

Derbyshire Data Protection Variation Agreement

Use of Tapestry is governed by our standard contract. To keep costs down we do not agree to bespoke clauses for particular customers, though we are interested in improvements to the contract to make it better for all customers.

Some Derbyshire schools have been sending us a standard document titled “Variation Agreement – General Data Protection Regulation”. We will not sign the variation agreement, because we do not agree to bespoke clauses for particular customers. But to make it easier for those schools, below is a list of where to find matching clauses in our contract or, if there isn’t one, why not.

This note matches contract version “Version: 2018-05-01”.

Please note that if there are any conflicts between what is written below and the contract, the contract is the version that is correct. But please do tell us if you spot such inconsistencies.

Please send comments or questions to contract-feedback@eyfs.info.

Clause 1.1

Covered by ‘Annex A: Tapestry Data Protection’ in ‘Who is responsible for what?’, but with two clarifications:

As you’d expect, we won’t decide what processing to do, you do. But unfortunately, we cannot police what you do based on a schedule you give us: we decide what to process based on the instructions you give us from within Tapestry. So if you authorise a user to upload material to Tapestry that falls outside of your schedule, we will let them upload it. See the section “Instructions we do and don’t accept” in ‘Annex A: Tapestry Data Protection’. For a list of what you *could* put into Tapestry, see ‘Annex C: Tapestry Privacy.’

This may be picky, but as described in ‘Annex C: Tapestry Privacy’ in ‘What data do we collect?’ we may also access your data “to maintain or improve the service or to fix faults.” We hope you would give us an instruction to maintain and improve our service and to fix faults, in which case the distinction isn’t important, but such an instruction is often missing from the schedule.

Clause 1.2

Covered by ‘Annex A: Tapestry Data Protection’ in ‘Who is responsible for what?’ and ‘What you can expect of us’.

Clause 1.3

Covered by ‘Annex A: Tapestry Data Protection’ in ‘Who is responsible for what?’ and ‘What you can expect of us’. We will assist you but we may have to charge our costs in doing so.

Clause 1.4 (a)

See our comment on clause 1.1 above about us not policing whether you are following your schedule.

Clause 1.4 (b)

Covered in overview clause 8 in ‘Your contract with us for the use of Tapestry’ and in detail in ‘Annex B: Tapestry Security.’

Clause 1.4 (c) (i)

See our comment on clause 1.1 above about us not policing whether you are following your schedule.

Clause 1.4 (c) (ii)

Covered in ‘What you can expect of us’ in ‘Annex A: Tapestry Data Protection’ and ‘Organisational data security’ in ‘Annex B: Tapestry Security.’

Clause 1.4 (d)

Covered in ‘Where is data stored’ in ‘Annex A: Tapestry Data Protection.’

Clause 1.4 (e)

Covered in overview in clause 23 in ‘Your contract with us for the use of Tapestry’ and in detail in ‘What you can expect of us’ in ‘Annex A: Tapestry Data Protection’ in and in ‘Deleting data when it is no longer needed’ in ‘Annex B: Tapestry Security.’

Clause 1.5 (a), (b), (c)

Covered by clause 5 in ‘Your contract with us for the use of Tapestry’ and ‘Who can instruct us’ in ‘Annex A: Tapestry Data Protection’.

Clause 1.5 (d)

No. Sorry, but there may be circumstances where we need to speak to a regulatory authority without your involvement.

Clause 1.5 (e)

Covered in ‘Annex A: Tapestry Data Protection’. We will “Tell you if we become aware of a data breach” and “Tell you immediately if we are asked to do something infringing data protection law.”

Clause 1.5 (f)

Covered in ‘Notification of personal data breaches’ in ‘Annex A: Tapestry Data Protection’.

Clause 1.6

Covered in ‘Notification of personal data breaches’ in ‘Annex A: Tapestry Data Protection’.

Clause 1.7

Covered in overview in clause 12 in ‘Your contract with us for the use of Tapestry’ and in detail in ‘what you can expect of us’ in ‘Annex A: Tapestry Data Protection’.

Clause 1.8

Covered in clause 10 in ‘Your contract with us for the use of Tapestry’.

Clause 1.9

Covered in clause 13 in ‘Your contract with us for the use of Tapestry’. We may charge you our costs in participating in your audit though.

Clause 1.10

Covered in ‘Our Data Protection Officer’ in ‘Annex A: Tapestry Data Protection’.

Clause 1.11

Covered in ‘Changes to sub-processors’ in ‘Annex D: Tapestry Sub-processors’ and ‘What you can expect of us’ in ‘Annex A: Tapestry Data Protection’.

Clause 1.12

Covered in ‘Annex D: Tapestry Sub-processors’.

Clause 1.13

Sorry, not applicable, as we are not agreeing with the proposed ‘variation agreement’.

But we are always interested in ways of improving the contract for all our customers and will keep a keen lookout for certification schemes that can make life easier for everyone. In the Tapestry contract the variation terms are in clause 28 of ‘Your contract with us for the use of Tapestry’.

Clause 1.14

Sorry, not applicable, as we are not agreeing with the proposed ‘variation agreement’.

But we’d always want our contract to be compliant with the legislation - otherwise we’d have no business. As above, clause 28 of ‘Your contract with us for the use of Tapestry’ describes how we’d vary the contract.

Clause 1.15

No. Sorry, but we will not indemnify you in full for *any* losses imposed on you from the ICO!

We do, of course accept that we may be liable to fines from the ICO and may need to pay compensation for damages if we breach data protection law.

But if the ICO decides a breach is your fault, not ours, then you must accept that you will need to pay your own fines and your own compensation.

See clauses 25 and 26 in ‘Your contract with us for the use of Tapestry’.