



# OTrack – Data Processing Terms

## BACKGROUND

These Personal Data Processing Terms (the “**Agreement**”) are entered into between Optimum Records Limited (“**Optimum**”) and the school using the services provided by Optimum (the “**School**”) whose details are set out on the order form for the services.

- A. The School and Optimum entered into an order form and terms of service (together the “**Master Agreement**”) that require Optimum to process Personal Data on behalf of the School.
- B. This Agreement sets out the additional terms, requirements and conditions on which Optimum will process Personal Data when providing services under the Master Agreement. This Agreement contains the mandatory clauses required by Article 28(3) of the General Data Protection Regulation ((EU) 2016/679) for contracts between controllers and processors.

## AGREED TERMS

### 1. Definitions and interpretation

The following definitions and rules of interpretation apply in this Agreement.

a. Definitions:

**Authorised Persons:** the persons or categories of persons that the School authorises to give Optimum personal data processing instructions which shall be all persons with a login to OTrack under the School’s account.

**Business Purposes:** the services described in the Master Agreement.

**Data Subject:** an individual who is the subject of Personal Data.

**Personal Data:** means any information relating to an identified or identifiable natural person that is processed by Optimum as a result of, or in connection with, the provision of the services under the Master Agreement; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

**Processing, processes and process:** either any activity that involves the use of Personal Data or as the Data Protection Legislation may otherwise define processing, processes or process. It includes any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording,



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organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. Processing also includes transferring Personal Data to third parties.

**Data Protection Legislation:** all applicable privacy and data protection laws including the General Data Protection Regulation ((EU) 2016/679) and any applicable national implementing laws, regulations and secondary legislation in England and Wales relating to the processing of Personal Data and the privacy of electronic communications, as amended, replaced or updated from time to time, including the Privacy and Electronic Communications Directive (2002/58/EC) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426).

**Personal Data Breach:** a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed.

**Standard Contractual Clauses (SCC):** the European Commission's Standard Contractual Clauses for the transfer of Personal Data from the European Union to processors established in third countries (controller-to-processor transfers), as set out in the Annex to Commission Decision 2010/87/EU.

- b. This Agreement is subject to the terms of the Master Agreement and is incorporated into the Master Agreement. Interpretations and defined terms set forth in the Master Agreement apply to the interpretation of this Agreement.
- c. The Annex forms part of this Agreement and will have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Annex.
- d. A reference to writing or written includes email.
- e. In the case of conflict or ambiguity between:
  - i. any provision contained in the body of this Agreement and any provision contained in the Annexes, the provision in the body of this Agreement will prevail;
  - ii. the terms of any accompanying invoice and any provision contained in the Annex, the provision contained in the Annex will prevail;
  - iii. any of the provisions of this Agreement and the provisions of the Master Agreement, the provisions of this Agreement will prevail; and

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- iv. any of the provisions of this Agreement and any executed SCC, the provisions of the executed SCC will prevail.

### **2. Personal data types and processing purposes**

- a. The School and Optimum acknowledge that for the purpose of the Data Protection Legislation, the School is the controller and Optimum is the processor.
- b. The School retains control of the Personal Data and remains responsible for its compliance obligations under the applicable Data Protection Legislation, including providing any required notices and obtaining any required consents, and for the processing instructions it gives to Optimum.
- c. Annex A describes the subject matter, duration and purpose of processing and the Personal Data categories and Data Subject types in respect of which Optimum may process to fulfil the Business Purposes of the Master Agreement.

### **3. Provider's obligations**

- a. Optimum will only process the Personal Data to the extent, and in such a manner, as is necessary for the Business Purposes and otherwise in accordance with the School's written instructions. Optimum will not process the Personal Data for any other purpose or in a way that does not comply with this Agreement or the Data Protection Legislation. Optimum must promptly notify the School if, in its opinion, any instruction from the School or any of its Users would not comply with the Data Protection Legislation.
- b. Optimum must promptly comply with any School request or instruction requiring Optimum to amend, transfer, delete or otherwise process the Personal Data, or to stop, mitigate or remedy any unauthorised processing.
- c. Optimum will maintain the confidentiality of all Personal Data and will not disclose Personal Data to third parties unless the School or this Agreement specifically authorises the disclosure, or as required by law. If a law, court, regulator or supervisory authority requires Optimum to process or disclose Personal Data, Optimum must first inform the School of the legal or regulatory requirement and give the School an opportunity to object or challenge the requirement, unless the law prohibits such notice.
- d. Optimum will reasonably assist the School with meeting the School's compliance obligations under the Data Protection Legislation, taking into account the nature of Optimum's processing and the information available to

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Optimum, including in relation to Data Subject rights, data protection impact assessments and reporting to and consulting with supervisory authorities under the Data Protection Legislation.

- e. Optimum must promptly notify the School of any changes to Data Protection Legislation that may adversely affect Optimum's performance of the Master Agreement.

### **4. Optimum's employees**

- a. Optimum will ensure that all employees:
  - i. are informed of the confidential nature of the Personal Data and are bound by confidentiality obligations and use restrictions in respect of the Personal Data;
  - ii. have undertaken training on the Data Protection Legislation relating to handling Personal Data and how it applies to their particular duties; and
  - iii. are aware both of Optimum's duties and their personal duties and obligations under the Data Protection Legislation and this Agreement.
- b. Optimum will take reasonable steps to ensure the reliability, integrity and trustworthiness of and conduct background checks consistent with applicable law on all of Optimum's employees with access to the Personal Data.

### **5. Security**

- a. Optimum must at all times implement appropriate technical and organisational measures against unauthorised or unlawful processing, access, disclosure, copying, modification, storage, reproduction, display or distribution of Personal Data, and against accidental or unlawful loss, destruction, alteration, disclosure or damage of Personal Data.
- b. Optimum must implement such measures to ensure a level of security appropriate to the risk involved, including as appropriate:
  - i. the pseudonymisation and encryption of personal data;
  - ii. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
  - iii. the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and
  - iv. a process for regularly testing, assessing and evaluating the effectiveness of security measures.

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### 6. Personal Data Breach

- a. Optimum will promptly and without undue delay notify the School if any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable. Optimum will restore such Personal Data at its own expense.
- b. Optimum will as soon as reasonably practical and without undue delay notify the School if it becomes aware of:
  - i. any accidental, unauthorised or unlawful processing of the Personal Data; or
  - ii. any Personal Data Breach.
- c. Where Optimum becomes aware of (a) and/or (b) above, it shall, without undue delay, also provide the School with the following information:
  - i. description of the nature of (a) and/or (b), including the categories and approximate number of both Data Subjects and Personal Data records concerned;
  - ii. the likely consequences; and
  - iii. description of the measures taken, or proposed, to be taken to address (a) and/or (b), including measures to mitigate its possible adverse effects.
- d. Immediately following any unauthorised or unlawful Personal Data processing or Personal Data Breach, the parties will co-ordinate with each other to investigate the matter. Optimum will reasonably co-operate with the School in the School's handling of the matter, including:
  - i. assisting with any investigation;
  - ii. providing the School with physical access to any facilities and operations affected;
  - iii. facilitating interviews with Optimum's employees, former employees and others involved in the matter;
  - iv. making available all relevant records, logs, files, data reporting and other materials required to comply with all Data Protection Legislation or as otherwise reasonably required by the School; and
  - v. taking reasonable and prompt steps to mitigate the effects and to minimise any damage resulting from the Personal Data Breach or unlawful Personal Data processing.
- e. Optimum will not inform any third party of any Personal Data Breach without first obtaining the School's prior written consent, except when required to do so by law.



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- f. Optimum agrees that the School has the sole right to determine:
  - i. whether to provide notice of the Personal Data Breach to any Data Subjects, supervisory authorities, regulators, law enforcement agencies or others, as required by law or regulation or in the School's discretion, including the contents and delivery method of the notice; and
  - ii. whether to offer any type of remedy to affected Data Subjects, including the nature and extent of such remedy.

### **7. Cross-border transfers of personal data**

- a. Optimum (or any subcontractor) must not transfer or otherwise process Personal Data outside the European Economic Area (**EEA**) without obtaining the School's prior written consent.
- b. Where such consent is granted, Optimum may only process, or permit the processing, of Personal Data outside the EEA under the following conditions:
  - i. Optimum is processing Personal Data in a territory which is subject to a current finding by the European Commission under the Data Protection Legislation that the territory provides adequate protection for the privacy rights of individuals; or
  - ii. Optimum participates in a valid cross-border transfer mechanism under the Data Protection Legislation, so that Optimum (and, where appropriate, the School) can ensure that appropriate safeguards are in place to ensure an adequate level of protection with respect to the privacy rights of individuals as required by Article 46 of the General Data Protection Regulation ((EU) 2016/679); or
  - iii. the transfer otherwise complies with the Data Protection Legislation.
- c. If any Personal Data transfer between the School and Optimum requires execution of SCC in order to comply with the Data Protection Legislation (where the School is the entity exporting Personal Data to Optimum outside the EEA), the parties will complete all relevant details in, and execute SCC, and take all other actions required to legitimise the transfer.
- d. If the School consents to appointment by Optimum located within the EEA of a subcontractor located outside the EEA in compliance with the provisions of clause 8, then the School authorises Optimum to enter into SCC with the subcontractor in the School's name and on its behalf. Optimum will make the executed SCC available to the School on request.

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### 8. Subcontractors

- a. Optimum may only authorise a third party (subcontractor) to process the Personal Data if:
  - i. the School is provided with an opportunity to object to the appointment of each subcontractor within 5 days after Optimum supplies the School with full details regarding such subcontractor;
  - ii. Optimum enters into a written contract with the subcontractor that contains terms substantially the same as those set out in this Agreement, in particular, in relation to requiring appropriate technical and organisational data security measures, and, upon the School's written request, provides the School with copies of such contracts;
  - iii. Optimum maintains control over all Personal Data it entrusts to the subcontractor; and
  - iv. the subcontractor's contract terminates automatically on termination of this Agreement for any reason.
- b. Those subcontractors set out in Annex A are deemed approved by the School as at the commencement of this Agreement.
- c. Where the subcontractor fails to fulfil its obligations under such written agreement, Optimum remains fully liable to the School for the subcontractor's performance of its agreement obligations.
- d. The Parties consider Optimum to control any Personal Data controlled by or in the possession of its subcontractors.

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### 9. Complaints, data subject requests and third party rights

- a. Optimum must take such technical and organisational measures as may be appropriate, and promptly provide such information to the School as the School may reasonably require, to enable the School to comply with:
  - i. the rights of Data Subjects under the Data Protection Legislation, including subject access rights, the rights to rectify and erase personal data, object to the processing and automated processing of personal data, and restrict the processing of personal data; and
  - ii. information or assessment notices served on the School by any supervisory authority under the Data Protection Legislation.
- b. Optimum must notify the School immediately if it receives any complaint, notice or communication that relates directly or indirectly to the processing of the Personal Data or to either party's compliance with the Data Protection Legislation.
- c. Optimum must notify the School within 5 working days if it receives a request from a Data Subject for access to their Personal Data or to exercise any of their related rights under the Data Protection Legislation.
- d. Optimum will give the School its full co-operation and assistance in responding to any complaint, notice, communication or Data Subject request.
- e. Optimum must not disclose the Personal Data to any Data Subject or to a third party other than at the School's request or instruction, as provided for in this Agreement or as required by law.

### 10. Term and termination

- a. This Agreement will remain in full force and effect so long as:
  - i. the Master Agreement remains in effect, or
  - ii. Optimum retains any Personal Data related to the Master Agreement in its possession or control (**Term**).
- b. Any provision of this Agreement that expressly or by implication should come into or continue in force on or after termination of the Master Agreement in order to protect Personal Data will remain in full force and effect.
- c. If a change in any Data Protection Legislation prevents either party from fulfilling all or part of its Master Agreement obligations, the parties will suspend the processing of Personal Data until that processing complies with the new requirements. If the parties are unable to bring the Personal Data



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processing into compliance with the Data Protection Legislation within one calendar month, they may terminate the Master Agreement on written notice to the other party.

### 11. Data return and destruction

- a. At the School's request, Optimum will give the School a copy of, or access to, all or part of the School's Personal Data in its possession or control in the format and on the media reasonably specified by the School.
- b. On termination of the Master Agreement for any reason or expiry of its term, Optimum will securely delete or destroy or, if directed in writing by the School, return and not retain, all or any Personal Data in respect of Pupils related to this Agreement in its possession or control.
- c. If any law, regulation, or government or regulatory body requires Optimum to retain any documents or materials that Optimum would otherwise be required to return or destroy, it will notify the School in writing of that retention requirement, giving details of the documents or materials that it must retain, the legal basis for retention, and establishing a specific timeline for destruction once the retention requirement ends.

### 12. Audit

- a. If a Personal Data Breach occurs or is occurring, or Optimum becomes aware of a breach of any of its obligations under this Agreement or any Data Protection Legislation, Optimum will:
  - i. promptly conduct an audit to determine the cause;
  - ii. produce a written report that includes detailed plans to remedy any deficiencies identified by the audit;
  - iii. provide the School with a copy of the written audit report; and
  - iv. remedy any deficiencies identified by the audit as soon as reasonably practical.
- b. At least once a year, Optimum will conduct site audits of its Personal Data processing practices and the information technology and information security controls for all facilities and systems used in complying with its obligations under this Agreement, including, but not limited to, obtaining a network-level vulnerability assessment performed by a recognised third-party audit firm based on recognised industry best practices.

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### 13. Warranties

- a. Optimum warrants that:
  - i. its employees, subcontractors, agents and any other person or persons accessing Personal Data on its behalf are reliable and trustworthy and have received the required training on the Data Protection Legislation relating to the Personal Data;
  - ii. it and anyone operating on its behalf will use reasonable endeavours to process the Personal Data in compliance with the Data Protection Legislation;
  - iii. it has no reason to believe that the Data Protection Legislation prevents it from providing any of the Master Agreement's contracted services; and
  - iv. considering the current technology environment and implementation costs, it will take appropriate technical and organisational measures to prevent the unauthorised or unlawful processing of Personal Data and the accidental loss or destruction of, or damage to, Personal Data, and ensure a level of security appropriate to:
    1. the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage;
    2. the nature of the Personal Data protected; and
    3. comply with all applicable Data Protection Legislation and its information and security policies, including the security measures required in clause 5a.
- b. The School warrants that Optimum's expected use of the Personal Data for the Business Purposes and as specifically instructed by the School will comply with the Data Protection Legislation.

### 14. Notice

- a. Any notice or other communication given to a party under or in connection with this Agreement must be in writing and delivered to the relevant address given in the order form.

### 15. Consent to this Agreement

- a. By signing the order form, each of Optimum and the School agrees to be bound by this Agreement in its entirety.

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## ANNEX A

### Personal Data Processing Purposes and Details

- Subject matter of processing: performance of the services set out in the Master Agreement including without limitation provision of OTrack.
- Duration of Processing: the term of the provision of services as set out in the Master Agreement.
- Personal Data Categories: as defined in the Privacy Policy.
- Data Subject Types: Pupils of the School and Users.

### Approved Subcontractors and Subprocessors:

OTrack uses certain subcontractors and subprocessors to assist it in providing the OTrack service. A subprocessor is a third-party data processor engaged by OTrack, who has or potentially will have access to or process data. OTrack uses different types of subprocessors to perform various functions as explained below. OTrack refers to third parties that do not have access to or process data but who are otherwise used to provide the services as “subcontractors” and not subprocessors.

Name	Purpose
Extraordinary Managed Services	The OTrack application, infrastructure and databases are hosted on Microsoft’s Azure servers and the encrypted, dedicated servers at Extraordinary Managed Services’ datacenter.
Google Analytics	Google Analytics is the analytics provider that we use to provide us with website statistics relating to which OTrack features you have used. We use this information so we can improve and optimise your experience when using OTrack.
Kraken.io	OTrack uses the Kraken.io encrypted image management service to allow us to quickly resize images that you upload to OTrack.
Pursuit Vision Ltd	Pursuit Vision provide OTrack with Crystal Report Server management and support services on a consultation basis.
Pusher.com	The Pusher services allow us to send OTrack users instant message notifications within the OTrack application.
SAGE One	The SAGE One API is a secure and encrypted service that allows us to send you renewal notices, payment reminders and the payment status of your OTrack license within the OTrack application.
Wonde	The Wonde API is a secure and encrypted service that means we can sync school MIS data with OTrack each morning.

If you would like an example of any of the data sets above, please contact our data protection officer. Please see our Privacy Policy for contact details.



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**SIGNED on behalf of the school**

**School name:**

**School DFE number:**

**Your signature:**

**Name:**

**Job title:**

**SIGNED on behalf of OTrack**

**Authorised signatory:**

**Name:** Tom Parkinson

**Job Title:** Director