Agreement and the obligations laid down in the Data Protection Legislation and allow for and contribute to audits, including inspections (by prior arrangement), conducted by the Customer or another auditor mandated by the Customer.

Data transfers

The Company shall not transfer the data (nor permit the data to be transferred) outside of the UK or the European Economic Area (EEA), unless it first takes such measures as are necessary to ensure any such transfer is in compliance with the Data Protection Legislation. Where required, EU approved Standard Contractual Clauses shall be put in place.

General Terms

Indemnity

The Company shall indemnify the Customer up to the amount paid by the Customer for the Focus on Sound subscription over the preceding 12 (twelve) months prior to any claim by the Customer for direct liabilities, fines and damages incurred. This includes third party claims made against the Customer, directly arising as a result of any breach by the Company of its obligations under this DPA.

Liability

The Company shall have no liability to the Customer, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, for or in connection with: loss, interception or corruption of any data resulting from any negligence or default by any provider of telecommunications services to the Company or the Customer; any loss arising from the default or negligence of any supplier to the Customer; damage to reputation or goodwill; and/or any indirect or consequential loss.

Nothing in this clause shall limit the liability of the Company for any death or personal injury caused by its negligence, fraud or fraudulent misrepresentation, or any other matter for which liability cannot be limited or excluded as a matter of law.

Confidentiality

Each Party (the Customer and the Company) must keep this Agreement and information it receives about the other Party and its business in connection with this Agreement (Confidential Information) confidential, and must not use or disclose that Confidential Information without the prior written consent of the other Party, except to the extent that disclosure is required by law or the relevant information is already in the public domain.


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Governing Law and Jurisdiction

This Agreement is governed by the laws of the member state in which the Customer is established. Any dispute arising in connection with this Agreement, which the Parties will not be able to resolve amicably, will be handled according to the section of the Terms of Service entitled "Law and Jurisdiction".

Signatures

The parties agree to the terms set out in this Agreement

Company Name: Focus on Sound Ltd	Customer Name:
Representative: Dr Simon Foxall, Managing Director	Representative:
Signature: 	Signature:
Date: 15 December 2020	Date:

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Schedule 1

Subject Matter and Data Processing

<i>Subject Matter of the Processing</i>	The Company's provision of the Services to the Customer (provision of education software)
<i>Duration of the Processing</i>	The period during which the Customer maintains a valid subscription for the services, including all renewals, and thereafter for so long as the Company or any Subprocessor has any Customer Personal Data in its or their possession or control.
<i>Nature and Purpose of the Processing</i>	The collection, storage and manipulation of the Customer Personal Data in connection with, and for the purpose of, providing the Services to the Customer.
<i>Types of Customer Personal Data to be Processed</i>	<p>Customer's Employees (e.g. system administrator and/or teacher)</p> <ul style="list-style-type: none">• School name and postal address• Employee first and last name• Employee email address• Name of classes taught (where relevant)• Telephone number• Username• Password: an initial password is set by Focus on Sound for the system administrator or main music teacher. This is usually then changed by the user. <p>Customer's Data Subjects (e.g. students)</p> <ul style="list-style-type: none">• School name• First and last name• Username• Class name• Work assignments from their teacher• Test data (test title, test date, number of attempts, test result)
<i>Categories of Data Subjects</i>	<ul style="list-style-type: none">• Students• Employees