

## DATA PROCESSING AGREEMENT (SCHOOLS VERSION)

### PARTIES

- 1) The school whose details are set out in the Schedule to this Data Processing Agreement (“**School**”); and
- 2) OVERNET DATA LTD (Company Registration Number 06559434) whose registered office is at Unit 2 Parkhill Castle Ashby Northampton NN7 1LA (“**Overnet Data**”).

### BACKGROUND

- A. Overnet Data has agreed to provide certain services to the School (“**the Services**”), which are to be provided in accordance with Overnet Data’s Terms and Conditions (“**the Terms**”).
- B. In performing the Services, Overnet Data is required to process certain Personal Data (as defined below) on behalf of the School, where the School is the Data Controller and Overnet Data is acting as the Data Processor. The School has agreed that Overnet Data may process such Personal Data in accordance with the terms of this Data Processing Agreement (“**Data Processing Agreement**”) from the date on which this Data Processing Agreement is entered into by the parties.
- C. Together, the Terms and this Data Processing Agreement shall form the contract between the parties for the Services (“**the Contract**”).

### DEFINITIONS

The terms **Data Controller, Data Processor, Data Subject, Personal Data, Special Categories of Personal Data, Process, Processed and Processing** shall all have the meanings set out in the Data Protection Law.

**Data Protection Law** means:

- i. prior to its repeal, the Data Protection Act 1998; and
- ii. from 25 May 2018, the GDPR and any UK statute which implements any provisions of the same.

**Data Protection Legislation** means all applicable data protection and privacy legislation, regulations, guidance and codes of practice, including:

- i. the Data Protection Law and the Privacy and Electronic Communications (EC Directive) Regulations;
- ii. any secondary legislation pursuant to the Data Protection Law;
- iii. any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK in respect of any of the foregoing; and

- iv. any guidance or codes of practice issued by Working Party 29, the European Data Protection Board or the Information Commissioner from time to time (all as amended, updated or re-enacted from time to time).

**GDPR** means Regulation (EU) 2016/679 (or the "General Data Protection Regulation").

## **CLAUSES**

### **1. DATA PROTECTION**

- 1.1 Each party shall comply with all applicable requirements of the Data Protection Legislation. This Clause 1 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 1.2 Neither party shall through its acts or omissions place the other party in breach of any Data Protection Legislation.

### **2. PROCESSOR'S OBLIGATIONS**

- 2.1 The School and Overnet Data acknowledge that for the purposes of the Data Protection Legislation, the School is the Data Controller and Overnet Data is the Data Processor. Schedule 2 sets out the scope, nature and purpose of Processing by Overnet Data , the duration of the Processing and the types of Personal Data and categories of Data Subject.
- 2.2 Without prejudice to the generality of Clause 1.1, the School will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Overnet Data for the duration and purposes of this Data Processing Agreement.
- 2.3 Without prejudice to the generality of Clause 1.1, Overnet Data shall, in relation to any Personal Data Processed in connection with the performance by Overnet Data of its obligations under the Contract:
  - 2.3.1 process that Personal Data only in accordance with the Contract and shall not Process the Personal Data for any purpose other than those expressly authorised by the School, unless Overnet Data is required to Process such Personal Data otherwise by the laws of any member of the European Union or by the laws of the European Union applicable to Overnet Data ("**Applicable Laws**"). Where Overnet Data is relying on Applicable Laws as the basis for Processing Personal Data, Overnet Data shall promptly notify the School of this before performing the Processing required by the Applicable Laws unless those Applicable Laws prohibit Overnet Data from so notifying the School from time to time;

- 2.3.2 ensure the reliability of all personnel (including, without limitation, employees) who have access to and/or Process Personal Data and that such persons are legally obliged to keep the Personal Data confidential;
- 2.3.3 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data appropriate to the harm that might result from such unauthorised or unlawful Processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 2.3.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the School has been obtained and the following conditions are fulfilled:
  - 2.3.4.1 the School or Overnet Data has provided appropriate safeguards in relation to the transfer;
  - 2.3.4.2 the Data Subject has enforceable rights and effective legal remedies;
  - 2.3.4.3 Overnet Data complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - 2.3.4.4 Overnet Data complies with reasonable instructions notified to it in advance by the School with respect to the Processing of the Personal Data;
- 2.3.5 assist the School in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators; and otherwise to comply with the School's obligations under the Data Protection Legislation to respond to requests from Data Subjects or

exercise of the rights of Data Subjects or information mandated to be provided to Data Subjects;

- 2.3.6 notify the School without undue delay if Overnet Data becomes aware of any Personal Data breach or other security incident affecting or relating to the School's Personal Data;
  - 2.3.7 subject to Clause 4.1 below, at the written direction of the School, delete or return Personal Data and all copies thereof to the School on the termination or expiry of this Data Processing Agreement or the Contract (the earlier of the two), or at any other time, unless required by Applicable Law to store the Personal Data; and
  - 2.3.8 maintain complete and accurate records and information to demonstrate its compliance with this Clause 2 and relevant provisions of the Data Protection Legislation and allow for and cooperate with reasonable audits, including without limitation, inspections by the School or the School's designated auditor.
- 2.4 The School acknowledges and agrees that Overnet Data may appoint a third-party processor of Personal Data under this Data Processing Agreement, such third-party processor to be notified to the School in advance so that the School has the opportunity to object to such appointment. Overnet Data confirms that it will enter into a written agreement with the third-party processor, which agreement shall contain provisions which comply with the Data Protection Legislation and which, in any event, are no less onerous than those imposed under this Clause 2. As between the School and Overnet Data, Overnet Data shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this Clause 2.4. In the event that the School objects to the appointment of a third-party processor in accordance with this clause, the School acknowledges that it may not be able to obtain the full benefit of the Service.

### **3. INDEMNITY AND LIMITATION OF LIABILITY**

- 3.1 Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this Data Processing Agreement. Each party's total liability under this indemnity shall be fifty thousand pounds (£50,000).
- 3.2 Notwithstanding clause 3.1 above, the limitations of or exclusions from liability set out in the Terms will apply to this Data Processing Agreement.

3.3 The School acknowledges that Overnet Data is reliant on the School for direction as to the extent to which Overnet Data is entitled to use and Process the Personal Data. Consequently, Overnet Data will not be liable for any claim brought by a Data Subject arising from any action or omission by Overnet Data, to the extent that such action or omission resulted directly from the School's instructions.

#### **4. COMMENCEMENT AND DURATION**

4.1 This Data Processing Agreement shall commence when Overnet Data commences Processing Personal Data in accordance with the Contract and shall continue until the Contract terminates or expires (in accordance with the Terms).

4.2 On termination or expiry of the Contract, the School shall ensure that it makes any request for the return of Personal Data within 30 days of the date of termination or expiry of the Contract. Overnet Data shall destroy or delete all Personal Data and all copies thereof after 30 days following termination or expiry of the Contract (except to the extent that Overnet Data is required by Applicable Law to store the Personal Data) after which date Overnet Data shall not be able to reinstate or recover any such Personal Data.

4.3 Termination of this Data Processing Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

#### **5. NOTICES**

5.1 Any notice or other communication given to a party under or in connection with this Data Processing Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

5.2 Any notice or communication shall be deemed to have been received:

5.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or

5.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

5.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

5.4 A notice given under this Data Processing Agreement is not valid if sent by fax or email.

## **6. GOVERNING LAW AND JURISDICTION**

6.1 The parties acknowledge and agree that this Data Processing Agreement will be governed by English law and irrevocably submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising under this Data Processing Agreement.

## **7. GENERAL**

7.1 Overnet Data's obligations under this Data Processing Agreement are in addition to and not in lieu of its obligations under the Terms. In the event of a conflict between the provisions of this Data Processing Agreement and the Terms, the provisions of this Data Processing Agreement shall prevail.

7.2 This Data Processing Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Data Processing Agreement.

7.3 If any provision of this Data Processing Agreement is determined to be illegal or unenforceable, such provision shall be deemed to have been deleted without affecting the remaining provisions.

7.4 No variation of this Data Processing Agreement shall be effective unless set out in writing and signed by duly authorised representatives of the School and Overnet Data.

## **8. CONTACT**

8.1 If you have any questions, contact us at [legal@overnetdata.com](mailto:legal@overnetdata.com).

**SCHEDULE 1– the School**

|                 |  |
|-----------------|--|
| Name of School: |  |
| Address:        |  |
| Name:           |  |
| Job Title:      |  |

Signed on behalf of the School .....

Date .....

## SCHEDULE 2 – PROCESSING, PERSONAL DATA AND DATA SUBJECTS

### 1. DESCRIPTION OF THE PROCESSING TO BE UNDERTAKEN BY OVERNET

- 1.1 **SCOPE** Processing of personal data provided by the School and its authorised users in connection with Overnet Data's provision of services pursuant to the contract between the School and Overnet Data ("**the Contract**").
- 1.2 **NATURE** Any operation including collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means.
- 1.3 **PURPOSE OF PROCESSING** For the purpose of Overnet Data providing the School with a licence to use and transfer personal data via Overnet Data's software application, along with the provision of associated services to the School on the terms and conditions set out in the Contract.
- 1.4 **DURATION OF THE PROCESSING** For the duration of the Contract.

### 2. TYPES OF PERSONAL DATA TO BE PROCESSED BY OVERNET

- 2.1 Names and contact details;
- 2.2 Date of birth;
- 2.3 Images; and/or
- 2.4 Payment details.

### 3. TYPES OF SPECIAL CATEGORIES OF PERSONAL DATA (OR SENSITIVE PERSONAL DATA) TO BE PROCESSED BY OVERNET

This may include personal data revealing or relating to a data subject's:

- 3.1 racial or ethnic origin;
- 3.2 political opinions;
- 3.3 religious or philosophical beliefs;
- 3.4 genetic data;
- 3.5 physical or mental health or condition;
- 3.6 sex life or sexual orientation;
- 3.7 the commission or alleged commission by them of any offence;

3.8 any proceedings for any offence committed or alleged to have been committed by them, the disposal of such proceedings or the sentence of any court in such proceedings.

**4. CATEGORIES OF DATA SUBJECT**

4.1 The School's staff (including volunteers, agents, and temporary workers);

4.2 Pupils;

4.3 Pupils' parents; and

4.4 Other linked contact of the pupil (for example, child-minder).