

Adapt Consulting Company Limited

AGREEMENT

BETWEEN:

- (1) (the "Data Controller"); STATES OF JERSEY / HIGHLANDS COLLEGE
and
- (2) (the "Data Processor"). TIM HJ ROGERS / ADAPT CONSULTING COMPANY

BACKGROUND

- (A) This agreement is to ensure the protection and security of data passed from the Data Controller to the Data Processor for processing or accessed by the Data Processor on the authority of the Data Controller for processing or otherwise received by the Data Processor for processing on the Data Controller's behalf;
- (B) Paragraphs 11 and 12 of Part 2 of Schedule 1 of the Data Protection (Jersey) Law 2005 place certain obligations upon a data controller to ensure that any data processor it engages provides sufficient guarantees to ensure that the processing of the data carried out on its behalf is secure;
- (C) This agreement exists to ensure that there are sufficient security guarantees in place and that the processing complies with obligations equivalent to those of the 7th Data Protection Principle contained in the Data Protection (Jersey) Law 2005;
- (D) This agreement further defines certain service levels to be applied to all data related services provided by the Data Processor.

IT IS AGREED

1. DEFINITIONS AND INTERPRETATION

1.1 In this agreement:

"Law" means the Data Protection (Jersey) Law 2005;

"Data" means any information of what ever nature that, by whatever means, is provided to the Data Processor by the Data Controller, is accessed by the Data Processor on the authority of the Data Controller or is otherwise received by the Data Processor on the Data Controller's behalf, for the purposes of the Processing specified in clause 3.1(a), and shall include, without limitation, any Personal Data;

"Data Subject", "Personal Data" and "Processing" shall have the same meanings as are assigned to those terms in the Law;

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“Schedule” means the schedule annexed to and forming part of this Agreement;

"Services" means processing of the Data by the Data Processor in connection with and for the purposes of the provision of the services to be provided by the Data Processor to the Data Controller under the Services Agreement; and

“Services Agreement” means the agreement for the provision of services between the Data Controller and the Data Processor identified in the Schedule.

- 1.2 In this agreement any reference, express or implied, to an enactment (which includes any legislation in any jurisdiction) includes references to:
- (a) that enactment as re-enacted, amended, extended or applied by or under any other enactment (before, on or after the date of this agreement);
 - (b) any enactment which that enactment re-enacts (with or without modification); and
 - (c) any subordinate legislation made (before, on or after the date of this agreement) under that enactment, as re-enacted, amended, extended or applied as described in clause 1.2(a), or under any enactment referred to in clause 1.2(b).
- 1.3 In this agreement:
- (a) references to a person include an individual, a body corporate and an unincorporated association of persons;
 - (b) references to a party to this agreement include references to the successors or assignees (immediate or otherwise) of that party.
- 1.4 Clauses 1.1 to 1.3 apply unless the contrary intention appears.

2. APPLICATION OF THIS AGREEMENT

- 2.1 This agreement shall apply to:
- (a) all Data sent from the date of this agreement by the Data Controller to the Data Processor for Processing;
 - (b) all Data accessed by the Data Processor on the authority of the Data Controller for Processing from the date of this agreement; and
 - (c) all Data otherwise received by the Data Processor for Processing on the Data Controller's behalf;

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in relation to the Services.

3. DATA PROCESSING

3.1 In consideration of the undertakings provided by the Data Controller in clause 4, the Data Processor agrees to Process the Data to which this agreement applies by reason of clause 2 in accordance with the terms and conditions set out in this agreement, and in particular the Data Processor agrees that it shall:

- (a) Process the Data at all times in accordance with the Law and solely for the purposes (connected with provision by the Data Processor of the Services) and in the manner specified from time to time by the Data Controller in writing and for no other purpose or in any manner except with the express prior written consent of the Data Controller;
- (b) in a manner consistent with the Law and with any guidance issued by the Data Protection Commissioner, implement appropriate technical and organisational measures to safeguard the Data from unauthorised or unlawful Processing or accidental loss, destruction or damage, and that having regard to the state of technological development and the cost of implementing any measures, such measures shall ensure a level of security appropriate to the harm that might result from unauthorised or unlawful processing or accidental loss, destruction or damage and to the nature of the Data to be protected;
- (c) ensure that each of its employees, agents and subcontractors are made aware of its obligations under this agreement with regard to the security and protection of the Data and shall require that they enter into binding obligations with the Data Processor in order to maintain the levels of security and protection provided for in this agreement;
- (d) not divulge the Data whether directly or indirectly to any person, firm or company or otherwise without the express prior written consent of the Data Controller except to those of its employees, agents and subcontractors who are engaged in the Processing of the Data and are subject to the binding obligations referred to in clause 3.1(c) or except as may be required by any law or regulation;
- (e) in the event of the exercise by Data Subjects of any of their rights under the Law in relation to the Data, inform the Data Controller as soon as possible, and the Data Processor further agrees to assist the Data Controller with all data subject information requests which may be received from any Data Subject in relation to any Data;
- (f) not Process or transfer the Data outside of Jersey except with the express prior written authority of the Data Controller; and

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- (h) allow its data processing facilities, procedures and documentation to be submitted for scrutiny by the Data Controller or its representatives in order to ascertain compliance with the terms of this agreement.

4. OBLIGATIONS OF THE DATA CONTROLLER

- 4.1 In consideration of the obligations undertaken by the Data Processor in clause 3, the Data Controller agrees that it shall ensure that it complies at all times with the Law, and, in particular, the Data Controller shall ensure that any disclosure of Personal Data made by it to the Data Processor is made with the data subject's consent or is otherwise lawful.

5. TERMINATION

- 5.1 This agreement shall terminate automatically upon termination or expiry of the Data Processor's obligations in relation to the Services, and on termination of this agreement the Data Processor shall forthwith deliver to the Data Controller or destroy, at the Data Controller's sole option, all the Data Controller's Data in its possession or under its control.
- 5.2 The Data Controller shall be entitled to terminate this Agreement forthwith by notice in writing to the Data Processor if:-
 - 5.2.1 the Data Processor is in a material or persistent breach of this Agreement which, in the case of a breach capable of remedy, shall not have been remedied within twenty one (21) days from the date of receipt by the Data Processor of a notice from the Data Controller identifying the breach and requiring its remedy; or
 - 5.2.2 the Data Processor become insolvent, has a receiver, administrator, or administrative receiver appointed over the whole or any part of its assets, enters into any compound with creditors, or has an order made or resolution passed for it to be wound up (otherwise than in furtherance of a scheme for solvent amalgamation or reconstruction).

6. GOVERNING LAW

- 6.1 This agreement will be governed by the laws of Jersey, and the parties submit to the exclusive jurisdiction of the Jersey courts for all purposes connected with this agreement, including the enforcement of any award or judgement made under or in connection with it.

7. WAIVER

- 7.1 Failure by either party to exercise or enforce any rights available to that party or the giving of any forbearance, delay or indulgence shall not be construed as a waiver of that party's rights under this agreement.

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8. INVALIDITY

- 8.1 If any term or provision of this agreement shall be held to be illegal or unenforceable in whole or in part under any enactment or rule of law such term or provision or part shall to that extent be deemed not to form part of this agreement but the enforceability of the remainder of this agreement shall not be affected provided however that if any term or provision or part of this agreement is severed as illegal or unenforceable, the parties shall seek to agree to modify this agreement to the extent necessary to render it lawful and enforceable and as nearly as possible to reflect the intentions of the parties embodied in this agreement including without limitation the illegal or unenforceable term or provision or part.

9. ENTIRE AGREEMENT

- 9.1 This agreement and the documents attached to or referred to in this agreement shall constitute the entire understanding between the parties and shall supersede all prior agreements, negotiations and discussions between the parties. In particular the parties warrant and represent to each other that in entering into this agreement they have not relied upon any statement of fact or opinion made by the other, its officers, servants or agents which has not been included expressly in this agreement. Further, each party hereby irrevocably and unconditionally waives any right it may have:

- (a) to rescind this agreement by virtue of any misrepresentation;
- (b) to claim damages for any misrepresentation whether or not contained in this agreement;

save in each case where such misrepresentation or warranty was made fraudulently.

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10. NOTICES

10.1 Notices shall be in writing and shall be sent to the other party marked for the attention of the person at the address set out below. Notices may be sent by first-class mail or facsimile transmission provided that facsimile transmissions are confirmed within 24 hours by first-class mail confirmation of a copy. Correctly-addressed notices sent by first-class mail shall be deemed to have been delivered 72 hours after posting and correctly directed facsimile transmissions shall be deemed to have been delivered instantaneously on transmission providing that they are confirmed as set out as above.

If for the Data Controller: Jo.Falla@highlands.ac.uk

If for the Data Processor: timhjrogers@adaptconsultingcompany.com

SCHEDULE

THE SERVICES AGREEMENT

Services including by not limited to...

Work in support of the CMI Management Programme

Work in support of Highlands College

Reference Emails/PO from

Order No Po00045495, Order No Po00045494, Order No Po00045496

FP.Accountspayableinv@gov.je

SupplyJersey@gov.je,

Reference

Adapt Consulting Company (Supplier 1190637)

Tim HJ Rogers (Supplier 1035896)