

# CUSTOMER MASTER DATA SERVICE ACCESS AGREEMENT

## BACKGROUND AND IMPORTANT NOTICE

The Chancellor, Masters and Scholars of the University of Cambridge, acting through its department Cambridge University Press & Assessment (**Cambridge**), The British Council and IELTS Australia Pty Ltd (**IELTS Australia**) are the joint owners of intellectual property in and relating to the IELTS exam as defined in an agreement between the three parties. For the purposes of this access agreement, The British Council, Cambridge and IELTS Australia are referred to jointly as The Partners ("**The Partners**"). The Partners have developed shared service software for use in relation to the IELTS exam known as Customer Master Data Service ("**CMDS**") and own all intellectual property rights in CMDS. Pursuant to this access agreement (this "**Agreement**") The Partners grant a non-exclusive licence to the User (the "**User**"), to whom access was issued; the User's log in and access to CMDS shall be deemed to be the User's acceptance of this Agreement to use CMDS and the User agrees that any use of CMDS shall be strictly in accordance with the terms of this Agreement.

Permission to use CMDS is subject to the terms set out below. Do not access CMDS unless you have read and accepted all the terms of this Agreement and wish to take a licence of CMDS.

IT IS HEREBY AGREED as follows:

### **1 Grant of Access**

1.1 In consideration of the User accepting and abiding by the terms and conditions of this Agreement, The Partners grant to the User a non-exclusive, non-transferable access to use CMDS ("**Access**"). Throughout this agreement, Access includes any use of the CMDS website together with any instruction manuals and/or other information associated with or contained in CMDS, whether in electronic form or otherwise.

1.2 The User shall not sub-license, re-distribute, re-sell, disassemble, reverse-engineer, lease, loan, copy, reproduce, modify or adapt Access or CMDS, or create derivative works based on the whole or any parts of CMDS.

1.3 The User shall only use CMDS for their internal business purposes associated with IELTS and shall not grant unauthorised access to CMDS to other individuals or third parties.

### **2 Acceptance**

2.1 The terms and conditions of this Agreement are deemed to be accepted by the User upon the User's log in and access to CMDS.

### **3 User Obligations**

3.1 The User undertakes to ensure the accuracy and timeliness of any and all information entered on CMDS; and to comply with all domestic and international

laws, regulations and obligations for the protection of individuals with regard to the processing of personal data by the use of CMDS.

3.2 The User further warrants and undertakes that the User shall in no circumstances whatsoever use or present documentation, reports or other information generated or created by CMDS as official certification by any of The Partners.

3.3 The User acknowledges that, as between the Partners and the User, the Partners shall own all intellectual property rights subsisting in the data the User inputs into CMDS.

3.3 The User shall: (a) not delete, erase or otherwise remove any data stored or contained in the CMDS; (b) keep a secure password for their use of CMDS; and (c) keep their password confidential.

#### **4 Exclusion of Warranties and Limitation of Liability**

4.1 The Partners provide Access to the User on an 'as is' basis and all conditions, warranties, terms and undertakings, express or implied, whether by statute, common law, trade practice, custom or otherwise (including without limitation as to quality, performance or fitness for purpose) in respect of the package are excluded to the fullest extent permissible by law.

4.2 The Partners shall not be liable for any special, indirect or consequential damages including any lost profit or savings arising out of or in connection with Access by the User.

4.3 The Partners shall be under no liability to the User or any potential or actual test taker with respect to anything related to the accuracy or timeliness of any information entered onto CMDS by the User.

4.4 Subject to clauses 4.2, 4.3 and 4.5, The Partners' maximum aggregate joint liability to the User in relation to use of the CMDS whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to one thousand pounds sterling (£1,000).

4.5 Nothing in this Agreement shall limit or exclude the Partners' liability for: (a) death or personal injury resulting from our negligence; (b) fraud or fraudulent misrepresentation; or (c) any other liability that cannot be excluded or limited by law.

4.6 The User acknowledges that CMDS has not been developed to meet the User's individual requirements, including any particular cybersecurity requirements, and that it is therefore the User's responsibility to ensure that the functions and facilities of CMDS meet the User's requirements.

#### **5 Intellectual Property Rights**

5.1 The User acknowledges that CMDS and the related documentation is the subject of copyright. The User shall not during or any time after the expiry or termination of this Agreement permit any act which infringes that copyright and, without limiting the foregoing, the User specifically acknowledges that it may not copy the program.

5.2 The User acknowledges that any and all of the trademarks, trade names, copyright, patents and other intellectual property rights anywhere in the world used or embodied in or in connection with CMDS shall be and remain the property of The Partners.

5.3 The User acknowledges that it is only granted those rights specified in this Agreement.

## **6 Confidential Information**

6.1 The User undertakes that they shall keep confidential and shall not disclose to third parties any information disclosed to them through use of CMDS, which shall include all data, documentation, source or object code or other information of any kind whatsoever. The User hereby agrees that it shall use the same solely in accordance with the provisions of this Agreement and that it shall not at any time during or after expiry or termination of Access and/or this Agreement, disclose the same, whether directly or indirectly, to any third party unless required to do so by law or with the written permission of The Partners.

6.2 The User further agrees that it shall not itself or through any agent modify, vary, enhance, copy, sell, lease, license, sublicense or otherwise deal with Access or CMDS itself or any part or parts or copies thereof, or have any program written or developed for itself based on any confidential information supplied through use of CMDS.

## **7 Termination**

7.1 The Partners may immediately suspend or terminate the User's Access and/or this Agreement, and remove any and all User information from CMDS, forthwith if the User, in The Partners' opinion, is in breach of any term, condition or provision of this Agreement.

7.2 Termination, howsoever or whenever occasioned, shall not affect any rights and remedies The Partners may have under this Agreement or in law.

7.3 On termination for any reason: (a) all rights granted to the User under this Agreement shall cease; and (b) the User must immediately cease all activities authorised by this Agreement.

## **8 General**

8.1 The User shall not assign or otherwise transfer all or any part of its Access or this Agreement.

8.2 The Partners shall not be under any liability to the User in respect of anything which, apart from this provision, may constitute breach of this Agreement arising by reason of circumstances, in the opinion of The Partners, beyond its control.

8.3 Failure or neglect by The Partners to enforce at any time any of the provisions hereof shall not be construed nor deemed to be a waiver of any rights hereunder nor in any way affect the validity of the whole or any part of this Agreement.

8.4 Nothing in this Agreement confers or purports to confer on any third party other than The Partners any benefit or any right to enforce any term of this Agreement.

8.5 In the event that any of these terms and conditions or provisions shall be determined invalid, unlawful or unenforceable to any extent such term, condition or provision shall be severed from the remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.

8.6 This Agreement constitutes the final, complete and exclusive agreement and understanding between The Partners and the User, and supersedes all previous

communications, representations or agreements, whether written or oral, with respect to the subject matter hereof.

8.7 The parties hereby agree that this Agreement shall be construed in accordance with and be subject to English law and all disputes shall be subject to the non-exclusive jurisdiction of the High Court of Justice in England and Wales.