learningpool

(1) Learning Pool Limited

– and –

(2) «Company_Name»

Adapt Agreement

Please return two signed copies of this document to:
Learning Pool Ltd, 100 Patrick Street,
Derry, Northern Ireland, BT48 7EL

Agreement

PARTIES:

1   "**LP**": Learning Pool Limited a company incorporated in Northern Ireland under number NI060102, whose registered office is at Old City Factory, 100 Patrick Street, Derry, BT48 7EL.

2   "**Client**": [Name & Address]

The following are the terms and conditions under which LP licenses the Software (as defined below) to the Client.

Operative Provisions:

1. INTERPRETATION

1.1   In this agreement unless the context otherwise requires:

"Client Materials" means the materials created by the Client using the Software;

"**Commencement Date**" [MMDDYYY]   ];

"**Intellectual Property**" means any trade or business name (including service marks), patent, copyright, registered or unregistered design right, database right, registered or unregistered trade mark, know how (including trade secrets and confidential information), any similar or analogous rights to any of the above, or any other intellectual property rights in any part of the world;

"**Fee**" as set out in schedule 3 being the annual fee payable in respect of using the Software or as otherwise communicated to the Client in writing by LP from time to time;

"Modification" means any upgrades or new versions of the Software made available by LP from time to time;

"Software" means Adapt Software as well as related documentation including without limitation any accompanying documentation and user manual and references to the Software include reference to any part thereof and references to the Software include any Modifications from time to time. For the avoidance of doubt the parties acknowledge that LP is not under any obligation to make Modifications available;

"Term" a Year from the Commencement Date and thereafter on a year to year basis until terminated by either party giving at least 30 days written notice that such party does not wish to continue the Agreement after expiry of that year;

"**Working Day**" means a day other than Saturday or Sunday or a public holiday; and

"**Year**" means the period of 12 months from the Commencement Date and each consecutive period of 12 months thereafter during the Term.

1.2   In this agreement a reference to (i) a clause or a paragraph is a reference to a clause of this agreement (other than the Schedules) or a paragraph of the relevant Schedule; (ii) either party or the parties includes its or their respective successors in title and permitted assignees; (iii) a person includes a body corporate, unincorporated association, partnership or other legal entity;

1.3   In this agreement (i) the singular includes the plural and vice versa; (ii) words importing any gender include any other gender; (iii) where an expression is qualified by one or more examples preceded by the word "including", it shall not limit the general scope of that expression.

1.4   The headings in this agreement are for convenience only and shall not affect its interpretation.

2. LICENCE

2.1   In consideration of the Client's acceptance to the terms of this Agreement and subject to payment of the Fee (payable annually in advance) LP grants to the Client a limited non-exclusive licence to use the Software for the Term in accordance with clause 3 below subject only to early termination in accordance with clause 9.

2.2   Payment of the Fee (including VAT) is due within 30 days of the date of LP's invoice unless otherwise specified in writing by LP. Time for payment shall be of the essence and no payment shall be deemed to have been received until LP has received cleared funds.

2.3   The Fee and any other amounts payable by the Client to LP pursuant to this agreement are exclusive of any value added tax, which the Client shall be additionally liable to pay at the applicable rate from time to time, subject to receipt of a valid VAT invoice.

2.4   The Client shall make all payments due under this agreement without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Client has a valid court order requiring an amount equal to such deduction to be paid by LP to the Client.

2.5   If the Client fails to pay in full on the due date for payment any amount which is payable to LP pursuant to this agreement then, without limiting any other rights LP may have, the amount outstanding shall bear interest, both before and after any judgment, at 5% above the Bank of England base rate from time to time accruing on a daily basis from the due date until payment is made in full.

3. PERMITTED USE

3.1   As licensee of the authorised copy of the Software, and provided that the Client has paid the applicable Fee, the Client may, subject to the following conditions use (and permit its employees to use) the Software on a computer system which is under the control of the Client, subject to a maximum of [XX] named users and a user's account may not be shared with any other individual. The Client will be responsible for all users' compliance with this Agreement and is liable for the acts and omissions of all users relating to this Agreement. Users must be staff of the Client and excludes contractors or other third parties;

3.2   The Client shall during the Term effect and maintain adequate security measures to safeguard the Software from access or use by any unauthorised person, shall retain the Software and all copies thereof under the Client's effective control and shall maintain a full and accurate record of the Client's copying of the Software/accompanying materials and produce such record to the Client on request from time to time.

3.3   The Client shall notify LP immediately if it becomes aware of any unauthorised use of the whole or any part of the Software by any person.

3.4   The Client may store Client Materials on the Software subject to such storage limitations or restrictions as LP may set from time to

time. LP may at its discretion make extra storage available to the Client on payment of additional storage charges. LP does not guarantee or warrant that any particular storage capacity will be made available or maintained and LP reserves the right to vary the storage facility from time to time. 3.5 It is agreed and acknowledged that the Software is hosted and accordingly that the Client Materials stored on the Software will be hosted within the EEA. It is acknowledged that the storage of the Client Materials may involve the transfer, storage and processing of data in the EEA and the Client specifically consents to this. LP shall not change the hosting location without the Client's prior written consent (such consent not to be unreasonably withheld or delayed).

4. RESTRICTIONS

The Client shall not, nor permit others to:-

a) Sub-licence, assign, rent, lease or transfer the licence or the Software or make or distribute copies of the Software except as permitted by this Agreement;

b) reverse engineer, decompile, disassemble, amend, modify, vary, adapt, translate, create derivative works based on the Software or perform any similar type of operation on the Software (or any materials accompanying the Software);

c) vary, delete or obscure any notices of proprietary rights or any product identification or restrictions on or in the Software; or

d) make the Software available to or use same for the benefit of anyone other than those authorised in clause 3.1(a) above or otherwise permit or facilitate the unauthorised use of or access to the Software by any person. The Software may not be accessed by more than the maximum number of users specified in clause 3.1(a) above;

e) use the Software to store or transmit infringing, libellous or otherwise unlawful or tortious material or to store or transmit material in violation of third party privacy rights.

5. UNDERTAKINGS

5.1 The Client hereby undertakes to ensure that, prior to use of the Software by the Client's employees or agents, all such parties are notified of this licence and the terms of this Agreement.

5.2 The parties undertake to comply with the provisions of the Data Protection Act 1998 and any related legislation in so far as the same relates to the provisions and obligations of this Agreement.

6. OWNERSHIP OF SOFTWARE, MATERIALS AND COPIES

6.1 LP shall at all times retain ownership of the Software and any Intellectual Property therein. All rights not expressly granted to Client are reserved by LP.

6.2 The Client owns all rights in and to the Client Materials. LP may access the Client Materials stored on the Software in accordance with this Agreement and to respond to service or technical problems or at Client's request. For these purposes the Client hereby consents to LP accessing same.

7. CLIENT INDEMNITY

The Client hereby indemnifies and agrees to hold fully indemnified LP against all claims, costs, proceedings, demands, losses, damages or liabilities arising as a result of any breach or non-performance by the Client of any of the terms contained in this Agreement including without limitation a breach by the Client of its obligations under application Data Protection legislation, that the Client Materials, or Client's use of the Software in breach of this Agreement, infringes the rights of or has otherwise harmed a third party.

8. LIABILITY

8.1 The following provisions set out the entire financial liability of LP to the Client in respect of any breach of these terms and any representation, statement or tortuous act or omission including negligence arising under or in connection with this agreement.

8.2 Nothing in these terms excludes or limits the liability of LP for death or personal injury caused by LP's negligence or affects the Client's statutory rights as a consumer (if the Client is contracting as a consumer).

The Client's attention is in particular drawn to the provisions of condition 8.3

8.3 Subject to clauses 8.1 and 8.2:

a) LP's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the yearly Fee under this agreement and subject to that overall limit to the part of any loss suffered which is proportionate to its responsibility;

b) LP does not warrant that this Software will meet your requirements or that its operation will be uninterrupted or error free. LP excludes and expressly disclaims all express and implied warranties or conditions not stated in this Agreement (including without limitation:-

(i) loss of profit;
(ii) loss of business;
(iii) depletion of goodwill and/or similar losses);
(iv) loss of anticipated savings;
(v) loss of goods;
(vi) loss of contract;
(vii) loss of use;
(viii) loss or corruption of data or information; or
(ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses)

And the Client acknowledges and agrees that the limitations contained in this clause are reasonable in the light of all the circumstances.

9. TERMINATION

9.1 All Client Materials stored on the Software will be deleted by LP on termination or expiry of this Agreement. It is the Client's responsibility to ensure any Client Materials stored on the Software are appropriately saved or backed up elsewhere both

on an ongoing basis during the Term and on termination or expiry of this Agreement.

9.2   Without limiting any other right or remedy which it might have, either party may terminate this Agreement immediately on giving notice in writing to the other party if:

a)   The other party commits any serious breach of any term of this Agreement and (in the case of a breach capable of being remedied) fails to remedy the breach, within **[**30**]** days after the receipt of a request in writing to do so;
b)   any distress or execution shall be levied upon any of the other party's goods;
c)   the other party offers to make any arrangement with its creditors;
d)   the other party commits an act of bankruptcy, any petition in bankruptcy is presented against it, it is unable to pay its debts as they fall due, or if being a limited company any resolution or petition to wind up (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented;
e)   a receiver administrator administrative receiver or manager shall be appointed over the whole or any part of the other party's business or assets;
f)   the other party ceases or threatens to cease to carry on business; or
g)   anything similar to any event specified above under the law of any foreign jurisdiction occurs.

9.3   LP may terminate this Agreement immediately on giving notice in writing to the Client if   the Client fails to pay any sum due under the terms
of this Agreement and such sum remains unpaid for 14 days after written notice from LP that such sum has not been paid.

9.4   Any termination of this Agreement (howsoever caused) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision in this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

9.5   Failure or delay by LP in enforcing or partially enforcing any provision of this agreement will not be construed as a waiver of any of its rights under this agreement and any waiver by LP of any breach of, or any default under, any provision of this agreement by the Client will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of this agreement.

9.6   The termination or expiry of this agreement shall not affect any payment which is owing by either party to the other or any other accrued rights of either party.

10. FORCE MAJEURE

Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that party. If such circumstances continue for a continuous period of more than **[**90 days**]**, the non-affected party may terminate this Agreement by written notice to the other party.

11. NATURE OF AGREEMENT

11.1   The Client shall not be entitled to assign this agreement or any part of it without the prior written consent of LP, such consent not to be unreasonably withheld or delayed. LP may assign or subcontract this agreement or any part of it to any person, firm or company.

11.2   This agreement contains the entire agreement between the parties with respect to its subject matter and save as set out above may not be varied except by a written agreement between the parties.

11.3   If any provision of this agreement is held by any court or other competent authority to be invalid or unenforceable in whole or in part, this agreement shall continue to be valid as to its other provisions and the remainder of the affected provision.

12. APPLICABLE LAW AND JURISDICTION

The formation, existence, construction, performance, validity and all aspects of this agreement shall be governed by Northern Irish law and the parties submit to the non-exclusive jurisdiction of the Northern Irish Courts.

13. NOTICES

13.1   A notice will be validly given only if it is in writing and (i) hand delivered, (ii) sent by first class post (or air mail if overseas) or recorded delivery, or (iii) electronic mail, to the party in question at the address or email address set out in this agreement or such other address or email address as the party in question may specify by notice.

13.2   In the absence of evidence of earlier receipt, a notice is deemed given:

a) if hand delivered, when left at the relevant address;

b) if sent by post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting it (exclusive of the day of posting) or if sent by air mail, six days after posting it (exclusive of the day of posting); and

c) if sent by electronic mail, on a Working Day prior to 4.00pm, at the time of transmission or sending and otherwise on the next Working Day.

13.3   Each party shall immediately give notice to the other of a change in its address or email address.

SIGNED BY _____
For and on behalf of
LEARNING POOL LIMITED

PRINT: _____

Position: _____

SIGNED BY _____
For and on behalf of:
Client Name

PRINT: _____

Position: _____

![learningpool logo]

Schedule 1

The Client

Name: «Company_Name»

Address: «Address»

Users: «Users»

Schedule 2

The address, email address and fax number of each party for sending notices is:

Contact for LP: Contract administration team

Address   Old City Factory, 100 Patrick Street, Derry, BT48 7EL

Email: hello@learningpool.com

Phone: +44 (0) 2871 277 884

Contact: «Contact»

Address: «Company_Name» «Address»

Email: «email»

Schedule 3

Commencement Date: «Commencement_Date»

Term: x years from the Commencement Date

Fee: Fee: <<Total subscription value>> Plus VAT. The sum of <<Year 1>> is payable on the commencement date with the sum of <<year 2>> payable on one year after the commencement date.

Service: Adapt Builder

Schedule 4

The following technology is provided under this contract:

Adapt Builder
Adapt Builder is an online e-learning content builder available by logging into http://adapt.learningpool.com. Adapt Builder provides functionality to:
1. Create e-learning content that can be viewed on a range of devices
2. Customise and update content
3. Create and apply branding to existing content
4. Publish e-learning in a range of outputs