

Learning by Questions Ltd DATA PROCESSING AGREEMENT

This agreement sets out the terms under which Learning by Questions Ltd will process data for any school participating in our Feedback Partner School Project in deliverance of the services described in our Feedback Partner School Project Agreement (appendix 1) and Terms of Service. Continued participation in the trial constitutes acknowledgement and acceptance of this agreement and other related terms.

PARTIES

1. **Any School Participating in the Feedback Partner Schools Project** ('the Data Controller' or 'the School')
2. **Learning by Questions Ltd** (*Company Number:* 10240336) whose registered office is at Bowland House, Philips Road, Blackburn, Lancashire, BB1 5NA. ('the Data Processor' or 'the Company')

RECITALS

- (A) The Data Controller has engaged the Data Processor to provide the Services.
- (B) The parties acknowledge and agree that the Services must be performed in a manner consistent with the Legislation and that both parties have obligations under the Legislation.
- (C) In order to ensure compliance with the Legislation, the parties agree to be bound by the terms and conditions of this Agreement.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement and in the Schedule unless the context otherwise requires the following words and expressions shall bear the following meanings:-

"Data" means any information of what ever nature that, by whatever means, is provided to the Data Processor by the Data Controller, is accessed by the Data Processor on the authority of the Data Controller or is otherwise received by the Data Processor on the Data Controller's behalf, for the purposes of

the providing the Services including, but not limited to, any and all Personal Data and special category data;

"Data Subject" shall have the same meaning as defined in the Legislation;

"Legislation" means the General Data Protection Legislation (EU) 2016/679 and any other data protection legislation whether in the form of Acts of Parliament, statutory instruments, regulations or orders which have force and effect in the United Kingdom;

"Personal Data" shall have the same meaning as defined in the Legislation;

"Processing" shall have the same meaning as defined in the Legislation;

"Services" means the data processing activities to be carried out by the Data Processor for the Data Controller in connection with and for the purposes of the provision of the services to be provided by the Data Processor as more particularly set out in Schedule 1 and the Feedback Partner Schools Project Agreement and otherwise on such terms as are agreed by the parties.

"Term" unless agreed otherwise this agreement will terminate on 30th September 2018 whereon if The School qualifies under the terms of the Feedback Partner Schools Project Agreement it will be superseded by a new agreement.

1.2 References to statutory provisions shall be construed as references to any statutory modification or re-enactment thereof and shall include all statutory instruments or orders from time to time made pursuant thereto.

1.3 References to persons shall include references to unincorporated associations, references to the singular shall include references to the plural and to the masculine shall include references to the feminine and vice versa.

1.4 Words and expressions defined in the Legislation bear the same meaning in this Agreement.

1.5 The Schedule forms part of this Agreement.

2. APPLICATION OF THIS AGREEMENT

2.1 This Agreement shall apply to:

2.1.1 all Data sent from the date of this Agreement by the Data Controller to the Data Processor for Processing pursuant to the Services; and

2.1.2 all Data held as of the date of this Agreement by the Data Processor which was received from the Data Controller;

2.1.3 all Data accessed by the Data Processor on the authority of the Data Controller for Processing pursuant to the Services; and

2.1.4 all Data otherwise received by the Data Processor for Processing on the Data Controller's behalf.

3. DATA PROCESSING

3.1 In consideration of being appointed to perform the Services for the Term, the Data Processor agrees to Process the Data in accordance with the terms and conditions set out in this Agreement, and in particular the Data Processor agrees and warrants that it shall:

3.1.1 process the Data at all times in a manner which is compliant with the Legislation; and

3.1.2 process the Data only to the extent and for the purposes necessary to perform the Services and in accordance with the instructions of the Data Controller from time to time; and

3.1.3 implement appropriate technical and organisational measures to safeguard the Data from unauthorised or unlawful Processing or accidental loss, destruction or damage consistent with the Legislation or otherwise as notified from time to time by the Information Commissioner; and

3.1.4 procure that each of its employees, agents and subcontractors who will be involved in performing the Services do so in accordance with the Legislation and the provisions of this Agreement; and

3.1.5 not under any circumstances to divulge the Data whether directly or indirectly to any person, firm or company or otherwise without the express prior written

consent of the Data Controller except to those of its employees, agents and subcontractors who are engaged in providing the Services save as may be required by law; and

- 3.1.6 immediately notify the Data Controller of any breach or alleged breach of this Agreement or the Legislation and provide the Data Controller at the Data Processor's cost with such assistance as the Data Controller reasonably requires to prevent or remedy the breach; and
- 3.1.7 provide such reasonable assistance as the Data Controller shall require in the event of the exercise of any rights by Data Subjects; and
- 3.1.8 not Process, store or transfer the Data outside the European Economic Area save with the express prior written authority of the Data Controller; and
- 3.1.9 allow the Data Controller reasonable access upon reasonable notice to the Data Processor's systems and procedures in order to monitor compliance with the Legislation and with the terms of this Agreement.
- 3.1.10 pursuant to Article 5 of the GDPR, anonymise or erase data that in the reasonable opinion of the Data Processor is no longer required for the purposes of the delivery of the Services

4. INDEMNITY

The Data Processor agrees to indemnify and keep indemnified to the fullest extent possible the Data Controller against all costs, claims, damages or expenses incurred by the Data Controller or for which the Data Controller may become liable due to any failure by the Data Processor or its employees or agents to comply with the obligations under this Agreement and/or the Legislation.

5. APPOINTMENT OF SUB-CONTRACTORS

The Data Processor may not delegate the performance of the Services or any part of them to a sub-contractor save with the express prior written consent of the Data Controller and subject always to the Data Processor procuring that any contract with the said sub-contractor is on

substantially the same terms and imposes obligations on the sub-contractor no less onerous than those set out in this Agreement.

6. OBLIGATIONS OF THE DATA CONTROLLER

In consideration of the obligations undertaken by the Data Processor under this Agreement, the Data Controller agrees that it shall ensure that it complies at all times with the Legislation, and, in particular, the Data Controller shall ensure that any disclosure of Personal Data made by it to the Data Processor is made with the data subject's consent or is otherwise lawful.

7. TERMINATION

7.1 This Agreement may be terminated at any time by the Data Controller on no less than one week's written notice.

7.2 Save as otherwise terminated in accordance with this clause 7, this Agreement shall terminate forthwith upon the expiry of the Term.

7.3 This Agreement may be terminated at any time by the Data Processor on no less than one week's notice if, in the reasonable opinion of the Data Processor, there has been a sustained period of inactivity on any lbq.org account operated by or for the Data Controller, subject always to any other conditions as set out in either the Terms of Service or the Feedback Partner Schools Project Agreement.

7.4 Either party may, at any time, by notice in writing terminate this Agreement forthwith if the other party is in default and if:

7.4.1 the default is material and is capable of remedy and the other party shall have failed to remedy such default within fourteen days of receiving written notice from the other party specifying the default and requiring its remedy; or

7.4.2 the default is material and is not capable of remedy; or

7.4.3 if the other party ceases to carry on its business; or

7.4.4 if a receiver, administrator or similar officer is appointed over all or any part of the assets or undertaking of the other party and is not discharged within fifteen days of such appointment; or

7.4.5 if the other party makes an assignment for the benefit of, or a composition with, its creditors, or another arrangement of similar import; or

7.4.6 if the other party shall go into liquidation otherwise than for the purposes of a bona fide amalgamation or reconstruction.

7.5 Any rights to terminate this Agreement shall be without prejudice to the rights of the other party.

8. CONSEQUENCES OF TERMINATION

8.1 In the event of this Agreement being determined whether by effluxion of time, notice, breach or otherwise and subject always to any other provision of the Agreement, the Data Processor shall on request deliver up to the Data Controller all Data and other documents, papers, data and reports which were furnished by the Data Controller to the Data Processor or which were prepared by or on behalf of the Data Processor in the course of providing the Services.

8.2 Either party shall be entitled to exercise any one or more of the rights and remedies given to it under the terms of this Agreement and the determination of this Agreement shall not affect or prejudice such rights and remedies and each party shall be and remain liable to perform all outstanding liabilities under this Agreement notwithstanding that the other may have exercised one or more of the rights and remedies against it.

8.3 Any right or remedy to which either party is or may become entitled under this Agreement or in consequence of the other's conduct may be enforced from time to time separately or concurrently with any right or remedy given by this Agreement or now or afterwards provided for and arising by operation of law so that such rights and remedies are not exclusive of the other or others but are cumulative.

9. FORCE MAJEURE

9.1 If the performance of the Agreement or any obligation under it is prevented, restricted or interfered with by reason of circumstances beyond the reasonable control of the party obliged to perform it ('a Force Majeure Event'), the party so affected (upon giving prompt notice to the other party) shall be excused from performance to the extent of the prevention, restriction or interference, but the party so affected shall use all reasonable

endeavours to avoid or remove the causes of non-performance and shall continue performance under the Agreement with the utmost despatch whenever such causes are removed or diminished.

- 9.2 If the event that a Force Majeure Event continues for more than three months, either party may give written notice to the other to terminate the Agreement immediately or on a set termination date. If the Agreement is so terminated, neither party will have any liability to the other, save that any rights and liabilities which accrued prior to termination will continue to exist and the provisions of the Agreement which deal with termination shall be construed accordingly.

10. MISCELLANEOUS

- 10.1 The Agreement is personal to the Data Processor and may not be assigned to any third party without the written consent of the Data Controller.

- 10.2 The Data Controller reserves the right to assign the Agreement and to sub-contract all or any of its obligations.

- 10.3 No person other than the Data Controller, any person to whom the Data Controller assigns the Agreement and the Data Processor shall acquire any enforceable rights under or in connection with this Agreement. Any rights of any person to enforce the terms of this Agreement pursuant to The Contracts (Rights of Third Parties) Act 1999 are excluded.

- 10.4 No variation or amendment of the Agreement or oral promise or commitment related to it shall be valid unless committed to writing and signed by or on behalf of both parties.

- 10.5 Any demand or notice given under the Agreement shall be in writing and maybe served:

10.5.1 personally,

10.5.2 by registered or recorded delivery mail,

10.5.3 by electronic mail, or

10.5.4 by any other means which any party specifies by notice to the others.

- 10.6 Each party's address for the service of notice shall be its above mentioned address or such other address as it specifies by notice to the others.
- 10.7 A notice shall be deemed to have been served:
- 10.7.1 if it was served in person, at the time of service,
- 10.7.2 if it was served by post, 24 hours after it was posted, and
- 10.7.3 if it was served by electronic mail, at the time of transmission subject to a valid delivery receipt.
- 10.8 If any provision of the Agreement or part thereof is rendered void by any legislation to which it is subject or the final decision of any court having jurisdiction, the Agreement shall be rendered void to that extent and no further; and the remainder of the Agreement shall constitute the agreement of the parties.
- 10.9 Nothing contained in the Agreement, and no action taken by the parties pursuant to this Agreement, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee. Neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party's behalf.
- 10.10 Each party acknowledges that the Agreement contains the whole agreement between the parties and that it has not relied upon any oral or written representation made to it by the other or its employees or agents and has made its own independent investigations into all matters relevant to it.
- 10.11 The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of the Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of the Agreement.
- 10.12 The law applicable to the Agreement shall be English law and the parties consent to the exclusive jurisdiction of the English courts in all matters affecting the Agreement.

Schedule 1 – The Services

The services are in the form of a period of access to lbq.org in exchange for insights into teacher experiences of lbq.org and access to data generated while using lbq.org during said period.

The Company offers the content and features of lbq.org (hereafter also referred to as 'the site') for the purpose of evaluating the efficacy of said features and content in enhancing teaching and learning in a classroom setting. Both features and content may be subject to change during the period of the contracted services.

The site allows teachers to: create work for, and monitor the work of, pupils, inform planning and teaching strategies and provide automatic marking and support to pupils.

lbq.org is an online platform that allows users (generally but not exclusively teachers) to deliver Questions (both singly and in sets) to their students. The site is designed as a tool for use in the classroom and is intended for use with those students a teacher is currently and directly engaged with; while not excluded, the site is not purposed as a 'distance learning' or 'homework' system. Questions may be those published on lbq.org or those created by teachers.

The School will be passing personal data to The Company when a teacher account is created or modified on the site. Teachers will add data to their records when they use the site with their students or when they create, modify or schedule questions.

Students are able to receive and answer questions set by a teacher on any compatible internet connected device via our dedicated app (app name) or via any supported browser. Student data is passed to The Company whenever a student connects to the site to answer questions and comprises: names entered by students along with their answers to questions and whether those answers are correct or not. This student data is also associated with the initiating teacher's account.

The Company additionally processes data to allow teachers to see, via the site, how many times a student has attempted to answer a question, how students are performing relative to each other and which questions students find most challenging.

The expectations and obligations of the School and The Company during the period of the contract services are set out in the original Feedback Partner Schools Project Agreement.

Description of Data Processed

Under the terms of this agreement The Company processes data from two groups of individuals; teachers and other staff members at the school who are using lbq.org and pupils attending the school who are assigned to use lbq.org by their teachers.

Teacher/staff member data

- First name & Surname
- Email address (this must be valid and we recommend use of an official school email)
- Display name (optional and set by the user e.g. 'Mrs Jones')
- Relationship with the School (this is automatically established within the system)
- User ID (this is a system generated value and is used to associate any related data generated by the teacher's interactions with the system)

Associated usage data

- Questions created, scheduled or used.
- Names and answers of students answering questions set by the teacher.
- Dates, times and types of interaction.
- IP Address, Operating System and Browser version
- Student IP Address, Operating System, temporary device ID and Browser version

Data collection volume and frequency.

- There is no theoretical limit to the volume of user data that can be collected under this agreement however in practice there is little likelihood of the number of individuals affected exceeding the number of teachers employed by the School. This data is captured once (at the point of account creation) and then updated periodically should the teacher's or school's circumstances require.
- Associated usage data will be collected whenever a logged in teacher interacts with the relevant features of lbq.org. Depending on the frequency of use this may (say in the course of a week) generate some thousands of data points, especially student answers to questions.

Student data

Student names are not rigidly recorded in the lbq.org system. There is no hard data generated to confirm that *student A* in one lesson is the same as *student A* in another lesson. However the data that is recorded may be sufficient to infer that *student A* is one and the same. The data collected comprises:

- Student name (this can be a pseudonym and schools can adopt their own conventions)
- Name of class/group
- Name & address of school attended

- Teacher assigning the questions
- Answers to questions and whether they are correct or not
- Time and date of answers
- IP Address, Operating System, temporary device ID and Browser version (anonymously captured)