

SWGfL and the Service User

Revised GDPR Clause by way of an Addendum to the Service User Agreement

<https://swgfl.org.uk/terms>

This Addendum shall become new clause 14

Data Processing Terms

This Addendum is dated 24 May 2018

1. BACKGROUND

- 1.1. The parties entered into an agreement made between (1) South West Grid For Learning Trust Limited and (2) A Service User (the “**Service User Agreement**”).
- 1.2. Any terms used in this Addendum are defined within the General Data Protection Regulation 2016 (2016/679) (“**GDPR**”) and the Data Protection Act 2018 and any applicable data protection laws and regulations relating to individuals’ privacy as amended from time to time (the “**Data Protection Laws**”) and shall have the meaning given to them in the GDPR, including, without limitation, “**data subject**”, “**controller**”, “**processor**”, “**personal data**” and “**processing**”.
- 1.3. The parties agree that: (i) the Service User is a Controller;; (ii) that SWGfL is a Processor for the purpose of Processing Personal Data pursuant to the Service User Agreement; and (iii) that the RM Education Limited (a Supplier for the purposes of the Service User Agreement) is a Processor for the purpose of Processing Personal Data pursuant to the Service User Agreement.
- 1.4. The parties recognise that SWGfL processes Personal Data as result of or in connection with its performance of its obligations under the Service User Agreement. In light of the changes into the EU data protection regime under the GDPR, this Addendum is intended to ensure compliance of such processing of Personal Data. RM Education Limited also Processes Personal Data in relation to the Service User Agreement, and equivalent terms to this Addendum have been put in place between SWGfL and the RM Education Limited which Service Users may enforce primarily through SWGfL, and in some cases directly.
- 1.5. The parties hereby agree that the Service User Agreement shall be varied as from 25 May 2018, and they agree that this shall be a binding variation to the Service User Agreement.
- 1.6. Any provisions in the Service User Agreement relating to the processing of Personal Data which contradict the clauses in this Addendum shall be updated and replaced in their entirety with the data protection provisions contained in this Addendum. The

parties agree that they shall update any cross-referencing to clause 14 of the Service User Agreement in the future.

2. DATA PROTECTION

With effect from 25 May 2018, clause 14 of the Service User Agreement shall be deleted in its entirety and replaced with the following:

42.1 The parties acknowledge and agree that the processing of Personal Data by SWGfL shall be governed by the terms of this clause.

42.2 To the extent that the Service User collects and passes Personal Data to SWGfL and/or its Suppliers pursuant to the Service User Agreement, the Service User represents, warrants and undertakes that:

42.2.1 the Service User has obtained appropriate authority from all Data Subjects to whom it relates, or has provided them with the requisite information required under the Data Protection Law, to pass the Personal Data to SWGfL and its Suppliers for the purposes for which SWGfL and its Suppliers are permitted to use it and/or as specified by the Service User in writing; and

42.2.2 the Personal Data is accurate and up to date.

42.3 SWGfL shall not permit any Processing of Personal Data by any agent or sub-contractor or other third party without the prior written authorisation of the Service User

42.4 SWGfL and their Personnel shall:

42.4.1 only Process the Personal Data for the purposes of supplying the Services (and for no other purpose whatsoever), and at all times in accordance with Good Industry Practice, the Service User's documented instructions from time to time (including this Service User Agreement) and all applicable Data Protection Laws; and

42.4.2 not transfer, or otherwise directly or indirectly disclose, any Personal Data to countries outside the European Economic Area (EEA) without the prior written consent of the Service Users except where SWGfL or its Supplier(s) is required to transfer the Personal Data by the laws of the member states of the EU or EU law (and shall inform the Customer of that legal requirement before the transfer, unless those laws prevent it doing so). If, at any time, the United Kingdom is not in the EEA and Personal Data is to be transferred from the EEA to the United Kingdom, SWGfL or its Supplier(s) may transfer any Personal Data to the United Kingdom provided that the United Kingdom has been deemed an adequately protective jurisdiction for the purposes of the applicable Data Protection Law and until and unless the United Kingdom has been deemed adequately protective, SWGfL and its Supplier(s) shall only transfer Personal Data to the United Kingdom from the EEA or Process such data in the United Kingdom provided it enters into all further terms with the Service User and completes, maintains and

implements (as applicable) all other actions, measures and safeguards as required to ensure that such transfers and Processing do not breach the obligations of SWGfL or the Service User under Data Protection Law, including, if applicable, the valid execution of the EU model contractual clauses as set out in Decision 2010/87/EU (or, at the Service User's option, any alternative version of those clauses issued by the European Commission or a supervisory authority from time to time) PROVIDED THAT it is hereby acknowledged that the Service User has previously given consent for SWGfL and/or its Supplier to use the Supplier's subsidiary, RM Education Solutions India pvt Ltd ("RMESI"), and the Supplier is permitted to continue to utilise RMESI provided the Supplier shall have entered into EU model contractual clauses with RMESI.

42.5 The Contractor shall ensure that access to Personal Data is limited to SWGfL Personnel who need access to it to supply the Services, and that all Personnel are:

42.5.1 informed of the confidential nature of Personal Data, and that they must not disclose the Personal Data;

42.5.2 are subject to an enforceable obligation of confidence with regards to the Personal Data; and

42.5.3 in the reasonable opinion of SWGfL, reliable and will receive, prior to any Processing of Personal Data, training on data protection matters.

42.6 SWGfL shall implement appropriate technical and organisational measures to protect Personal Data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data Processed by it, including (inter alia) where appropriate:

42.6.1 the pseudonymisation and encryption of the Personal Data;

42.6.2 guaranteeing the ongoing confidentiality, integrity, availability and resilience of processing systems and services;

42.6.3 restoring the availability and access to the Personal Data in a timely manner in the event of a physical or technical incident; and

42.6.4 regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing.

42.7 SWGfL shall provide to any Service User at any time on request a detailed written description of such technical and organisational measures in place.

42.8 SWGfL and its SWGfL Personnel shall:

(a) promptly forward any Data Subject access requests or similar requests / complaints to the relevant Service User; and

(b) within a reasonable period, provide such information and assistance (at no cost to the Service User, unless the information (i) repeats a previous request, (ii) is part of a vexatious request or (iii) in the reasonable opinion of SWGfL and/or its Suppliers, requires SWGfL and/or its Suppliers to incur excessive cost or use excessive resource

to complete (in which case SWGfL and/or its Suppliers shall be entitled to payment of its reasonable charges)) as the Service User may reasonably require in relation to any request from or on behalf of any Data Subject for access, rectification or erasure of Personal Data or activation of any right of a Data Subject, or any complaint, objection to Processing, or other correspondence (including from any Regulatory Body). In no event shall SWGfL or any of SWGfL Personnel respond directly to any such request, complaint or correspondence without the affected Service User's prior written consent unless and to the extent required by law.

42.9 SWGfL shall notify the relevant Service User without undue delay (and in any event within 72 hours) if it suspects or becomes aware of any actual, threatened or potential Personal Data Breach (as defined in the GDPR), including any breach by any SWGfL Personnel, and shall ensure all such notices include full and complete details relating to such breach, in particular:

42.9.1 the nature and facts of such breach including the categories and number of Personal Data records and, if applicable, Data Subjects concerned;

42.9.2 the contact details of the data protection officer or other representative duly appointed by SWGfL or its Supplier(s) from whom the Service User, as appropriate, can obtain further information relating to such breach;

42.9.3 the likely consequences of such breach; and

42.9.4 the measures taken or proposed to be taken by SWGfL and/or any SWGfL Personnel to address such breach and to mitigate any possible adverse effects and the implementation dates for such measures,

and SWGfL shall then:

42.9.5 take immediate steps to remedy the breach or prevent the potential breach or remove the threat;

42.9.6 promptly take measures intended to ensure there is no repetition of the incident in the future;

42.9.7 promptly provide the Service User with appropriate details in writing of the steps and measures taken; and

42.9.8 comply (at no cost to the Service User) with all reasonable requests made by the Service User in respect of the breach or threat.

42.10 SWGfL or any of its SWGfL Personnel shall promptly provide such information and assistance as the Service User may reasonably require (taking into account the level of resource that would be required to fulfil such request) in relation to:

42.10.1 the Service User's decision to undertake a data protection impact assessment where the Service User considers (in its sole discretion) that the type of Processing may result in a high risk to the rights and freedoms of Data Subjects;

- 42.10.2 any approval of the Information Commissioner or other data protection supervisory authority to any Processing of Personal Data, or any request, notice or investigation by such supervisory authority.
- 42.11 SWGfL and its SWGfL Personnel shall on request at any time and on the expiry or termination of the Agreement, (at no cost to the Service User) at the Service User's option either return all of the Personal Data and copies of it in such format as the Service User may require or securely dispose of the Personal Data, except to the extent that any applicable law permits or requires SWGfL to store such Personal Data and SWGfL has promptly demonstrated their legal requirements to the Service User.
- 42.12 SWGfL shall permit the Service User (and any of its authorised representatives) and the Information Commissioner (or its authorised representatives), subject (in the case of the Service User or its authorised representatives) to SWGfL receiving reasonable and appropriate confidentiality undertakings in its favour, access to any of SWGfL's premises, personnel, IT systems and relevant records as may be reasonably required by the Service User upon reasonable notice at any time for the purposes of conducting an audit in order to verify SWGfL's compliance with this clause and Data Protection Laws.
- 42.13 SWGfL shall, on demand, provide the Service User and the Information Commissioner (and/or their authorised representatives) with all reasonable co-operation, access and assistance in relation to each audit.
- 42.14 SWGfL shall permit and contribute to all audits or inspections conducted by the Service User and/or the Information Commissioner (or their authorised representatives) for the purpose of confirming SWGfL's compliance with this clause and the Data Protection Laws.
- 42.15 In SWGfL's reasonable opinion, to the extent that it believes that any instruction received by it is likely to infringe the Data Protection Law or any other applicable law, SWGfL shall promptly inform the relevant Service Users.
- 42.16 The parties shall adhere to the description of processing as set out in the Annex (Description of Processing).
- 42.17 SWGfL shall ensure that any equipment or systems used to store Personal Data is capable of providing such data:
- 42.17.1 to the Service Users;
 - 42.17.2 directly to the Data Subject; or
 - 42.17.3 to any data controller specified by a Data Subject,
- in each case, in a structured, commonly used and machine-readable format within such period of time as is reasonable in all the circumstances following the Service User's written request and, in respect of 42.17.2 and 42.17.3, only in accordance with the Service User's written instructions.

42.18 SWGfL will not be liable for any claim brought by any Data Subject or any Service User arising from: (a) any action or omission by SWGfL to the extent that such action or omission resulted from the Service User's refusal to withdraw its instructions where it has been advised by SWGfL that its instructions may infringe Data Protection Laws; (b) where the Service User's instructions are later found to be in breach of Data Protection Laws, where the Service User knew or should have known that that was an infringing instruction; (c) any claim regarding the accuracy or completeness of the Personal Data initially provided to SWGfL by the Service User; or (d) a related breach by any Service User under this Agreement or Data Protection Laws.

42.19 The Service User shall indemnify and hold harmless SWGfL against all costs, claims, losses, damages and expenses (including legal expenses) arising out of, or in connection with, any breach of this clause 42 by the Service User and/or its employees, agents and/or sub-contractors.

42.20 SWGfL shall (at no cost to the Service User) restore or recreate (in a timely manner and in accordance with Good Industry Practice) all Personal Data which is lost, deleted or corrupted by SWGfL or any of the Processor Personnel in breach of this clause.

42.21 SWGfL shall keep detailed, accurate and up-to-date records relating to its Processing of Personal Data to the extent it is required to do so by Data Protection Laws, and shall make available to the relevant Service Users on request (at no cost to the Service User) all information necessary to demonstrate compliance with the obligations laid down in this clause.

42.22 SWGfL shall supply the Services in such a way as to ensure compliance with all Data Protection Law and this clause and, subject to clause 42.23 below shall not place the Service User in breach of Data Protection Law.

42.23 The Service User agrees to comply with its obligations under Data Protection Laws and will ensure it has all necessary consents and notices in place in relation to its collection, processing and provision of Personal Data, to enable the lawful transfer of the Personal Data to SWGfL in connection with, and for the duration of, the Services provided under the Agreement.

The continued receipt of the Services set out in the Service User Agreement by a Service User beyond 25 May 2018 shall be deemed as acceptance of this Addendum.

Annex

Description of Processing

The processing of Personal Data is as follows:

The processing may be undertaken by SWGfL and/or its Supplier(s) on up to approximately 1 million data subjects (being approximately 200,000 adults (including employees of Connected Establishments) and approximately 800,000 children (being learners within Connected Establishments)).

The purpose of the processing is primarily to offer and provide goods and services to existing and prospective Service Users, such goods and services being as described in the Service User Agreement (as amended) and including a range of network and software services, and a range of associated support and maintenance services. Other purposes for processing include meeting obligations set out in the Service User Agreement; meeting other statutory obligations; promotion of the Services; and for service management and quality control purposes.

Personal data shall be collected directly from the Data Subject; from Service Users, from external sources; and from existing internal sources.

Personal data shall be stored on secure systems within the UK and on systems within or outside the EEA pursuant to the Addendum.

Data subjects

The Personal Data concern the following categories of data subjects:

1. Service Users and/or representatives of Connected Establishments (being both existing and prospective Service Users and/or representatives);
2. Authorised users of IT systems within Connected Establishments (including, for example, teachers and learners); and
3. Individuals providing goods and/or services to Connected Establishments with which the Services interface (including, for example, technical support companies).

For the purposes of this Description of Processing, references to a Service User and/or Connected Establishment shall include all authorised users of the Services and the Service User's IT systems.

Purposes of the Processing

The processing is necessary for the following purposes:

1. Deployment of the Services; and
2. Support for the Services.

Categories of data

The Personal Data processed fall within the following categories of data:

1. Contact details for Service Users;

2. Financial details for Service Users;
3. Location details for Service Users;
4. Biographical information relating to Service Users;
5. Workplace, employment and education information relating to Service Users;
6. IP addresses of Service Users;
7. Account user names and credentials for systems provided to Service Users;
8. Correspondence to and from Service Users relating to the operation and management of the Services and/or the other legitimate activities of the Contractor; and
9. Any other Personal Data provided by Service Users.

Special Categories of Data / Sensitive Data (if appropriate)

The Personal Data processed fall within the following categories of sensitive data (please specify):

Though SWGfL does not usually require it, Service Users may provide information classified as Special Category Personal Data from time to time, including:

1. race;
2. ethnic origin;
3. politics;
4. religion;
5. trade union membership;
6. genetics;
7. biometrics (where used for ID purposes);
8. health;
9. sex life; or
10. sexual orientation.

Instructions with regards to the processing of Personal Data:

SWGfL and its Suppliers shall process the Personal Data only in accordance with terms of the Service User Agreement and this Addendum and the instructions received in writing by the Service User from time to time.