

Data Sharing Agreement

Data Sharing Agreement Updated 1st October 2020

Within the SAM Learning service, each Learner Account contains information that allows us to provide a personalised learning environment for each learner and meaningful reports on their activity and progress.

That information is completely under the control of your school, and we take seriously our role in storing and processing that data on your behalf. This section details the data content, how it is created and stored and the various rules that govern its use. Please note, this relates specifically to student data uploaded to our server by or under the direction of your school. We have a separate policy for data supplied by individuals in our Privacy Statement.

1. Overview

Why do we hold and process Personal Data? (Subject Matter)

SAM Learning is an online Review and Assessment, 'elearning' resource. Teachers set work for learners to complete. We hold and process enough data to be able to identify Teachers and Learners and to communicate / report on the work done.

How long do we hold Data for? (Duration of Processing)

A signed Order Form instructs us to set up SAM Learning for School use, which includes upload / completion of Learner and Teacher Data. Once a school terminates its subscription with us, we undertake to anonymise all data on the Platform within 90 days of the end of the subscription.

What teacher data is used?

We collect the following data for each teacher: Email Address, Role, Classes Taught.

As usage progresses, we store data concerning number of logins and tasks set, as well as the authorship of any SHARE activities.

What student data is used? (Please see our *Legal Compliance Documentation* for further details.)

We store the following data for each student:

First Name, Last Name, Admission Number, Gender, Date of Birth, Registration Group, Year Group, Unique Pupil Number (UPN) and Classes.

We also optionally collect data for Ethnicity, FSM, FSM 6, Pupil Premium, CLA, EAL and SEN.

Additionally, a record of the exercises completed and marks awarded is stored in each Learner Account when the student uses SAM Learning.

Why is student data needed? (Nature and Purposes of or Processing)

Student data is only used to create Learner Accounts for individual progress tracking. We undertake not to use student data for any commercial purpose. The student data supplied by schools does not contain email or postal addresses or other contact details for learners and we do not ask learners for additional details after they log in.

Registration Group, Year Group and Classes are used to generate Progress Reports. These contain the First Name and Last Name of learners.

First Names are used on welcome screens and screens showing users' marks. This is done to give a sense of ownership.

Date of Birth combined with initials is used to generate User IDs for learners to log in.

UPN is used to match student records for students moving school. This allows us to provide schools with a progress report for new students who have used SAM Learning at their previous school. This is particularly useful for the incoming Year 7 in secondary schools. UPN is also used to match pupil records for statistical research. UPN is used behind the scenes only and is not accessible by users of our website or our own staff. For this reason UPN does not appear anywhere on our website or on printed progress reports.

Admission Numbers are used to match students whose details may have changed since last year. We use Admission Number because other details (e.g. Last Name) may have changed and UPN is not available for all pupils.

Ethnicity, FSM, FSM 6, Pupil Premium, CLA, EAL and SEN data allow reports to be generated by teachers responsible for these groups of students. However, provision of this data is optional.

How is student data created?

Initially, student data can be exported from SIMS (via a RepGen Report) or other school-management software and uploaded by us on behalf of the school. Authorised staff in schools can also create and modify Learner Accounts manually.

Who controls student data?

Your school controls your student data and you can add, modify and delete student data without our involvement.

We only store your student data once there is a formal agreement between us – as a subscriber to the SAM Learning service or during a pre-arranged formal evaluation.

Security

We store student data on a secure server. This means that we use encryption technology and firewalls to protect the information from being accessed by anyone else. We hold over 600,000 Learner Records and have never had a reported abuse.

Teachers and learners are assigned passwords that protect access to the system and ensure that only teachers and learners in your school can access your student data. No third party can access it without permission.

Data Protection Act

Parents – when providing the school with details about their children – are usually advised of the school's data protection policy. Most schools' policy specifies the school may provide students' personal details to 'suppliers, providers of goods and services' for purposes of administration of education and training'. In which case no further permission from parents is needed to provide SAM Learning with student data. If unsure, your school's data protection policy can be looked up on the data protection website www.dpr.gov.uk.

SAM Learning's data protection notification number is Z7116737.

Usage data and marks

Students can view their own usage data, marks and personal details. Members of staff can view usage data and marks for students in their school. While details of specific schools or students are never released without permission, SAM Learning aggregates usage data and marks for statistical analysis and research, which may be published and used to provide comparative data to other schools and bodies interested in education.

Summary

We believe our Student Data Policy demonstrates our commitment to the security of your data and to its appropriate use. Indeed, David Grashoff (Third Party Product Manager, Capita SIMS) said:

'Having reviewed SAM Learning's Student Data Policy Statement, we found it to be a model of best practice for the use of student data in internet-based learning.'

If you have any questions about our use of student data, please contact our Schools Help Desk on 0845 130 4160.

2. Detailed Clauses

2.1. The definitions and rules of interpretation in this condition apply in this agreement, unless the context requires otherwise.

| Term | Definition |
|---|--|
| Centre | refers to the educational institution(s) or establishment(s) listed on the Order Form. |
| Conditions | refers to the standard Terms and Conditions of supply of the Service, as set out in these Terms. |
| Content | refers to materials (including but not limited to software, text, images, sound, videos, documents, spreadsheets, slideshows, presentations and any other multimedia files) on the Site. |
| Contract Period | refers to the period for which You have committed to receive SAM Learning Website access, goods and Service, as detailed in the Order Form, which period commences on the Start Date or such other date as may be agreed between Us in writing. |
| Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer | take the meaning given in the GDPR |
| Data Loss Event | any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach |
| Data Protection Impact Assessment | an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data |
| Data Protection Legislation | (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018, and; (iii) all applicable Laws about the processing of personal data and privacy |
| DPA 2018 | Data Protection Act 2018 |
| Data Subject Access Request | a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data |
| Fees | refers to the Fees payable in respect of the Service, as detailed in the Order Form or as agreed between Us in writing. |
| GDPR | the General Data Protection Regulation (Regulation (EU) 2016/679) |
| Law | means any law, regulation, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Processor is bound to comply |
| Learner Data | refers to all information relating to Learners which We hold for the purpose of providing the Service, as more particularly described in the Data Sharing Agreement and Privacy Policy. |
| Learner | refers to a student or pupil at a Centre with access to SAM Learning. |
| LED | Law Enforcement Directive (Directive (EU) 2016/680) |
| Order Form | refers to the order form detailing Your subscription licence, goods and Services, and information about You and Your educational institution(s). |
| Privacy Policy | refers to Our Website Privacy Policy & GDPR compliance which can be found on the Site. |
| Processor Personnel | means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement |
| Protective Measures | appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely |

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| | manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it. |
| Registered Users,Users | refers to Learner accounts, teacher accounts and admin accounts created on SAM Learning. |
| Renewal Period | refers to a period of one or three years commencing on the expiry of the preceding Contract Period or Renewal Period. |
| Service' and 'Services | refers to the provision of the SAM Learning Website, goods and Services for use by Learners, teachers and senior leaders that supports revision, Three-wave Intervention, classroom differentiation and GCSE exam preparation, and to enable Centres, teachers, senior leaders and parents to track the usage and progress of Learners. |
| Site | refers to the Site operated by Us at https://www.samlearning.com via which You (Centres, Learners, teachers and senior leaders) can access the Service. |
| Start Date | refers to the date We accept the Order Form by issuing to You an invoice in respect of the initial Fees payable and Your chosen payment option. |
| Sub-processor | any third Party appointed to process Personal Data on behalf of the Processor related to this Agreement |
| Subscription | The period of time for which this agreement applies, as specified on the most recent order form. |
| Terms | refers to the agreement between You and Us that is set out in these Terms and Conditions, Privacy Policy and Order Form. |
| We, Our, Us | refers to SAM Learning Limited. |
| Website | refers to the SAM Learning Website, found at https://www.samlearning.com . |
| Welcome/Onboarding/Launch Pack | refers to the detailed information supplied to You by Us that includes: a unique URL link to access teacher/admin CPD; a unique URL link specific to Your Centre for teachers and senior leaders to create a SAM Learning account (for schools registering teachers manually); a unique URL link specific to each teacher to complete set-up of their SAM Learning account (for schools registering teachers via Groupcall); and instructions to get Learners started with access to SAM Learning. |
| You, Your | refers to the subscriber detailed on the Order Form. |

3. Data Protection, Security and Privacy

3.1. Our Privacy Policy and GDPR Legal Compliance Documentation set out how We collect and use Your personal data and other information regarding Your privacy. We have in place appropriate technical and organisational security measures to protect data against unauthorised or unlawful processing and accidental loss, destruction or damage.

3.2. We will cooperate with any law enforcement authorities or court order requesting or directing Us to disclose the identity of or locate anyone breaching any provision of these Terms due to behaviour that may be deemed a criminal offence or otherwise for the prevention or detection of crime or the apprehension or prosecution of offenders. There may be other circumstances in which We may be required by law to disclose information about You or Your use of the Website.

3.3. We are registered as a data controller for the purposes of the Data Protection Act 2018. Our registration number on the register of data controllers maintained by the Information Commissioner is Z7116737. Services to UK schools fully comply with the Data Protection Act. If You have any queries about how We use Your personal data please contact DPO@samlearning.com.

3.4 For the purposes of the Data Protection Legislation, the School (or Association) is the Controller and the We are the Processor. The only processing that the Processor is authorised to

do by the School is listed in our Data Sharing Agreement and Legal Compliance Documentation and may not be altered by Us without notification and consent from the Controller.

3.5 We will notify the School immediately if we consider that any of the School's instructions infringe the Data Protection Legislation.

3.6 We will provide all reasonable assistance to the School in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the School, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

3.7 We will, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with our published documentation unless We are required to do otherwise by Law. If it is so required, We will promptly notify the School before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which have are available for review and approval by the School as appropriate to protect against a Data Loss Event having taken account of the:
 - i. nature of the data to be protected;
 - ii. harm that might result from a Data Loss Event;
 - iii. state of technological development; and
 - iv. cost of implementing any measures;
- (b) ensure that Our staff do not process Personal Data except in accordance with this Agreement.
- (c) take all reasonable steps to ensure the reliability and integrity of any of our staff who have access to the Personal Data and ensure that they:
 - i. are aware of and comply with the Our duties under this clause;
 - ii. are subject to any of Our appropriate confidentiality undertakings, or those of any Sub-processor;
 - iii. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the School or as otherwise permitted by this Agreement; and
 - iv. have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the School has been obtained and the following conditions are fulfilled:
 - i. We or the School have provided appropriate safeguards in relation to the transfer

(whether in accordance with GDPR Article 46 or LED Article 37) as determined by the School;

- ii. the Data Subject has enforceable rights and effective legal remedies;
 - iii. We comply with our obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the School in meeting its obligations); and
 - iv. We comply with any reasonable instructions notified to us in advance by the School with respect to the processing of the Personal Data;
- (e) at the written direction of the School, delete or return Personal Data (and any copies of it) to the School on termination of the Agreement unless We are required by Law to retain the Personal Data.

3.8 We will notify the School immediately if we:

- (a) receive a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receive a request to rectify, block or erase any Personal Data;
- (c) receive any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receive any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (e) receive a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) become aware of a Data Loss Event.

3.9 Our obligation to notify under clause 3.8 will include the provision of further information to the School in phases, as details become available.

3.10 Taking into account the nature of the processing, We will provide the School with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 3.8 (and insofar as possible within the timescales reasonably required by the School) including by promptly providing:

- (g) the School with full details and copies of the complaint, communication or request;
- (h) such assistance as is reasonably requested by the School to enable the School to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (i) the School, at its request, with any Personal Data it holds in relation to a Data Subject;
- (j) assistance as requested by the School following any Data Loss Event;
- (k) assistance as requested by the School with respect to any request from the Information Commissioner's Office, or any consultation by the School with the Information Commissioner's Office.

3.11 We will maintain complete and accurate records and information to demonstrate its compliance with this clause. As we employ fewer than 250 staff, this requirement does not apply unless:

- (l) the School determines that the processing is not occasional;
- (m) the School determines the processing includes special categories of data as referred to in

Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and

(n) the School determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

3.12 We shall allow for audits of our Data Processing activity by the School or the School's designated auditor.

3.13 We have designated a data protection officer.

3.14 Before allowing any Sub-processor to process any Personal Data related to this Agreement, We will:

(o) notify the School in writing of the intended Sub-processor and processing;

(p) obtain the written consent of the School;

(q) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Agreement such that they apply to the Sub-processor; and

(r) provide the School with such information regarding the Sub-processor as the School may reasonably require.

3.15 We will remain fully liable for all acts or omissions of any Sub-processor.

3.16 The School may, at any time on not less than 30 Working Days' notice, consult with us to revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated into this Agreement).

3.17 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The School may on not less than 30 Working Days' notice to the Processor consult with us to amend this agreement to ensure that it complies with any guidance issued by Information Commissioner's Office.

4. Freedom of Information

4.1 We acknowledge that the School is subject to the requirements of the FOIA and the EIRs.

4.2 We acknowledge that the School may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) provided by Us to the School in accordance with this Agreement without consulting or obtaining consent from Us. The School shall take reasonable steps to notify Us of a Request For Information to the extent that it is permissible and reasonably practical for it to do so but the School shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

4.3 Notwithstanding any other term of this agreement, We consent to the publication of this agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.

4.4 The School will, prior to publication, consult with Us on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decisions in its absolute discretion. We will assist and co-operate with the School to enable the School to comply with any

FOIA and EIR obligations and to publish this agreement.

5. General

5.1 This agreement, along with Our other Data Protection, Legal Compliance and Privacy Policies are reviewed bi-annually. Subscriber schools are notified of any changes and have the right to challenge them.

5.2 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

5.3 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

5.4 This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

5.5 This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

5.6 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

5.7 The Order Form and the documents referred to in it, including this document, constitute the entire agreement between the parties in relation to the matters dealt with by this Agreement.

6. How to Contact Us For Support or to Report Complaints, Faults or Abuse

19.1. If You require customer support or would like to report a complaint, a fault or abusive behaviour or if You have any other questions or comments in relation to the Website and related Services then You may contact Us at support@samlearning.com or in writing to SAM Learning Ltd, 235 High Holborn, London, United Kingdom, WC1V 7LE.