



The Brilliant Club

DATA SHARING BETWEEN SCHOOLS AND THE BRILLIANT CLUB – TERMS AND CONDITIONS

The following terms and conditions reflect the arrangements that are put in place to facilitate the sharing of Personal Data relating to participant pupils of The Scholars Programme between the Parties acting as data controllers and explains the purposes for which that Personal Data may be used. The Brilliant Club will regularly review and update the content of this agreement as necessary. This agreement forms a part of the wider commercial agreement (the “**Overarching Agreement**”) between the Parties. These data sharing terms and conditions shall terminate or expire on termination or expiry, as applicable, of the Overarching Agreement.

Parties:

(1) The Brilliant Club, a registered charity with company number 7986971 and registered charity number 1147771, whose registered office is at 17th Floor Millbank Tower, 21-24 Millbank, London, England, SW1P 4QP (“**Data Recipient**”); and

(2) The School, which has in place a commercial agreement with the Data Recipient to run The Scholars Programme in their School, (“**Data Discloser**”)

each a “**Party**” and together the “**Parties**”.

(A) The Data Discloser agrees to share the Personal Data with the Data Receiver in the European Economic Area (EEA) on the terms set out in the Agreement.

(B) The Data Receiver agrees to use the Personal Data within the EEA on the terms set out in this Agreement.

1. INTERPRETATION

1.1 Definitions:

Academic Year: shall mean 1 September to 31 August inclusive.

Agreed Purposes: shall mean those purposes set out in clause 2.4 of this Agreement.

Business Days: a day other than a Saturday, Sunday or public holiday.

Data Controller: means a person or organisation who (either alone or together with other persons):

- a. decides to collect and Process the Personal Data;

- b. determines the purpose or outcome of the Processing;
- c. determines what Personal Data should be collected;
- d. determines which Data Subjects to collect Personal Data about;
- e. determines how the Personal Data is Processed; and
- f. determines how long to retain the Personal Data and whether to make non-routine amendments to it.

Data Discloser: the Party transferring the Personal Data to the Data Receiver.

Data Protection Authority: the relevant data protection authority in the territories where the Parties to this Agreement are established, here the Information Commissioner's Office (ICO).

Data Protection Legislation and Guidance: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; UK GDPR; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

Data Receiver: The Party receiving the Personal Data from the Data Discloser.

Data Security Breach: a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Personal Data.

Data Sharing: means the disclosure of Personal Data from one party to the other, which can be (a) systematic, routine sharing of the same data sets for an established specified purpose outlined in clause 2, or (b) exceptional, one off decisions to share data for any one purpose of a range of specified purposes outlined in clause 2.

Privacy Notice: shall mean a statement of the Data Controller to the Data Subject that describes the lawful ground, purpose and manner of Processing of the Personal Data.

Programme: The Scholars' Programme, a supra-educational programme offered to schools and intended to support successful university applications by Pupils

Pupils: shall mean pupils registered as participating on a Brilliant Club programme.

Shared Personal Data: The Personal Data and Special Category Data to be shared between the Parties under clause 4 of this Agreement.

Subject Access Request: has the same meaning as "Right of access to personal data" in section 7 of the DPA / Article 15 of the GDPR.

Term: shall mean for the duration of the Overarching Agreement

(Data) Processor, Data Subject and Personal Data, Sensitive Personal Data, Special Category Data, processing, Right to Object and appropriate technical and organisational measures shall have the meanings given to them in the Data Protection Legislation.

2. PURPOSE

- 2.1 This Agreement sets out the framework for the sharing of Personal Data between the Parties as Data Controllers and defines the principles and procedures that the Parties shall adhere to and the responsibilities the Parties owe to each other.
- 2.2 The Programme is run by the Data Recipient. The Data Recipient works with schools, including the School, in order to deliver the Programme. The School pays the Data Recipient a contribution towards the delivery of the Programme. The Data Discloser and the Data Recipient have concluded an Overarching Agreement, to which these data sharing terms and conditions are an appendix. The Overarching Agreement contains a description of the Programme.
- 2.3 The Parties consider this data sharing initiative necessary in order to process and evaluate, improve and promote the Programme. This will serve to benefit both current and future Pupils who participate in the Programme, by enabling the Programme to be efficiently administered, and allowing robust outcome data for the Programme to be generated by the Data Recipient.
- 2.4 The sharing of Personal Data is necessary to support the following Agreed Purposes of both Parties:
 1. To register Pupils on the Programme;
 2. To administer all aspects of the Programme;
 3. To monitor, evaluate, and research the effectiveness of the Programme and any follow up programme which Pupils go on to undertake through the Data Recipient;
 4. To promote and obtain funding for the future delivery of the Programme
- 2.5 The legal bases for this processing are:
 1. Contractual Fulfilment (Agreed Purposes #1 and #2) and
 2. Legitimate Interests (Agreed Purposes #3 and #4). A legitimate interests assessment has been undertaken in respect of data sharing under this basis.

- 2.6 The Parties agree that this Agreement formalises a lawful transfer of Personal Data between the Parties and presents no new or additional privacy concerns. A risk assessment has been conducted in respect of the Personal Data to be shared and the necessity of the sharing; this Agreement serves to address any residual privacy or information risks and document the actions taken to identify, address and mitigate those risks wherever possible.
- 2.7 The Personal Data collected by each party is:
- a) disclosed to the other parties exclusively for the Agreed Purposes;
 - b) Processed in accordance with the rights of Data Subjects outlined in the Data Protection Legislation; and
 - c) retained securely by each party until the Agreed Purposes are fulfilled.

3. COMPLIANCE WITH NATIONAL DATA PROTECTION LEGISLATION AND OTHER OBLIGATIONS

- 3.1 Each Party must ensure compliance with applicable Data Protection Legislation at all times during the Term. The School shall be the first point of contact for Pupils as Data Subjects.
- 3.2 Each Party has a valid registration with its national Data Protection Authority if required which, by the time that the data sharing is expected to commence, covers the intended data sharing pursuant to this Agreement. The Data Receiver is registered with the Information Commissioner's Office, registration number ZA242644.
- 3.3 Each Party is a separate Data Controller of the Shared Personal Data and must ensure compliance with the Data Protection Legislation and applicable national data protection laws at all times during the Term.
- 3.4 Each party is expected to provide all reasonable assistance to the other parties in the preparation of a Data Protection Impact Assessment prior to commencing any Data Sharing if the other Party requests it. Such assistance may include:
- a) a systematic description of the envisaged Processing and the purposes of the Processing;
 - b) an assessment of the necessity and proportionality of the Processing 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 the Personal Data.

- 3.5 Each party must ensure that the Personal Data it collects and processes is:
- a) collected for specified, explicit and legitimate purposes;
 - b) adequate, relevant and not excessive in relation to the Processing purpose;
 - c) accurate and maintained up to date to the best of its knowledge;
 - d) not kept for longer than necessary; and
 - e) Processed in an appropriate manner to maintain security.
- 3.6 Each party must ensure that it Processes the Personal Data:
- a) fairly, lawfully and in a transparent manner;
 - b) solely for a purpose specified in clause 2;
 - c) in accordance with the rights of Data Subjects under the Data Protection Legislation and as the Data Subjects would reasonably expect;
 - d) in ways that do not have unjustified adverse effects on the Data Subjects; and
 - e) with the knowledge and agreement of the other parties.
- 3.7 Each Party shall, in respect of all shared Personal Data, ensure that their Privacy Notices are clear and provide sufficient information to Data Subjects in order for them to understand what of their Personal Data the Parties are sharing, the circumstances in which it will be shared, the purposes for the data sharing and either the identity with whom the data is shared or a description of the type of organisation that will receive the Personal Data.
- 3.8 The Personal Data shall not be published by any party in identifiable form unless the relevant Data Subjects have given their consent and in conformity with other safeguards laid down by the Data Protection Legislation and any other UK laws.
- 3.9 The Personal Data shall not at any time be copied, broadcast or disseminated to a third party unless the disclosure is authorised in this Agreement, by the consent of the Data Subject or as required by law.
- 3.10 Each party shall have in place appropriate Protective Measures to keep the Personal Data safe from a Data Loss Event. Such Protective Measures shall be appropriate, taking into account: (i) the nature of the Personal Data to be protected; (ii) the anticipated harm that might result from a Data Loss Event; (iii) the state of technological development; and (iv) the cost of implementing any such measures.
- 3.11 Each party shall ensure that:

- a) only such of its employees who may be required during the course of their employment to perform tasks relating to the Services have access to the Personal Data; and
- b) such employees are adequately trained in the use, care, protection and handling of personal data as set out in the Data Protection Legislation, and are aware of their employer's obligations under this Agreement to comply with them in relation to all Personal Data; and
- c) it has taken all reasonable steps to ensure the reliability and integrity of such employees and their appropriate compliance with the Data Protection Legislation and its obligations under this Agreement.

3.12 Each party undertakes that it will only use a subcontractor to Process the Personal Data:

- a) through a written data processing agreement between it and the subcontractor; and
- b) on condition that the subcontractor complies with the terms of this Agreement and the Data Protection Legislation.

3.13 Each party shall maintain complete and accurate records in relation to the Processing of the Personal Data and shall supply on demand the other parties, without undue delay, with any reasonably requested evidence about its Processing of the Personal Data, including of any subcontracting, in order to demonstrate compliance with this Agreement and the Data Protection Legislation.

4. SHARED PERSONAL DATA

4.1 In order to fulfil the Agreed Purposes, the following types of personal data and special categories of personal data will be disclosed by the Data Discloser to the Data Recipient:

Personal Data (requested from schools)

1. Name
2. DfE Unique Pupil Number
3. school name
4. date of birth
5. home postcode
6. gender
7. parental history of higher education
8. prior academic attainment
9. eligibility status for Pupil Premium; and
10. eligibility status for free school meals.

Special Category Data *(this data is requested directly from parents / older pupils under the basis of explicit consent. This data is included only for completeness and is not governed by this data sharing agreement)*

1. Ethnicity; and

2. Disability.

Together the "Shared Personal Data".

- 4.2 In order to fulfil the Agreed Purposes, the following types of personal data and special categories of personal data will be disclosed by the Data Recipient to the School:

Pupil Assessment Scores

5. FAIR AND LAWFUL PROCESSING

- 5.1 Each Party shall ensure that it processes the Shared Personal Data fairly and lawfully in accordance with clause 5 during the Term of this Agreement.
- 5.2 Each Party shall ensure that it processes Shared Personal Data on the basis that the processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data (GDPR Art 6.1(f)).
- 5.3 Where Sensitive Personal Data or Special Category Data is shared this will be processed on the additional ground of explicit consent only (GDPR Art 9.2(a)).

6. DATA QUALITY

- 6.1 Both parties shall ensure that Shared Personal Data is accurate.
- 6.2 Where either Party becomes aware of inaccuracies in Shared Personal Data, they will notify the other Party.

7. DATA SUBJECTS' RIGHTS

- 7.1 Data Subjects have the right to obtain certain information about the processing of their Personal Data through a Subject Access Request. Data Subjects may also request rectification, erasure or blocking of their Personal Data.
- 7.2 The Parties shall maintain a record of Subject Access Requests, the decisions made and any information that was exchanged. Records must include copies of the request for information, details of the data accessed and shared and where relevant, notes of any meeting, correspondence or phone calls relating to the request.
- 7.3 The Parties agree that the responsibility for complying with a Subject Access Request falls to Party receiving the Subject Access Request in respect of the Personal Data held by that Party.
- 7.4 The Parties agree to provide reasonable and prompt assistance (within 5 Business Days of such a request for assistance) as is necessary to each other to enable the other Party to comply with requests from Data Subjects to exercise

their rights under the Data Protection Legislation within the time limits imposed by the Data Protection Legislation.

8. DATA RETENTION AND DELETION

- 8.1 The Data Receiver shall not retain or process Shared Personal Data for longer than is necessary to carry out the Agreed Purposes.
- 8.2 Notwithstanding clause 8.1, the Parties shall continue to retain Shared Personal Data in accordance with any statutory or professional retention periods applicable in their respective countries and/or industry.
- 8.3 The Data Receiver shall ensure that any Shared Personal Data are returned to the Data Discloser or destroyed once processing of the Shared Personal Data is no longer necessary for the Agreed Purposes.

9. TRANSFERS

- 9.1 For the purposes of this clause, transfers of personal data shall mean any sharing of personal data by the Data Receiver with a third party, and shall include, but is not limited to, the following:
 - a) sharing of the Shared Personal Data with any other third party, whether a sub-contracted Processor or a third party Controller
 - b) storing Shared Personal Data on servers outside the EEA.
 - c) granting third parties located outside the EEA access rights to the Shared Personal Data.
- 9.2 Save for sharing explicitly permitted by the Parties and detailed in appendix 1 to this agreement, the Data Receiver shall not share the Shared Personal Data with a third party without the express written permission of the Data Discloser.9.3
- 9.3 Save where express written permission has been granted further to clause 9.2, the Data Receiver shall not disclose or transfer Shared Personal Data outside the EEA without ensuring that adequate and equivalent protections will be afforded to the Shared Personal Data.
- 9.4 Clause 9.2 will not apply to any data transfers carried out by the Data Discloser in respect of Shared Personal Data.

10. SECURITY AND TRAINING

- 10.1 The Data Discloser shall be responsible for the security of transmission of any Shared Personal Data in transmission to the Data Receiver by using appropriate technical methods. These are detailed below:

Via a secure Sharepoint site, set up by The Brilliant Club and in no circumstances by email.

- 10.2 The Parties agree to implement appropriate technical and organisational measures to protect the Shared Personal Data in their possession against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure, including but not limited to:
- a) Ensuring IT equipment, including portable equipment is kept in lockable areas when unattended; not leaving portable equipment containing the Shared Personal Data unattended;
 - b) Ensuring that staff use appropriate secure passwords for logging into systems or databases containing the Shared Personal Data;
 - c) Ensuring that all IT equipment is protected by antivirus software, firewalls, passwords and suitable encryption devices;
 - d) In particular ensure that any Sensitive Personal Data is stored and transferred (including where stored or transferred on portable devices or removable media) using industry standard 256-bit AES encryption or suitable equivalent;
 - e) Limiting access to relevant databases and systems to those of its officers, staff agents and sub-contractors who need to have access to the Personal Data, and ensuring that passwords are changed and updated regularly to prevent inappropriate access when individuals are no longer engaged by the Party;
 - f) Conducting regular threat assessment or penetration testing on systems.
 - g) Ensuring all staff handling Personal Data have been made aware of their responsibilities with regards to handling of Personal Data.

11. DATA SECURITY BREACHES AND REPORTING PROCEDURES

- 11.1 The Parties shall notify any potential or actual losses of the Shared Personal Data to the other Party as soon as possible and, in any event, within 1 Business Day of identification of any potential or actual loss to enable the Parties to consider what action is required in order to resolve the issue in accordance with the applicable national data protection laws and guidance.
- 11.2 Clause 11.1 also applies to any breaches of security which may compromise the security of the Shared Personal Data.
- 11.3 The Parties agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any Data Security Breach in an expeditious and compliant manner.

12. RESOLUTION OF DISPUTES WITH DATA SUBJECTS OR THE DATA PROTECTION AUTHORITY

- 12.1 The Parties agree to provide reasonable assistance as is necessary to each other to enable them to comply with data subject access requests and to

respond to complaints or communications related to the Processing of the Shared Personal Data.

- 12.2 In the event of a dispute or claim brought by a Data Subject or the Data Protection Authority concerning the processing of Shared Personal Data against either or both Parties, the Parties will inform each other about any such disputes or claims and will cooperate with a view to settling them amicably in a timely fashion.
- 12.3 The Parties agree to respond to any generally available non-binding mediation procedure initiated by a Data Subject or by the Data Protection Authority. If they do participate in the proceedings, the Parties may elect to do so remotely (such as by telephone or other electronic means). The Parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.
- 12.4 In respect of breaches relating to this Agreement, each Party shall abide by a decision of a competent court of the Data Discloser's country of establishment or of any binding decision of the relevant Data Protection Authority.

13. WARRANTIES

- 13.1 Each Party warrants and undertakes that it will:
- a) Process the Shared Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments that apply to its personal data processing operations.
 - b) Maintain a record of processing activities, which includes the Shared Personal Data.
 - c) Make available upon request to the Data Subjects who are third party beneficiaries a copy of this Agreement.
 - d) Respond within a reasonable time and as far as reasonably possible to enquiries from the relevant Data Protection Authority in relation to the Shared Personal Data.
 - e) Respond to Subject Access Requests in accordance with the terms of this Agreement and in accordance with the Data Protection Legislation.
 - f) Where applicable, maintain registration with all relevant Data Protection Authorities to process all Shared Personal Data for the Agreed Purposes.
 - g) Take all appropriate steps to ensure compliance with the security measures set out in clause 10 above.
- 13.2 The Data Discloser warrants and undertakes that it will ensure that the Shared Personal Data are accurate.

14. LIMITATION OF LIABILITY

- 14.1 Neither Party excludes or limits liability to the other Party for
- a) fraud or fraudulent misrepresentation;
 - b) death or personal injury caused by negligence;
 - c) a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - d) any matter for which it would be unlawful for the Parties to exclude liability.
- 14.2 Subject to Clause 14.1 neither Party shall in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for
- a) any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
 - b) loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
 - c) any loss or liability (whether direct or indirect) under or in relation to any other contract.

15. TERM AND TERMINATION

- 15.1 The Agreement is dependent on a continuing service provision between the Parties as further detailed in the Overarching Agreement between the Parties. In the event that the Overarching Agreement expires or terminates, this Agreement will also terminate.
- 15.2 Upon termination of this Agreement for any reason, the parties shall immediately cease the Data Sharing. In such case, the named points of contact shall work in good faith and without undue delay to put in place a procedure for retention, return or Deletion of any Personal Data.

16. THIRD PARTY RIGHTS

- 16.1 No one other than a Party to this Agreement shall have any right to enforce any of its terms.

17. VARIATION

- 17.1 No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

18. WAIVER

- 18.1 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.

19. SEVERANCE

19.1 If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Agreement, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

19.2 If a provision of this Agreement (or part of any provision) is found to be illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

20. ASSIGNMENT

20.1 This Agreement is personal to the Parties and neither Party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

21. CHANGES TO THE APPLICABLE LAW

21.1 In case the applicable Data Protection Legislation changes in a way that the Agreement is no longer adequate for the purpose of governing lawful data sharing exercises, the Parties agree that they will negotiate in good faith to review the Agreement in light of the new legislation.

22. NO PARTNERSHIP OR AGENCY

22.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.

22.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

23. ENTIRE AGREEMENT

23.1 This Agreement constitutes the entire agreement between the Parties in relation to its subject matter, namely the sharing of Pupil Personal Data, and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

23.2 Each Party acknowledges that in entering into this Agreement it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

23.3 Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

24. FORCE MAJEURE

24.1 Neither Party shall 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. In such circumstances either party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 3 months, the Party not affected may terminate this Agreement by giving 30 days' written notice to the affected Party.

25. NOTICE

25.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered personally or sent by pre-paid first-class post, recorded delivery or by commercial courier to the other Party.

25.2 Any notice shall be deemed to have been duly received if delivered personally, when left at the address set out above or, if sent by pre-paid first-class post or recorded delivery, at 10.00 am on the second business day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

25.3 This Clause 25 shall not apply to the service of any proceedings or other documents in any legal action.

25.4 A notice required to be given under or in connection with the Agreement shall not be validly served if sent by email or fax.

26. GOVERNING LAW AND JURISDICTION

26.1 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.

26.2 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.