

AGREEMENT

between

The Scottish Further and Higher Education Funding Council, an organisation established under the Further and Higher Education (Scotland) Act 2005 and having its principal place of business at Donaldson House, 97 Haymarket Terrace, Edinburgh EH12 5HD ("**SFC**");

and

[Insert name of company], a **[insert private or public]** company **incorporated in [insert country]** (company number **[insert company number]**) and having its registered office at **[insert address]** (the "**Contractor**").

BACKGROUND

The Contractor has agreed to deliver to SFC certain computer software, to grant to SFC a licence to use such software and the documentation to be provided with it, and to provide the support and maintenance and other services described in this Agreement.

NOW IT IS THEREFORE AGREED AS FOLLOWS

1 DEFINITIONS AND INTERPRETATION

1.1 The expressions which follow are given these meanings unless the context in which they are used requires a different meaning:

"Accessibility Standards" means the requirements of (a) any SFC policy which is notified to the Contractor from time to time (b) the EA Guidance and (c) any other applicable British, European or international standards, in each case

regarding either usability and/or accessibility and which are applicable to the Licensed Materials;

"Agreement" means this agreement together with the Schedule, as may be amended from time to time;

"Anti-Corruption Laws" means (a) the United Kingdom Bribery Act 2010; and (b) any anti-bribery or anti-corruption related provisions in criminal and competition Laws and/or anti-bribery or Anti-Corruption Laws of the jurisdiction in which the Contractor provides the Services, together with any amending, consolidating or successor legislation or case law which has effect from time to time in the relevant jurisdiction;

"Anti-Discrimination Laws" means (a) the United Kingdom Equality Act 2010; and (b) any equal opportunities related Laws, regulations, bye-laws, UK or EU or international standards from time to time applicable, together with any amending, consolidating or successor legislation or case law which has effect from time to time in the relevant jurisdiction;

"Business Day" means a day on which SFC is open for business in Edinburgh;

"Change of Control" means that there has been a direct or indirect change of ownership of the Contractor resulting overall in more than 50% of the total voting rights conferred by all shares in the Contractor being held directly or indirectly by a person who did not hold 50% of the voting rights as at the date on which the Agreement was signed by SFC;

"Clause" means a clause of this Agreement;

"Commencement Date" means [insert date];

"Confidential Information" means information that is designated as 'confidential' or which by its nature is clearly confidential;

" Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer" take the meaning given in Data Protection Legislation;

"Current Release" means the most recent Release accepted by SFC under this Agreement or, if no Release has been accepted, the version of the Licensed Software currently provided to SFC;

"Data Loss Event" means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;

"Data Protection Impact Assessment" means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

"Data Protection Legislation" means the GDPR, the LED and any applicable national implementing Laws as amended from time to time (i) the DPA to the extent that it relates to processing of personal data and privacy; (ii) all applicable Law about the processing of personal data and privacy;

"Data Subject Request" means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

"Delivery Date" means the date set out in Part 1 on which the Licensed Materials are to be delivered to SFC;

"Delivery, Installation and Testing Services" means the Services to be provided pursuant to Clauses 2 and 3;

"DPA" means the Data Protection Act 2018;

"EA Guidance" means the Code of Practice on Employment, the Code of Practice on Services, Public Functions and Associations, and/or any other relevant guidance issued from time to time by the EHRC relevant to the Services or Licensed Materials;

"EHRC" means the Equality and Human Rights Commission, a non-departmental public body established on 1 October 2007 under the Equality Act 2006 (or any replacement organisation);

"Environmental Information Regulations" means the Environmental Information (Scotland) Regulations 2004 together with any statutory codes of practice, guidance and decisions issued by the Scottish Ministers, and the Scottish Information Commissioner, respectively in relation to such regulations;

"Equipment" means the equipment listed in Part 1 upon which the Licensed Software is to be operated, including any additional, upgraded or replacement equipment introduced by SFC from time to time;

"Fees" means the Licence Fee and Maintenance Fee;

"FOISA" means the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under this Act together with any statutory codes of practice, guidance and decisions issued by the Scottish ministers and the Scottish Information Commissioner, respectively in relation to the Act and any subordinate legislation;

"Force Majeure Event" means any cause affecting the performance by a party of its obligations under this Agreement arising from acts, events or omissions beyond its reasonable control, but excluding, in the case of the Contractor, Staff or material shortage or any industrial dispute relating to the Contractor,

the Staff or its sub-contractors or any other delay or failure in the Contractor's supply chain;

"**GDPR**" means the General Data Protection Regulation (Regulation (EU) 2016/679);

"**Good Environmental Practice**" means complying with all environmental standards imposed by any applicable laws;

"**Good Industry Practice**" means that the Services will be performed with the standard of skill, care, knowledge and foresight which would reasonably be expected from an experienced person engaged in providing the Services;

"**Intellectual Property Rights**" means any patents, trademarks, rights in designs, get-up, trade, business or domain names, copyrights including rights in computer software and databases (including database rights) and topography rights (in each case whether registered or not and, where these rights can be registered, any applications to register or rights to apply for registration of any of them), and where applicable any goodwill therein, rights in inventions, know-how, trade secrets and other Confidential Information, or any other intellectual property rights which may exist at any time in any part of the world;

"**Joint Controller Agreement**" means the agreement in the form set out in Part 8;

"**Joint Controllers**" means where two or more Controllers jointly determine the purposes and means of processing;

"**Law**" means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of

a relevant court of law, or directives or requirements with which the Processor is bound to comply;

"**LED**" means the Law Enforcement Directive (Directive (EU) 2016/680);

"**Licence**" means the licence granted by the Contractor under Clause 4;

"**Licence Fee**" means the fee which appears in, or which is capable of being calculated in accordance with the terms of Part 3 and which SFC is to pay for the Licensed Materials and the Delivery, Installation and Testing Services. Where any fee is expressed as being payable on a per CPU basis, a CPU shall count as a single CPU regardless of the number of cores or processors contained within such CPU;

"**Licensed Materials**" means the Licensed Software, the Operating Manuals and the Media;

"**Licensed Software**" means the computer programs listed in Part 1 which are either owned by or licensed to the Contractor, including any corrections, improvements, modifications, upgrades or replacements that may be made by the Contractor to, or for, the computer programs at any time;

"**Maintenance Fee**" means the fees payable for the Maintenance Services as set out in Part 3;

"**Maintenance Services**" means the support and maintenance services to be provided by the Contractor as set out in Part 4;

"**Media**" means the physical media set out in Part 1 on which the Licensed Software and the Operating Manuals are recorded or printed;

"**NCC**" means NCC Escrow International Limited;

"Operating Manuals" means the operating manuals, user instructions, online help material, technical literature and other related materials (including any updates from time to time) which are set out in Part 1 and provided to SFC by the Contractor to enable SFC to Use the Licensed Software;

"Part" means a part of the Schedule;

"Previous Releases" means any Releases (other than the Current Release) which have been accepted by SFC and which are being used by SFC;

"Processor Personnel" means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-processor engaged in the performance of its obligations under this Agreement;

"Protective Measures" means the appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Part 7.

"Regulator" means any regulator or regulatory body to which SFC is subject from time to time or whose consent, approval or authority is required so that SFC can lawfully carry on its business;

"Release" means a version of the Licensed Software defined by reference to variations in release numbers (e.g. v. 1, v. 2 etc);

"Schedule" means the schedule attached to and forming part of this Agreement;

"Service Levels" means the required timescales, levels and standards of service (if any) as set out in Part 4;

"Services" means the Delivery, Installation and Testing Services and the Maintenance Services;

"SFC Property" means all items of property (including equipment) issued to the Contractor by or on behalf of SFC for the purpose of carrying out the Services;

"Specification" means the specification for the Licensed Software set out in Part 2 describing its operations, function, performance and other characteristics;

"Staff" means those persons employed or engaged by the Contractor from time to time to provide the Services. The definition of "Staff" will also include the staff of any sub-contractor appointed under this Agreement who are providing the Services from time to time;

"Sub-processor" means any third party appointed to process Personal Data on behalf of that Processor related to this Agreement;

"Substantial Disposal" means a sale or other disposal of the whole or a substantial part of the business or assets of the Contractor;

"Use" means any use of the Licensed Materials; and

"2006 Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) or any regulations which replace or amend these.

- 1.2 Unless the context requires a different interpretation, the following rules shall be used to interpret this Agreement:

- 1.2.1 any reference to a provision of a statute includes references to: (a) that provision as amended, extended or applied by any other provision regardless of whether the other provision became Law before or after this Agreement; (b) any re-enactment of that provision (with or without change); and (c) any regulation, order, code of practice or similar thing having the force of law made (before or after this Agreement) under that provision or any provision falling within (a) or (b) above;
- 1.2.2 words used in the singular tense should be interpreted to include the plural tense and vice versa;
- 1.2.3 any use of the word "including" will not be limited by the words that follow;
and
- 1.2.4 the headings in this Agreement do not affect its interpretation.
- 1.3 In the event of any conflict or inconsistency between them, the terms of the main body of this Agreement will prevail over the terms of the Schedule, and the relevant provisions of the Schedule should be construed accordingly.

2 DELIVERY AND INSTALLATION

- 2.1 The Contractor shall deliver the Licensed Software and Operating Manuals to SFC on the Delivery Date to the premises notified to the Contractor for this purpose, and, if specified in Part 1, install the Licensed Software on the Equipment. SFC may reject any Licensed Materials delivered to it which do not conform to this Agreement.
- 2.2 The Contractor will provide promptly any information which SFC reasonably needs from time to time concerning the delivery and installation of the Licensed Software.

- 2.3 Risk of loss, damage or destruction of the Media will pass to SFC when the Media is delivered to it. If, after delivery, loss, damage or destruction should occur, SFC may ask the Contractor to, and the Contractor will, promptly replace the Media embodying the relevant part of the Licensed Materials and SFC will pay the reasonable cost of the replacement Media. The Contractor will not make any other charge for the replacement.
- 2.4 Where the Contractor is to install the Licensed Software, the Contractor will give SFC a minimum of 5 Business Days' written notice and SFC will permit personnel of the Contractor approved in advance by SFC access to the agreed SFC premises during SFC's normal working hours for this purpose.
- 2.5 The Contractor will access the Equipment and other computing systems of SFC only for purposes expressly authorised by SFC in writing and implement and operate appropriate security measures to ensure only personnel authorised by SFC have access. The Contractor will comply with Good Industry Practice and the policies and procedures of SFC relating to security, which to avoid doubt shall include appropriate levels of data encryption and the implementation and operation of up to date anti-virus software on all of its computing systems which may be linked, directly or indirectly, to the computing systems of SFC.

3 TESTING AND ACCEPTANCE

- 3.1 The Contractor will provide SFC, at the Contractor's cost, with such assistance as SFC may require to carry out tests of the Licensed Software within 10 Business Days of the Delivery Date.
- 3.2 SFC will accept the Licensed Software upon its reasonable satisfaction that it meets the Specification and has correctly processed the test data by achieving the expected results. Acceptance does not in any way affect the rights and

remedies of SFC in the event that any defects or errors in the Licensed Software become apparent thereafter.

- 3.3 If the Licensed Software or any part fails to meet the Specification or process the test data correctly, SFC shall fix a new date for carrying out further tests on the Licensed Software which will be carried out on the same basis as the first tests.
- 3.4 If the Licensed Software or any part fails any subsequent tests under Clause 3.3, or if more than 60 days have passed from the Delivery Date without the Licensed Software being fully accepted by SFC, SFC will be entitled to reject the Licensed Materials and terminate this Agreement immediately on the grounds of the Contractor's material breach of its terms. The Contractor will immediately refund to SFC all sums paid in advance to the Contractor under this Agreement. If the Licensed Materials are rejected then the risk of their loss, damage or destruction passes to the Contractor at that time. Rejection of the Licensed Materials and any refund of any sums paid under this Agreement does not affect any other rights or remedies that SFC may have for the Contractor's breach of this Agreement.

4 LICENCE

- 4.1 The Contractor grants to SFC a non-exclusive, perpetual, irrevocable, worldwide Licence to Use the Licensed Materials.
- 4.2 Without limiting the terms of Clause 4.1, the Licence includes the right for SFC to (a) Use the Licensed Software by running it on any central servers, networks and other computer equipment at any SFC premises; (b) make such copies of the Licensed Materials as SFC needs from time to time for operational, security back-up and disaster recovery purposes and to Use them for these purposes; (c) copy and adapt any Operating Manuals for Use in the course of their business; (d) grant sub-licenses to outsourcing, facilities

management or other similar contractors to Use the Licensed Materials provided that SFC will remain responsible for ensuring that any contractor who is sub-licensed complies with the terms of this Agreement that relate to the Use of the Licensed Materials; and (e) permit their consultants, contractors or agents to Use the Licensed Materials on its behalf for any purpose provided that SFC will remain responsible for ensuring that any contractor who is sub-licensed complies with the terms of this Agreement that relate to the Use of the Licensed Materials.

5 MAINTENANCE SERVICES

5.1 The Contractor shall provide Maintenance Services to support and maintain the Current Release and Previous Releases. Previous Releases shall be supported and maintained by the Contractor for a minimum period of two years after the date on which they ceased to be the Current Release. Thereafter the Contractor shall, if requested, continue to support the Release(s) in use by SFC, subject to payment for its services on its standard time and materials rates.

5.2 The Maintenance Services shall initially be provided by the Contractor for a period of [1 year] ("**Initial Period**"), which SFC may elect to extend for successive 12 month periods by giving the Contractor not less than 30 days written notice prior to the end of the Initial Period or any extension to it.

6 PRICING ARRANGEMENTS

6.1 In consideration of the provision of the Licensed Materials and the performance of the Services by the Contractor, SFC shall pay to the Contractor the Fees.

- 6.2 Unless SFC tells the Contractor at any time to address its invoices to a different address all invoices should be addressed and sent in accordance with the instructions contained in Part 3.
- 6.3 The Fees are inclusive of all expenses incurred by the Contractor, its Staff and its sub-contractors in the provision of the Licensed Materials and the Services and are exclusive of value added tax which shall be paid provided that a valid value added tax invoice has been received by SFC addressed pursuant to Clause 6.2.
- 6.4 SFC will not become liable to pay the Maintenance Fee until the later of the end of the warranty period referred to in Clause 7.5 or the rectification of all errors reported by SFC during such period to SFC's satisfaction. The Contractor shall, however, remain obliged to provide the Maintenance Services during these periods.
- 6.5 Payment of any sums due under this Agreement shall be made to the Contractor within 30 days of receipt of a valid invoice raised in accordance with this Agreement. The Contractor will not issue an invoice before the due date for its payment and will quote the purchase order number(s) allocated by SFC for this Agreement on all invoices. If any payment to the Contractor is delayed other than where Clause 6.6 applies, then (a) the Contractor shall notify SFC in writing, providing a copy of the relevant invoice; and (b) if SFC fails to pay the undisputed invoice or part thereof within 30 Business Days of receiving the Contractor's written notice then the Contractor will be entitled to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. .

- 6.6 SFC will have the right to retain any payments under this Agreement that would otherwise be due to the Contractor where it disputes, in good faith, that the Contractor has properly performed its obligations under this Agreement.
- 6.7 Payment by SFC will not affect any claims or rights which SFC may have against the Contractor. Payment will not amount to any admission by SFC that the Contractor has satisfactorily performed its obligations under this Agreement.
- 6.8 Wherever under this Agreement any sum of money is recoverable from or payable by the Contractor, that sum may be deducted from any sum then due, or which at any later time may become due, to the Contractor under this Agreement or under any other contract with SFC.

7 WARRANTIES AND UNDERTAKINGS

- 7.1 The Contractor warrants and undertakes to SFC that the Licensed Software shall after acceptance by SFC (a) provide the functions, facilities and other characteristics and operate in accordance with the performance levels specified in the Operating Manuals, the Specification and the relevant provisions of this Agreement; (b) be fit for the intended purpose(s) for which SFC will Use it and be free from material defects in design, materials, workmanship and installation; and (c) be free from viruses, worms, trojan horses, cancelbots, and other contaminants and any codes or instructions that may or will be used to access, modify, delete, corrupt, deteriorate, alter or damage any data, files or other computer programs used by SFC.
- 7.2 The Contractor warrants and undertakes to SFC that the Licensed Materials and Services meet the Accessibility Standards applicable at the date(s) on which they are delivered to SFC in terms of this Agreement.

- 7.3 The Contractor warrants and undertakes that it shall perform the Maintenance Services to ensure that the Current Release and any Previous Releases (subject to Clause 5.1) at all times provide the functions, facilities and other characteristics and operate in accordance with the performance levels specified in the Operating Manuals and the Specification and operate in accordance with the relevant requirements of this Agreement.
- 7.4 The Contractor warrants and undertakes to provide the Services in accordance with (a) Good Industry Practice and Good Environmental Practice; (b) all Laws, regulatory requirements, regulations, bye-laws, codes of practice, British Standards and EU or international standards from time to time applicable to the performance of the Services; and (c) all policies and working procedures of SFC made known by SFC to the Contractor; and (d) all lawful and reasonable directions, instructions and requests from SFC.
- 7.5 If at any time within **[12 months]** from acceptance of the Licensed Software in accordance with this Agreement SFC tells the Contractor in writing that any of the warranties in Clause 7.1 have been breached then the Contractor shall at its own expense remedy that breach to the satisfaction of SFC within 30 days or, if shorter, the relevant time periods specified in relation to the performance of the Maintenance Services. The obligation on the Contractor to remedy the breach does not affect any other rights or remedies that SFC may have for the Contractor's breach of the warranty concerned.

8 INTELLECTUAL PROPERTY RIGHTS

- 8.1 The Contractor will not obtain rights in any SFC Property, which will be held at the risk and liability of the Contractor. Upon request by SFC and in any event upon the expiration or termination of this Agreement, the Contractor will at its expense and as directed by SFC promptly return to SFC or destroy any SFC Property provided to the Contractor or its sub-contractors.

- 8.2 The Contractor will indemnify SFC and keep it indemnified against all losses, costs, claims, demands, expenses and liabilities of any nature arising from or relating to the Services and/or the use or possession of the Licensed Materials infringing the Intellectual Property Rights of anyone else or any claim to that effect.
- 8.3 SFC will promptly tell the Contractor in writing if it becomes aware of any allegation of Intellectual Property Rights infringement to which Clause 8.2 applies, and will not make any admission without first obtaining the Contractor's written consent.
- 8.4 If requested to do so by the Contractor, and subject to Clause 8.7, SFC will allow the Contractor at its own cost to conduct and/or settle all negotiations and litigation resulting from any claim to which Clause 8.2 applies. Where, however, SFC is being indemnified by the Contractor in terms of this Clause 8, SFC will be entitled (if it wishes) to elect to participate in the negotiations and/or litigation at its own cost. If SFC makes such an election the Contractor will liaise, consult and co-operate with SFC, and keep it fully informed at all stages of the negotiations and/or litigation.
- 8.5 If the Contractor requests, SFC will give reasonable assistance with any negotiations or litigation as referred to in Clause 8.4 at the Contractor's cost.
- 8.6 If the use or possession of any of the Licensed Materials by SFC is held by a court to constitute an infringement of a third party's Intellectual Property Rights or SFC is given advice by an appropriately qualified adviser that the use or possession of the Licensed Materials is likely to constitute an infringement of a third party's Intellectual Property Rights, then the Contractor will promptly and at its own expense and to the satisfaction of SFC (a) obtain for SFC the right to continue using and possessing the Licensed Materials; or (b) modify or replace the Licensed Materials (without detracting from their

overall performance, functionality and other characteristics) so as to avoid the infringement; or (c) with the written agreement of SFC, which will not be unreasonably withheld, if the terms of (a) or (b) above cannot be accomplished on reasonable terms, or if the claim is not avoided or resolved, remove the Licensed Materials (or if SFC elects, those parts that infringe) from any SFC premises and will refund to SFC any sums paid under this Agreement for the parts removed and SFC will have the right to terminate this Agreement for material breach.

8.7 Notwithstanding Clauses 8.3 to 8.5 above, SFC may elect to retain control over any claim made against it in respect of an alleged infringement. In the event that SFC makes such an election, its remedy against the Contractor will be in damages rather than on an indemnity basis.

8.8 The obligations in this Clause 8 will remain in full force and effect following the termination or expiry of this Agreement.

9 MODIFICATIONS

SFC may modify or combine, at its own expense and responsibility, the Licensed Software with other programs to form a combined work. Any of the Licensed Software included in the combined work will continue to be subject to the terms of this Agreement. Where such other programs are the property of someone else, SFC will be responsible for obtaining all necessary consents to use them with the Licensed Software.

10 CONFIDENTIALITY AND FREEDOM OF INFORMATION

10.1 Except to the extent set out in this Clause 10, the Contractor and SFC will each treat as confidential all Confidential Information obtained from the other under this Agreement and will not, without the prior written consent of the

other, disclose or use such Confidential Information except for the purposes of this Agreement.

- 10.2 Clause 10.1 does not prohibit disclosure of Confidential Information to (a) the receiving party's own employees, agents and permitted sub-contractors who need to know it; (b) the receiving party's auditors, professional advisors, HM Revenue & Customs and any other person having a statutory or regulatory right to request and receive that information (including a Regulator); or (c) a person to whom an assignation has been permitted under Clause 26. Each party will ensure that any person mentioned in this Clause 10.2 is made aware, prior to any disclosure of Confidential Information, that it is confidential and that such person and the receiving party owe a duty to the owner of it to keep it confidential. The receiving party shall be responsible for procuring that such person complies with the duty of confidentiality imposed by this Agreement as if they were a party to it.
- 10.3 Clause 10 does not apply to information which the receiving party can show by reference to documentary or other evidence (a) was rightfully in its possession prior to disclosure to it by the other party; (b) is already public knowledge or which becomes so at a future date (otherwise than as a result of breach of this Clause 10); (c) is received from a third party who is not under an obligation of confidentiality in relation to the information; or (d) is developed independently without access to, or use or knowledge of, the Confidential Information.
- 10.4 The Contractor will not make any announcement or disclosure about this Agreement or its subject matter without the prior written consent of SFC.
- 10.5 Other than as expressly permitted under this Agreement, on termination or expiry of this Agreement for whatever reason, each party shall forthwith cease to use any Confidential Information of the other and shall return on demand,

or at the request of the other, destroy or permanently erase all copies of that Confidential Information in its possession or control, save that either party will be permitted to retain one copy of such part of the Confidential Information for the purposes of and for so long as required by any Law or by judicial or administrative process or its legitimate internal compliance issues.

10.6 The Contractor acknowledges that SFC may disclose any information provided to it by the Contractor:

10.6.1 where obliged to do so by Law;

10.6.2 where it considers (in its absolute discretion) that it is obliged to do so under the FOISA or the Environmental Information Regulations;

10.6.3 through SFC's publication scheme published from time to time in terms of the FOISA; and

10.6.4 to the Scottish Ministers, the Scottish Parliament and any statutory successor to SFC.

10.7 Where appropriate, SFC will use reasonable efforts to inform the Contractor prior to any disclosure or publication of information which, in the reasonable opinion of SFC, the Contractor may regard as confidential to it.

10.8 For the purposes of Clauses 10.6.2, 10.6.3 and 10.7, the Contractor acknowledges that SFC will be entitled to act in accordance with the Scottish Ministers' current guidance on the discharge of the functions by public bodies under the FOISA.

10.9 The Contractor acknowledges that SFC is subject to the requirements of the FOISA and the Environmental Information Regulations and, where SFC asks it to do so, the Contractor shall (and shall procure that its sub-contractors shall)

assist and co-operate with SFC, at the Contractor's cost and expense, to enable SFC to comply with its information disclosure obligations.

10.10 The obligations in this Clause 10 will remain in full force and effect following the termination or expiry of this Agreement.

11 DATA PROTECTION

11.1 The parties acknowledge that for the purposes of the Data Protection Legislation, SFC is the Controller and the Contractor is the Processor unless otherwise specified in Part 7. The only processing that the Processor is authorised to do is listed in Part 7 by the Controller and may not be determined by the Processor.

11.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

11.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

11.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;

11.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;

11.3.3 an assessment of the risks to the rights and freedoms of Data Subjects;
and

11.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

11.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

11.4.1 process that Personal Data only in accordance with Part 7, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;

11.4.2 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:

11.4.2.1 nature of the data to be protected;

11.4.2.2 harm that might result from a Data Loss Event;

11.4.2.3 state of technological development; and

11.4.2.4 cost of implementing any measures;

11.4.3 ensure that:

11.4.3.1 the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Part 7);

11.4.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

11.4.3.2.1 are aware of and comply with the Processor's duties under this Clause;

11.4.3.2.2 are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;

11.4.3.2.3 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and

11.4.3.2.4 have undergone adequate training in the use, care, protection and handling of Personal Data; and

11.4.3.2.5 it shall not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

- i. the Controller or the Processor has provided appropriate safeguards in relation to the transfer in accordance with the Data Protection Legislation as determined by the Controller;
- ii. the Data Subject has enforceable rights and effective legal remedies;
- iii. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and

- iv. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

11.4.4 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

11.5 Subject to Clause 11.6, the Processor shall notify the Controller immediately if it:

11.5.1 receives a Data Subject Request (or purported Data Subject Request);

11.5.2 receives a request to rectify, block or erase any Personal Data;

11.5.3 receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;

11.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

11.5.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

11.5.6 becomes aware of a Data Loss Event.

11.6 The Processor's obligation to notify under Clause 11.5 shall include the provision of further information to the Controller in phases, as details become available.

- 11.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 11.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- 11.7.1 the Controller with full details and copies of the complaint, communication or request;
 - 11.7.2 such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 11.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 11.7.4 assistance as requested by the Controller following any Data Loss Event;
 - 11.7.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 11.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause.
- 11.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 11.10 Each party shall designate its own data protection officer if required by the Data Protection Legislation.
- 11.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:

- 11.11.1 notify the Controller in writing of the intended Sub-processor and processing;
- 11.11.2 obtain the written consent of the Controller;
- 11.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 11 and the requirements of the Data Protection Legislation such that they apply to the Sub-processor; and
- 11.11.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 11.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 11.13 The Controller may, at any time on not less than 30 Business Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 11.14 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Business Days' notice to the Processor amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 11.15 Where the parties include two or more Joint Controllers as identified in Part 7 in accordance with the Data Protection Legislation, those parties shall enter into a Joint Controller Agreement based on the terms outlined in Part 8 in replacement of Clauses 11.1 to 11.14 for the Personal Data under joint control.

12 REGULATORY REQUIREMENTS

The Contractor acknowledges that SFC is subject to regulation by certain Regulators, and the Contractor agrees that it will give SFC all such assistance that it reasonably requires to comply with the requirements of such Regulators.

13 DISPUTES

If a dispute arises under this Agreement which cannot be resolved by the parties' authorised representatives within a maximum of 10 Business Days after it has been referred to them, the dispute shall be referred to the managing director of the Contractor and a senior management representative of SFC for resolution. Should the dispute remain unresolved after such reference, Clause 28 shall apply. For the avoidance of doubt, the provisions of this Clause 13 do not prevent either party from applying for an interim court order at any time.

14 CONTRACTOR PERSONNEL

- 14.1 The Contractor undertakes that it will only use technically competent and properly trained and qualified Staff in the provision and performance of the Services.
- 14.2 The Contractor agrees that it shall, and shall ensure that all members of its Staff shall, comply with any relevant SFC policies and procedures that are in place from time to time and which it is made aware of (including health and safety policies and physical, systems and information security policies).
- 14.3 If SFC requests, the Contractor will provide SFC with the names of all Staff whom the Contractor proposes will carry out the Services (other than those whose duties are purely clerical) together with a description of the part each

member of Staff will play in carrying out the Services, and details of their qualifications, experience and previous employment.

- 14.4 SFC may at any time by notice to the Contractor designate any member of Staff concerned with the provision of the Services as key Staff, and any person referred to in the Agreement as to be concerned with the provision of the Services will be deemed so designated.
- 14.5 The Contractor shall procure that the key Staff are made available to provide the Services, unless otherwise agreed with SFC. SFC reserves the right to interview any person proposed by the Contractor as a replacement for any Staff designated as key Staff, before agreeing to the relevant change.
- 14.6 The Contractor shall comply, and shall procure the compliance of any sub-contractor, with SFC's staff vetting policies notified by SFC from time to time, other than in relation to any person who, at the date of signature of this Agreement, is already employed by the Contractor.
- 14.7 If SFC (acting reasonably) determines that a member of the Staff should be removed from the provision of the Services, SFC will notify the Contractor in writing and the Contractor shall immediately remove that person from the provision of the Services and shall not permit that person to be involved subsequently in the provision of the Services without the prior written consent of SFC.
- 14.8 The Contractor will ensure that any sub-contractor complies with this Clause 14, and for these purposes all references to the Contractor should therefore be read as if they were references to the sub-contractor concerned.
- 14.9 The Contractor agrees to arrange Staff, and, if applicable, procure that any sub-contractor of the Contractor arranges Staff, in relation to the provision of the Services in such a way that no individual is at any time wholly or mainly

assigned to the provision of the Services and consequently that no contract of employment of any individual will transfer from the Contractor (or any sub-contractor of the Contractor) to SFC, or to any new supplier by virtue of the 2006 Regulations, on the cessation or partial cessation of the provision of the Services by the Contractor, or otherwise.

14.10 Notwithstanding Clause 14.9, if the employment of any individual is transferred from the Contractor (or any sub-contractor of the Contractor) to SFC or to any new supplier by virtue of the 2006 Regulations or any person asserts that his employment has so transferred, then SFC or such new supplier may terminate the employment of any such person within thirty (30) Business Days of becoming aware of such transfer or alleged transfer. Whether or not SFC or such new supplier terminates any contract of employment in such circumstances, the Contractor will indemnify SFC and each new supplier against and as a separate obligation undertakes to pay to SFC the amount of, all losses, fines, penalties, awards, liabilities, costs, damages and expenses (including reasonable legal expenses on an indemnity basis) which SFC and/or any such new supplier may suffer or incur and which arise in connection with, or relate to the employment of such a person and/or the termination of their contract of employment.

14.11 Failure by the Contractor to comply with the provisions of this Clause 14 will be a material breach of this Agreement.

15 BUSINESS CONTINUITY

The Contractor will ensure that at all times it has in place and is able to implement a business continuity and disaster recovery plan which will ensure the continued performance and operational resilience of the Services. If required by SFC, the Contractor will explain to SFC how the features set out in such plan will interface with any business continuity and disaster recovery

plans and procedures of SFC notified to the Contractor from time to time. The Contractor shall develop, update and test the plan on a regular basis and, in any event, not less than once in every 12 month period, in accordance with Good Industry Practice. The Contractor shall provide SFC with details of each test results within 20 Business Days, and shall promptly implement any actions or remedial measures which SFC considers necessary as a result of those tests.

16 ESCROW

If requested by SFC at any time the Contractor will, as soon as possible, and in any event no later than 15 Business Days after the date of such request enter into an escrow agreement covering the Licensed Software with SFC and NCC in terms of NCC's current standard single licensee (UK) escrow agreement.

17 FORCE MAJEURE

17.1 Neither SFC nor the Contractor will be liable for any delay in performing their obligations under this Agreement where such delay is directly caused by a Force Majeure Event provided that in the case of the Contractor, it will only have a right to relief in terms of this Clause where there is no failure by the Contractor to provide the back up recovery facilities and services in accordance with the plan referred to in Clause 15.

17.2 Subject to the party who has been delayed promptly telling the other party in writing of the reasons for the delay and the likely duration of the delay, and using its reasonable efforts to continue to perform its obligations under this Agreement and to mitigate the effects of the delay, the performance of that party's obligations will be suspended during the period of the Force Majeure Event so far as it affects the obligations in question and that party will be granted an extension of time for performance equal to the period of the delay. SFC may, if that delay continues for more than 28 days, terminate this

Agreement (but, at its option, not the Licence) immediately on giving notice in writing to the Contractor.

18 LIABILITY

18.1 Neither SFC nor the Contractor will be liable to the other regarding this Agreement for any indirect, special or consequential loss or damages, whether caused by breach of contract or delict/tort (including negligence or breach of statutory duty) or arising in any other way.

18.2 Neither SFC nor the Contractor will be liable to the other regarding this Agreement for any direct loss or damage, whether caused by breach of contract or delict/tort (including any negligence or breach of statutory duty) or arising in any other way, in excess of:

18.2.1 £[],000,000 Sterling in respect of loss or damage to tangible property per claim or series of related claims; and

18.2.2 in other cases, £[],000,000 Sterling per claim or series of related claims.

18.3 The limits and exclusions of liability set out in Clauses 18.1 and 18.2 do not apply to:

18.3.1 any liability of the Contractor under Clauses 8, 10, 11 or 14;

18.3.2 liability for death or personal injury caused by a party's negligence or that of its employees or agents;

18.3.3 loss caused by fraud or fraudulent misrepresentation; or

18.3.4 any loss which by Law cannot be excluded or limited.

19 INSURANCE

The Contractor shall maintain at its own cost sufficient insurance policies with a reputable insurance company to cover potential liabilities which the Contractor may have to SFC under this Agreement. If requested by SFC at any time to do so, the Contractor shall provide SFC with a certificate from its insurers or insurance brokers confirming that the insurance is in force, with cover of no less than the limits of liability set out in Clause 18, and that the relevant premiums have been paid up to date.

20 TERM AND TERMINATION

20.1 This Agreement will come into effect on the Commencement Date.

20.2 This Agreement may be terminated by SFC:

20.2.1 at any time by giving a minimum of 30 days' prior written notice to the Contractor; or

20.2.2 in circumstances in which termination is necessary for the purposes of meeting the requirements from time to time of a Regulator. If such circumstances arise, termination may be effected immediately, or within such period of time as the requirements of the Regulator permit by giving notice to the Contractor to that effect; or

20.2.3 in accordance with Clauses 3.4, 8.6, 17.2, and 25.2 to 25.4 (inclusive); or

20.2.4 immediately or within such period of time as SFC considers reasonably necessary by giving notice to the Contractor, in the event of an act or omission on the part of the Contractor or its sub-contractor which SFC reasonably believes will impact adversely on the reputation of SFC; or

20.2.5 immediately or within such period of time as SFC considers reasonably necessary by giving notice to the Contractor if SFC becomes aware that there has been a Change of Control or a Substantial Disposal provided that SFC will

not be entitled to terminate this Agreement under this Clause 20.2.5 where the Change of Control or Substantial Disposal has been approved by SFC in advance in writing and, for this purpose, the Contractor will notify SFC in writing immediately on becoming aware that any such Change of Control or Substantial Disposal has taken or is due to take place.

20.3 This Agreement may be terminated immediately by either party upon written notice to the other party, if the other party:

20.3.1 ceases to trade or is unable to pay its debts as they fall due, makes an arrangement with its creditors or goes into administration, receivership, liquidation (other than as part of a solvent reorganisation), bankruptcy, judicial factory or any analogous insolvency proceedings in any jurisdiction; or

20.3.2 materially breaches this Agreement, except that where such breach is capable of being remedied, this Agreement may only be terminated where the party in breach has failed to remedy the breach within 30 days of receipt of written notice of the breach. Notwithstanding the foregoing, this Agreement can be terminated immediately where the breach is persistent. A breach of this Agreement will be persistent where the party in breach has already been asked to remedy the breach but it has recurred not less than 2 further times in any continuous period of 12 months.

20.4 Any termination or expiry of this Agreement (however it occurs) will not affect any rights or liabilities of either party that may have accrued before termination or expiry of any provisions of this Agreement that are expressly or by implication intended to come into or continue in force on or after such termination or expiry.

20.5 Where this Agreement is lawfully terminated by SFC, the Contractor will immediately repay to SFC any portion of the Fees which has been paid in advance and which relates to the period after the date of termination, save

where this Agreement has been lawfully terminated by SFC in terms of Clause 20.2.2 in circumstances where the Contractor is not in breach of the terms of this Agreement.

- 20.6 If SFC is entitled to terminate this Agreement under any of the foregoing provisions of this Clause 20 or under any other provision of this Agreement SFC may, instead of terminating this Agreement in whole, but subject always to SFC giving the same minimum notice as is required to terminate this Agreement as a whole terminate the Maintenance Services and in this event the remainder of the Agreement including for the avoidance of doubt the Licence, will remain in full force and effect.

21 TERMINATION ASSISTANCE

Following notice of termination being given or received by the Contractor, or at any time commencing in the three month period prior to expiry of this Agreement, the Contractor will comply (and will ensure that any sub-contractor will comply) with SFC's reasonable directions and will provide SFC with any and all termination assistance reasonably requested by SFC to allow the Services to continue and to facilitate the orderly transfer of responsibility for the provision of the Services to SFC and/or a new supplier. Such assistance will be provided, at the request of SFC, for up to six months following termination or expiry of this Agreement.

22 RIGHTS OF THIRD PARTIES

The parties confirm that it is not their intention to confer any rights on any person who is not a party to this Agreement by virtue of its terms.

23 NO DISCRIMINATION

The Contractor shall, and shall procure that all Staff, and/or sub-contractors shall comply with any applicable Anti-Discrimination Laws and with SFC's

equality and diversity policy as may be amended from time to time, copies of which will be provided by SFC to the Contractor at the Contractor's written request. The provisions of Part 6 will apply, and the Contractor will take all reasonable steps to secure the observance of these provisions by all servants, employees or agents of the Contractor, and all sub-contractors employed in the execution of the Agreement.

24 ANTI-CORRUPTION

- 24.1 The Contractor undertakes to SFC that it will comply with, and that the Services will be performed in accordance with, the Anti-Corruption Laws and that it shall not do, nor omit to do, any act that will lead to SFC being in breach of any of the Anti-Corruption Laws.
- 24.2 The Contractor shall have in place and comply with its own anti-bribery and corruption procedures adequate to ensure that the Contractor complies with the Anti-Corruption Laws ("**Adequate Procedures**"). If requested, the Contractor shall provide to SFC a copy of the Contractor's Adequate Procedures. The Contractor shall promptly implement any amendments to the Contractor's Adequate Procedures which SFC, acting reasonably, considers necessary to ensure that SFC complies with the Anti-Corruption Laws. In any event, the Contractor will comply with any SFC anti-bribery and corruption policies and procedures, notified by SFC to the Contractor from time to time.
- 24.3 The Contractor shall review the Contractor's Adequate Procedures on a regular basis and shall promptly implement and notify SFC of any amendments to the Contractor's Adequate Procedures which it considers necessary for continued compliance with the Anti-Corruption Laws.
- 24.4 The Contractor shall co-operate with SFC and promptly provide SFC with any information or confirmation which SFC requires from time to time in connection with the obligations of the Contractor pursuant to this Clause 24.

This may include enabling SFC, whether itself or through an agent, to conduct an audit of records and information held by the Contractor or its sub-contractors or any other relevant person. The Contractor acknowledges that SFC will place reliance upon the information provided. This obligation shall continue after the expiry or termination of this Agreement.

24.5 The Contractor shall immediately notify SFC in writing of any suspected or known breach of the Contractor's Adequate Procedures or any of the Anti-Corruption Laws which occurred or may have occurred during the term of the Agreement. This obligation to notify SFC shall continue for a period of 5 years after the expiry or termination of this Agreement.

24.6 The Contractor shall ensure that any person employed by it or its sub-contractors or acting on the Contractor's behalf in the provision of the Services complies with the terms of this Clause 24. The Contractor shall be responsible for ensuring that terms equivalent to this Clause 24 are included within any subcontract it uses in relation to the provision of the Services, such that these terms flow down to the subcontractor.

24.7 SFC shall have the right to suspend and/or terminate this Agreement for material breach immediately, or on such other time specified by SFC, upon written notice to the Contractor if:

24.7.1 the Contractor, or any person employed by it or acting on its behalf (whether with or without the knowledge of the Contractor) fails to comply with any of the Anti-Corruption Laws;
or

24.7.2 SFC has a reasonable suspicion that an occurrence as specified in Clause 24.7.1 has occurred.

24.8 In the event of breach by the Contractor of this Clause 24 any exclusions or limitations of liability set out in this Agreement which would otherwise be applicable to the Contractor shall not apply to any claim or loss arising from or connected with such breach and the parties agree that the following losses shall be recoverable from the Contractor by SFC:

24.8.1 any costs or expenses (including reasonable legal fees) incurred by SFC in investigating a breach or suspected breach of this Clause 24:

24.8.2 any fine or penalty paid or imposed on SFC arising from a breach of this Clause 24; and

24.8.3 any other costs or expenses incurred by SFC as a result of a breach of this Clause 24.

24.9 Regardless of any other provision in this Agreement, SFC shall not be obliged to do, nor obliged to omit to do, any act which would, in its reasonable opinion, put it in breach of any Anti-Corruption Laws.

25 CONFLICT OF INTEREST

25.1 The Contractor shall ensure that it has no conflict of interest such as may be likely to prejudice its independence and objectivity in performing this Agreement and undertakes that upon becoming aware of any such conflict of interest during the performance of this Agreement (whether the conflict existed before the award of this Agreement or arises during its performance) it shall immediately notify SFC in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as SFC may reasonably require.

25.2 Where SFC is of the opinion that the conflict of interest notified to it under Clause 25.1 is not capable of being avoided or removed SFC may terminate this Agreement forthwith by written notice to the Contractor.

25.3 Where SFC is of the opinion that the conflict of interest notified to it under Clause 25.1 is capable of being avoided or removed SFC may require the Contractor to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict, and SFC may terminate this Agreement forthwith by written notice to the Contractor:

25.3.1 if the Contractor fails to comply with SFC's requirements in this respect, or

25.3.2 if, in the opinion of SFC, compliance does not avoid or remove the conflict.

25.4 Where SFC is of the reasonable opinion that the conflict of interest existed at the time of the award of this Agreement and could have been discovered with the application by the Contractor of due diligence and ought to have been disclosed in terms of the tender or other documents pertaining to this Agreement, SFC may terminate this Agreement forthwith by written notice to the Contractor and, notwithstanding anything else in this Agreement, no payment shall be due for any Services provided by the Contractor, and in addition SFC may, without prejudice to any other rights, recover from the Contractor any payment made under this Agreement, and the amount of any loss resulting from such termination.

26 ASSIGNATION AND SUB-CONTRACTING

The Contractor will not assign or otherwise transfer this Agreement or any of its rights and obligations under it whether in whole or in part, or sub-contract with any person (including appointing any agent, consultant or contractor) to perform any part of this Agreement, without obtaining SFC's prior written consent. The Contractor will be responsible for any acts, or failures to act, of its sub-contractors as if they were the Contractor's acts or failures to act.

27 GAELIC LANGUAGE

In delivery of Services to SFC, the Contractor will use its reasonable endeavours to support the Gaelic language in accordance with the SFC's obligations under the Gaelic Language (Scotland) Act 2005 and the SFC's Gaelic Language Plan. If requested by the SFC as part of the Services, the Contractor will provide materials in Gaelic to the standards operated by SFC.

28 GENERAL

- 28.1 This Agreement does not create a partnership or joint venture between the parties to it and except as expressly provided in this Agreement neither party will enter into or have authority to enter into any engagement or make any representations or warranties on the other party's behalf, nor will they seek to otherwise bind or oblige the other party in any way. Neither this Agreement nor the provision of the Services is intended to create or imply any employment relationship between SFC and the Staff during the term of this Agreement.
- 28.2 This Agreement (including the Schedule) constitutes the entire agreement between the parties with respect to the subject matter of this Agreement. This Agreement supersedes any previous agreement between the parties relating to the subject matter thereof. Each of the parties acknowledges and agrees that in entering into this Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) other than as expressly set out in this Agreement. Nothing in this Clause 28 shall operate to exclude any liability for fraud.
- 28.3 The Contractor and SFC will each nominate a person with appropriate authority to act as its representative under this Agreement. No variation of this Agreement shall be valid unless it is in writing and signed by authorised representatives of each party.

- 28.4 Any notice to be given pursuant to the terms of this Agreement shall be given in writing to the party due to receive such notice at their address set out in this Agreement or such other address or fax number as may have been notified to the other party in accordance with this Clause 28. Notice shall be delivered personally or sent by first class prepaid recorded delivery or registered post (airmail if overseas) or by facsimile transmission, and shall be deemed to be given in the case of delivery personally on delivery and in the case of posting (in the absence of evidence of earlier receipt) 48 hours after posting (six days if sent by airmail) and in the case of facsimile transmission on completion of the transmission provided that the sender shall have received printed confirmation of transmission.
- 28.5 Should a notice be delivered on a day other than a Business Day, the notice shall be deemed to be given on the next Business Day following the day of actual delivery.
- 28.6 Notices sent by facsimile transmission shall also be sent by first class prepaid recorded delivery or registered post (airmail if overseas) within 24 hours of being sent by facsimile transmission.
- 28.7 If any Clause (or part of a Clause) of this Agreement should be found not to be valid, lawful or enforceable by a court having proper authority or if the Law changes so that it becomes invalid, unlawful or unenforceable to any extent the Clause (or part affected) will be treated as having been deleted from the remaining terms of this Agreement which will continue to be valid. In addition, the parties will use reasonable efforts to replace the deleted Clause (or part) with a valid replacement provision which is as close as possible to the one that has been deleted.
- 28.8 If either party delays or fails to exercise its rights under this Agreement it does not prevent that party from exercising those rights at any time afterwards. In

addition, if a party waives its right on one occasion this does not mean that the party has lost (or waived) these rights on a later occasion. SFC's express rights and remedies under this Agreement are in addition to and are not exclusive of any other right or remedy available to SFC at Law.

- 28.9 The Contractor shall (and shall procure that its sub-contractors shall) maintain appropriate records of work carried out under this Agreement for the duration of the Agreement and for a period of [2] years thereafter. The Contractor shall permit a representative appointed by SFC or a Regulator to conduct an audit of the Services and such records from time to time, by prior arrangement where possible.
- 28.10 The Contractor will tell SFC as soon as it becomes aware of any developments that may have a material adverse impact on the Contractor's ability to meet its obligations under this Agreement. Such developments include (but are not limited to) any relevant material control weaknesses identified by the Contractor's internal or external auditors.
- 28.11 On entering into this Agreement, the Contractor shall notify SFC of all other contracts in terms of which it is providing services to SFC. If, during the term of this Agreement, the Contractor enters into any further contract to provide services to SFC, it shall provide SFC with an updated list of the other contracts in terms of which it is providing services to SFC.

29 LAW

This Agreement is made under Scots law and the Scottish courts will have authority to settle any dispute.

IN WITNESS WHEREOF these presents consisting of this and the [26] preceding pages, and the Schedule in [6] Parts are executed as follows:

Signed for and on behalf of The Scottish Further and Higher Education Funding Council

by..... witness

Authorised signatory

..... name

at..... address

on.....

Signed for and on behalf of [name of company]

by..... witness

Director/Authorised signatory

..... name

at..... address

on.....

This is the Schedule referred to in the Agreement between The Scottish Further and Higher Education Funding Council and [name of company] which precedes this Schedule.

Part 1

- (i) EQUIPMENT
 - (ii) LICENSED SOFTWARE
 - (iii) MEDIA
 - (iv) OPERATING MANUALS
 - (v) INSTALLATION SERVICES
 - (vi) DELIVERY DATE
-

Part 2

SPECIFICATION

Part 3

LICENCE FEE AND MAINTENANCE FEE AND PAYMENT SCHEDULE

Part 4

SERVICE LEVELS/ SERVICE CREDITS

Part 5

MAINTENANCE SERVICES

Part 6

EQUAL TREATMENT

1. For the purposes of this Part 6, references to the "Act" are to the Equality Act 2010 (as amended from time to time).
2. In accordance with the Anti-Discrimination Laws, the Contractor shall not discriminate directly or indirectly, harass or victimise any person on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, or sexual orientation.
3. In relation to the Act, the Contractor shall comply with the provisions of section 41 of the Act in all dealings with any sub-contractors.
4. Where in connection with the Agreement the Contractor, its agents or sub-contractors, or the Staff are required to carry out work at SFC premises, or alongside SFC's employees on any other premises, the Contractor shall, to the extent required to comply with the provisions of section 149 of the Act as if the Contractor were a body within the meaning of section 157 of the Act (or any European equivalent):
 - (a) comply with SFC's own employment policy and codes of practice relating to racial discrimination and equal opportunities, as notified by SFC to the Contractor;
 - (b) monitor its employees by reference to the racial groups to which they belong, in accordance with SFC's procedures for monitoring its own employees; and

- (c) notify SFC forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Contractor under the Act.
5. Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with matters referred to in the Agreement being in contravention of the Act, the Contractor shall, free of charge:
- (a) provide any information requested in the timescale allotted by SFC;
 - (b) attend any meetings as required by SFC, and permit SFC staff to attend relevant meetings at which the Contractor is in attendance;
 - (c) promptly allow access to and investigation of any documents or data deemed to be relevant by SFC;
 - (d) allow itself and any of its Staff to appear as witness in any ensuing proceedings; and
 - (e) co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
6. Where any investigation is conducted, or proceedings are brought which arise directly or indirectly out of any act or omission of the Contractor, its agents or sub-contractors, or the Contractor's Staff in connection with the subject matter of this Part, and where there is a finding against the Contractor in such investigation or proceedings, the Contractor shall indemnify SFC with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment SFC may have been ordered or required to pay a third party.

7. In the event that the Contractor enters into any sub-contract in connection with the Agreement, it shall impose terms on its sub-contractors substantially similar to those imposed on it pursuant to this Part.

8. To the extent that the Contractor's performance of the Services relates to the exercise of public functions by the Contractor, the Contractor shall, and shall procure that its agents and/or sub-contractors, comply with the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (the "**Scottish Regulations**") as if the Contractor were a body within the meaning of the schedule to the Scottish Regulations.

Part 7

DATA PROTECTION

This Part shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Part 7 shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are: [Insert Contact details]
2. The contact details of the Processor's Data Protection Officer are: [Insert Contact details]
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Part 7.

Description	Details
Identity of the Controller and Processor	<p>The parties acknowledge that for the purposes of the Data Protection Legislation, SFC is the Controller and the Contractor is the Processor in accordance with Clause 11.1.</p> <p>[Note: You may need to vary this section where (in the rare case) SFC and Contractor have a different relationship. For example where the parties are Joint Controller of some Personal Data:]</p> <p><i>"Notwithstanding Clause 11.1 the parties</i></p>

	<p><i>acknowledge that they are also Joint Controllers for the purposes of the Data Protection Legislation in respect of:</i></p> <p><i>[Insert the scope of Personal Data which the purposes and means of the processing is determined by the both parties]</i></p> <p><i>In respect of Personal Data under joint control, Clause 11.1 to 11.15 will not apply and the parties agree to put in place a Joint Controller Agreement as outlined in Part 8 instead."</i></p>
Subject matter of the processing	<p><i>[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.</i></p> <p><i>Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public.]</i></p>
Nature and purposes of the processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.</i></p> <p><i>The nature of the processing means any operation such as collection, recording,</i></p>

	<p><i>organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i></p>
Type of Personal Data being processed	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
Plan for return and destruction of the data once the processing is complete.	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>
Protective Measures	<i>[Describe the security measures]</i>

PART 8

JOINT CONTROLLER AGREEMENTS

[Note: insert only where Joint Controller applies in Part 7

In this Part 8 the parties must outline each party's responsibilities for:

- *providing information to data subjects under Article 13 and 14 of the GDPR.*
- *responding to Data Subject Requests under Articles 15-22 of the GDPR*
- *notifying the Information Commissioner (and data subjects) where necessary about data breaches*
- *maintaining records of processing under Article 30 of the GDPR*
- *carrying out any required Data Protection Impact Assessment*

The agreement must include a statement as to who is the point of contact for data subjects.

The essence of this relationship shall be published.

You may wish to incorporate some clauses equivalent to those specified in Clauses 11.2-11.14.

You may also wish to include an additional clause apportioning liability between the parties arising out of data protection; of data that is jointly controlled.

Where there is a Joint Controller relationship, but no controller to processor relationship under the contract, this completed Part 8 should be used instead of Clauses 11.1-11.15.]