

## DATA PROCESSING AGREEMENT

This data processing agreement (“**DPA**”) is dated the date of the last signature at the end of this agreement.

### DETAILS

Party Name	Party Address	Email address
Educational Research Centre, a statutory body established under section 54 of the Education Act 1998 (the “ <b>ERC</b> ”)	DCU St Patrick’s College Campus D09 AN2F	ppad-e@erc.ie
(the “ <b>School</b> ”)		
(each a “ <b>Party</b> ” and together the “ <b>Parties</b> ”).		
<b>Effective Date:</b>	The date of the last Party’s signature to this DPA.	
<b>Services:</b>	The provision of paper Test Materials together with: (i) all support services provided by the ERC in relation to the scoring of paper tests; and (ii) the provision of the hosting services in relation to the School Data for the Storage Period.	
<b>Storage Period:</b>	36 months from the date the test results are issued to the School or in July (whichever is the longer period).	

## 1 INTERPRETATION

1.1 In this DPA, the following terms have the meanings given to them below:

“**Data Protection Law**” means the EU General Data Protection Regulation 2016/679 (“**GDPR**”) and the Data Protection Acts 1988 to 2018.

“**Effective Date**” has the meaning given to it at the top of this DPA.

“**Group Level Data**” means the group-level data derived from the School Data as set out in Appendix 1.

“**Permitted Purpose**” means the provision of statistical reports to the Department of Education and fulfilment of the ERC’s statutory functions including future re-development or enhancement of ERC tests and the support of essential administrative functions of the ERC’s test department (including stock control).

“**Personal Data Breach**” means any breach of security resulting in the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, School Data processed by the ERC on behalf of the School.

“**Services**” has the meaning given to it at the beginning of this DPA.

**“School Data”** means any personal data provided by the School or generated by the ERC in the course of the ERC’s provision of the Services but excludes any Group Level Data.

**“Storage Period”** has the meaning given to it at the top of this DPA.

**“Test Materials”** means any materials supplied by the ERC to the School for the purposes of enabling the school to administer, score and interpret test results including test booklets, answer sheets manuals, scoring instructions/stencils, scoring/reporting software, login credentials and test credits.

- 1.2 In this DPA, “personal data”, “process/processing”, “controller”, “processor” and “data subject” have the same meaning as set out in the GDPR.
- 1.3 The term “subprocessor” means a processor engaged by the ERC in connection with the processing of School Data.
- 1.4 Any words following the terms including, include, in particular, for example or any similar expression must be construed as illustrative and do not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.5 Any notice given under this DPA may be given by email at the address stated above.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and includes all subordinate legislation made from time to time under that statute or statutory provision.
- 1.7 References in this DPA to:
  - 1.7.1 a clause is to a clause of this DPA;
  - 1.7.2 an Appendix is to an appendix to this DPA,

## **2 HOW THIS DPA APPLIES**

- 2.1 This DPA will become legally binding on the Parties as of the Effective Date set out above and shall continue in force until either: (i) the expiration of the Storage Period; or (ii) the termination of the Services and this DPA by either Party on 30 days’ written notice to the other.
- 2.2 This DPA comprises of this document and Appendices 1, 2 and 3.

## **3 DETAILS**

- 3.1 The School’s obligations and rights are as outlined in this DPA.
- 3.2 The subject-matter and duration of the processing carried out by the ERC on behalf of the School, the nature and purpose of the processing, the type of personal data and the categories of data subjects are described in Appendix 1.

## **4 STATUS**

- 4.1 The Parties acknowledge and agree that, for the purpose of Data Protection Law:
  - 4.1.1 the School is the controller of the School Data;
  - 4.1.2 the ERC is engaged by the School as its processor in relation to all School Data processed under this DPA; and

4.1.3 the ERC is an independent controller of the Group Level Data and will process such data in accordance with clause 8.

4.2 The School and the ERC shall at all times during the term of this DPA comply with its respective obligations under applicable Data Protection Law in performing its obligations under this DPA.

## **5 THE ERC RESPONSIBILITIES**

5.1 The ERC (in its capacity as a processor only) agrees with the School (as controller) that it shall:

5.1.1 process School Data only in accordance with the School's documented instructions, as are set out in this DPA or agreed between the Parties as part of the Services, unless required to do so by mandatory EU or national law to which ERC is subject; in such cases ERC will inform the School of that legal requirement before processing the personal data, unless it is precluded from doing so by law;

5.1.2 ensure that the ERC's personnel that process the School Data are subject to appropriate contractual or statutory obligations of confidentiality;

5.1.3 implement appropriate technical and organisational measures, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, to ensure a level of security appropriate to the risk of the processing, in particular, the risk of accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to School Data as set out in Appendix 2;

5.1.4 to the extent that the information is not directly available to the School through the Services, provide reasonable assistance (at the School's cost) to the School in respect of its fulfillment of its obligation as controller to respond to requests by data subjects under Chapter III of the GDPR, taking into account the nature of the Services and information available to the ERC;

5.1.5 promptly notify the School of any request or correspondence received from any data subject or data protection regulator in respect of School Data. The ERC shall not respond to any data subject unless agreed in writing with the School except to direct the data subject to the School as the controller of the School Data;

5.1.6 promptly (and in any event within 48 hours) notify the School of any Personal Data Breach and provide such information as the School reasonably requires in order to comply with its notification obligations under Articles 33 and 34 of the GDPR;

5.1.7 provide reasonable assistance (at the School's cost) to the School in ensuring the School's compliance under Articles 35 and 36 of the GDPR by providing information relating to the processing activities under this DPA that is reasonably available to the ERC;

5.1.8 retain the School Data for the Storage Period on behalf of the School in accordance with the terms of this DPA;

5.1.9 upon the School's written request, provide information regarding the ERC's compliance with the obligations in this DPA;

- 5.1.10 facilitate an audit requested in writing by the School of the systems and facilities used to process School Data on behalf of the School. Such audit may be conducted by the School or its authorized third-party auditor to assess the ERC's compliance with the terms of this DPA provided that the School: (i) shall not exercise its right of audit more than once per year (unless otherwise required by Data Protection Law or where the ERC suffers a Personal Data Breach involving School Data processed on behalf of the School); (ii) gives the ERC at least 4 weeks' written notice of intention to conduct an audit; (iii) shall conduct the audit in the least intrusive means possible and during normal business hours; and (iv) and any third-party auditor must sign any non-disclosure agreement requested by the ERC and shall comply with the ERC's security and other rules; and
- 5.1.11 promptly inform the School if the ERC is of the opinion that any instruction received from the School infringes applicable Data Protection Law, or if the ERC is unable to comply with the School's instructions.

## **6 SUBPROCESSORS AND TRANSFERS OF DATA**

- 6.1 The School agrees that the ERC shall have general authorisation to engage subprocessors subject to this clause 6. A list of the subprocessors used by the ERC as at the date of this DPA is set out in Appendix 3 and the ERC shall be entitled to continue to use those subprocessors.
- 6.2 The ERC may engage a new subprocessor or change the role of its existing subprocessors provided it gives the School notice of this change. Any notice to the School under this clause 6.2 shall be given by email using the details given at the top of this DPA. The School shall have 14 days to notify the ERC of any reasonable grounds of objection to the change. Where the School objects to the change, the ERC may (but is under no obligation) to find a suitable workaround to avoid the use of the objected-to subprocessor. Where an alternative solution is not promptly agreed, either Party may terminate the affected Services.
- 6.3 If a subprocessor engaged by the ERC fails to fulfil its data protection obligations, the ERC shall remain fully liable for the performance of the subprocessor's obligations provided that such responsibility shall not increase the ERC's liability under this DPA.
- 6.4 Where ERC engages any subprocessor under this DPA it shall impose on the subprocessor, through a legally binding contract between the ERC and subprocessor, data protection obligations materially equivalent to those set out in this DPA.

## **7 TRANSFERS**

- 7.1 As at the Effective Date, the ERC transfers data to the countries set out in Appendix 3.
- 7.2 The ERC shall:
- 7.2.1 provide prior notice to the School of any intended processing of School Data outside the EEA beyond that processing set out in Appendix 3; and
- 7.2.2 process School Data outside the EEA only:
- (A) in an Adequate Country; or
  - (B) if the country or territory in which the School Data is processed is not an Adequate Country, if Appropriate Safeguards are in place in respect of the processing of the School Data by the ERC and, as applicable, its subprocessors.

7.3 For the purpose of this clause 7:

7.3.1 “**Adequate Country**” means a country or territory in respect of which the European Commission, in accordance with European Data Protection Law, has declared there is an adequate level of protection for personal data, provided and only for so long as such decision of the European Commission remains in force and the recipient of the personal data satisfies the relevant adequacy conditions under that decision.

7.3.2 “**Appropriate Safeguards**” means appropriate safeguards in respect of the processing of the personal data and on condition that enforceable data subject rights and effective legal remedies for data subjects are available with respect to any processing of personal data, in each case within the meaning of, and as determined by, Data Protection Law.

## **8 ERC AS INDEPENDENT CONTROLLER**

8.1 The School acknowledges and agrees that the ERC shall generate and process Group Level Data as an independent controller. The Parties acknowledge and agree that they do not act as a joint controller in this regard.

8.2 The ERC shall process the Group Level Data for the Permitted Purpose only and for no other purpose.

## **9 RESPONSIBILITY FOR DEFAULT**

9.1 Nothing in this DPA limits any liability which cannot legally be limited.

9.2 Subject to clause 9.1 and clause 9.3, the ERC’s total liability to the School arising under or in connection with this DPA or the Services including liability in contract, tort (including negligence) or breach of statutory duty shall be equal to the lower of: (i) €2,500; or (ii) 200% of the fees paid by the school in respect of the Services.

9.3 Neither Party shall be liable to the other under this DPA for any indirect or consequential loss.

## **10 DELETION OF SCHOOL DATA**

10.1 On the expiration of the Storage Period or termination of this DPA, the ERC shall securely delete the School Data unless otherwise previously agreed in writing with the School.

10.2 The ERC shall retain a copy of any School Data which the ERC is required to retain by law.

10.3 The ERC shall, at the request of the School, provide written confirmation that all School Data has been deleted from the ERC’s systems.

## **11 GENERAL**

11.1 Any notifications provided under this DPA shall be sent to the email address of the party stated at the beginning of this DPA or such other email address as may be notified by a Party to the other from time to time. Notice shall be deemed to have been effected immediately upon transmission.

11.2 Each of the sections of this DPA operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining sections will remain in full force and effect.

- 11.3 Any failure by either Party to exercise or any delay by either Party in exercising a right or remedy does not constitute a waiver of that right or remedy or of any other rights or remedies. A waiver by either Party of any breach of, or any default under, any provision of the DPA is not a general waiver or a waiver of any subsequent default or breach and in no way affects the other terms of this DPA.
- 11.4 The ERC may transfer its rights and obligations under this DPA to another entity or statutory body. The School may not transfer its rights and obligations under this DPA without the prior written consent of the ERC.
- 11.5 This DPA constitutes the entire agreement between the ERC and the School in relation to its subject matter and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between the Parties, whether written or oral, relating to the processing of personal data in connection with the Services.
- 11.6 Each Party may execute this DPA by any form of electronic signature. An electronic signature is conclusive evidence of a Party's intention to be bound by this DPA and has the same legal validity and enforceability as a wet ink signature for all purposes.
- 11.7 If a Party stores a duly executed copy of the DPA in an electronic format that maintains its integrity and allows unchanged reproduction of the stored information, this constitutes an original of this DPA and may be relied on as evidence of this DPA.
- 11.8 This DPA and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter, existence, formation, interpretation, repudiation or termination are governed by, and construed in accordance with, the law of Ireland and the parties irrevocably agree that the courts of Ireland have exclusive jurisdiction to settle any such dispute or claim.

## APPENDIX 1

### Details of processing

<b>Subject Matter</b>	The processing is carried in connection with the provision of the Services by the ERC
<b>Duration</b>	As set out in clause 2.1 of the DPA.
<b>Nature &amp; Purpose of the Processing</b>	ERC processes the personal data in order to provide the Services
<b>Categories of Data Subjects</b>	Teachers and students
<b>Types of Personal Data i.e. any information relating to an identified or identifiable person.</b>	<ul style="list-style-type: none"><li>• school name,</li><li>• school roll number</li><li>• school contact details</li><li>• class and/or teacher name</li><li>• contact details of teacher</li><li>• date of testing</li><li>• pupil/student name</li><li>• pupil/student date of birth</li><li>• pupil/student gender</li><li>• pupil/student test item responses</li><li>• pupil/student test scores</li></ul>
<b>Group Level data</b>	<ul style="list-style-type: none"><li>• school roll number</li><li>• counts of records</li><li>• test score statistics</li></ul>

## APPENDIX 2

### Security Measures

#### 1 General Measures within the ERC

Employees of the ERC are aware of their responsibility towards the protection of data gathered and processed by the ERC. In order for the employees to be able to carry out their tasks in a secure environment, the following measures form the basis for secure data processing within the ERC:

##### Commitment to Confidentiality

All employees of the ERC have a confidentiality clause included in their employment contract and have a contractual obligation to ensure the security and integrity of the data they work with.

##### Compliance with Legislation

When working with data, whether working with digital data using IT systems and applications or working with data in hard copy formats, the ERC's employees must comply with the applicable data protection legislation as well as the ERC's policies and procedures. If employees are unsure about the application of the procedures, policies or as to whether and to what extent legislation must be observed, they should contact their Manager or the Data Protection Officer for clarification.

##### Employee Training and Awareness

Upon commencement of employment with the ERC, employees receive data protection training. Project Managers have also been trained on the completion of the Data Protection Impact Assessment tool and all new projects are reviewed and risk assessed for any potential concerns for personal data pertaining to the security and protection of the data. All employees receive refresher training and project team members participate in the DPIA process to ensure they are aware of the potential risks to data for the projects they work on. Employees are required to immediately report security incidents to the Data Protection Officer, who will take care of further coordination and handling of the incident.

#### 2 Technical and Organisational Measures

In order to ensure the confidentiality and security of the data and to protect against unauthorized access, the following measures are in place:

##### Entrance control

The access of unauthorized persons to the ERC buildings and to the data processing systems is denied through the following measures:

- Building access control system
- Building alarm system
- Secured IT server room (DCU, St. Patrick's Campus)
- Fire suppression system in IT server room (DCU, St. Patrick's Campus)
- Employee references checked prior to employment
- Specified cleaning and maintenance times
- Guests and external service providers are accompanied
- Sign-in at reception for non-ERC staff.

##### Access to systems

The unauthorized use of the data processing systems is prevented by the following measures:

- Specified user account for each employee
- Authentication with password

- Authentication via Active Directory
- Automated screen lock
- Dedicated network folders for projects and associated data
- Employee hiring and leaving processes.

The access to the systems is regulated by different user levels with different rights adapted to them:

- **Administrators:** The Administrators group has access to most resources. The systems are administrated exclusively by the IT department and the third party service provider.
- **Selected users:** The project staff entrusted with the further processing of the data are provided with the necessary data to fulfil their work and to process the collected data.

### Access to data

The following measures are taken to control access to data:

- Differentiated permissions for different transactions/ functions
- Access-rights are assigned by the IT department (or in certain limited cases, by the Project Manager) according to the specifications of the departments
- Disk encryption
- File encryption
- Secure deletion of data
- Strict password policies
- Regular password changes

### Malware protection

Each ERC user has Antivirus-Software installed. Automatic updates are enabled and monitored by IT. Infected IT systems are immediately disconnected from all networks and are no longer used productively until fully cleaned up. Depending on the extent or type of infestation, reinstallation may be necessary.

### Backup and restore

The data is backed up on hard disks and tapes according to a planned and fixed schedule. The data recovery has been tested. The tapes are stored off-site in secure storage area with a third-party provider.

### Availability

To ensure the availability of the systems, the following measures are implemented:

- Connection to an uninterrupted power supply
- Nightly backups, tapes held off-site with a Third-Party Provider for business continuity purposes.
- Monitoring of the systems, errors can be detected and fixed at an early stage.

## 3 Measures specific to the Services

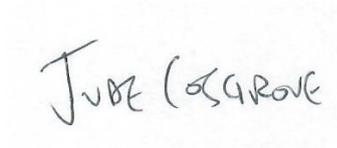
- Each answer sheet is converted into a text file by the ERC. This text file is used to generate the results reports provided to the School.
- The text files are hosted on an encrypted server on the ERC's premises for 3 years. This enables the ERC to re-issue a results report if required.
- The ERC's secure server is only accessible by ERC staff with appropriate access.
- The results reports and answer sheets are returned to the School and are not retained by the ERC.

### APPENDIX 3

#### Subprocessors

Name of Subprocessor	Nature of Services Provided	Location(s) from which Services are Provided	Transfer mechanism relied upon
IT electronics	Technical support services	Ireland	n/a
Kefron	Back-Up Storage Services	Ireland	n/a

Signed for and on behalf of the ERC

A handwritten signature in black ink that reads "JUDE COSGROVE". The signature is written in a cursive style with capital letters.

Print name:

Jude Cosgrove

Position:

Chief Executive Officer

Date:

[•] 2021

Signed for an on behalf of the School

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Print name:

Position:

Date: