

PARTNERSHIP AND SERVICE LEVEL AGREEMENT

between

UNIVERSITY OF THE HIGHLANDS AND ISLANDS

and

SHETLAND UHI LTD

2021

PARTNERSHIP AND SERVICE LEVEL AGREEMENT dated

between

- (1) **UNIVERSITY OF THE HIGHLANDS AND ISLANDS (UHI)** a company limited by guarantee incorporated and registered in Scotland with company number SC148203 whose registered office is at 12B Ness Walk, Inverness IV3 5SQ and a charity registered in Scotland with registered number SC022228 (**UHI**).
- (2) **SHETLAND UHI LTD** a company limited by guarantee incorporated and registered in Scotland with company number SC646337 with registered office at Gremista Industrial Estate, Lerwick, Shetland, ZE1 0PX and a charity registered in Scotland with registered number SC050701 (**Shetland**).

BACKGROUND

- (A) Shetland has been a member of the academic partnership formerly known as the UHI Millennium Institute and now known as the University of the Highlands and Islands since 1999, as provided for in the Existing Academic Partner Agreements.
- (B) UHI is designated under the FHE Acts as the regional strategic body with responsibility for securing the provision of a high quality portfolio of fundable further education and fundable higher education in the localities of the UHI Partners.
- (C) Shetland is a provider of Further Education and Higher Education assigned to UHI by the Assigned Colleges Order.
- (D) UHI and Shetland have agreed to enter into this Agreement to provide for the delivery of Further Education and Higher Education by Shetland.

AGREED TERMS

1. **INTERPRETATION**

1.1 In this academic partner agreement, the following definitions apply:

Academic Council: the UHI Academic Council constituted under the Articles of Association of UHI.

Academic Freedom: has the meaning attributed to it by section 26(4) of the Further and Higher Education (Scotland) Act 2005.

Academic Quality Framework: the University academic quality framework academic standards and regulations, and associated policies and procedures as

such regulations, policies and procedures may be issued, amended, supplemented or replaced from time to time by notice in writing to Shetland.

Academic Year: each period of 12 months commencing on 1 August in each year.

Agreement: means this partnership and service level agreement.

Applicable Law: all law applicable in and to Scotland as amended from time to time, and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the performance of Shetland's obligations under this Agreement.

Assigned Colleges Order: the [Assigned Colleges (University of the Highlands and Islands) Order 2021/[TBC] details of Order assigning TBC].

Background IP: Any Intellectual Property Rights owned or controlled by a party prior to commencement of or developed independently from a Research Activity, and which that party contributes or uses in the course of performing the Research Activity.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including retained EU law version of the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).

Dispute: any dispute under this Agreement.

Existing Academic Partner Agreements: the academic partner agreement between UHI and each of the Legacy Institutions, dated 8 December 1998 and funding and service level agreement dated 15 November 2000 (in the case of the agreements between UHI and Shetland Fisheries Training Centre Trust trading as NAFC Marine Centre), and dated 22 February 1999 and funding and service level agreement dated 15 November 2000 (in the case of the agreements between UHI and Shetland Islands Council trading as Shetland College UHI).

FE Governance Code: the Code of Good Governance for Scotland's Colleges published in August 2016 by Colleges Scotland as such code may be supplemented, amended or replaced from time to time.

FHE Acts: the Further and Higher Education (Scotland) Act 1992, the Further and Higher Education (Scotland) Act 2005 including any statutory modification or re-enactment thereof for the time being in force.

Financial Memorandum: the financial memorandum between UHI and Shetland dated/ effective from 1 January 2016 in respect of the provision of funding for Further and Higher Education a copy of which is annexed at Part 8 of the Schedule,

and such other memoranda as may supplement, amend or replace it by notice in writing to Shetland from time to time.

FoI Legislation: the Freedom of Information (Scotland) Act 2002 and the Environmental Information Scotland Regulations 2004 (SI 2004/520).

Further Education: means any course or programme of fundable further education, as defined in the FHE Acts.

Highlands and Islands: the local government areas of Shetland, Orkney, Western Isles, Highland, Moray, Perth and Kinross and Argyll and Bute.

HE Governance Code: the Scottish Code of Good HE Governance published in October 2017 by the Committee of Scottish Chairs Steering Group as such code may be supplemented, amended or replaced from time to time.

Higher Education: means any course of fundable higher education, as defined in the FHE Acts.

HISA: the students' association for the University and the UHI Partners, operated by Highlands and Islands Students Association a company limited by guarantee incorporated and registered in Scotland with company number SC511955 whose registered office is at 12B Ness Walk, Inverness IV3 5SQ, or any successor body or association to the role of students' association for students of the University.

Intellectual Property Rights: means patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, trade names, domain names, rights to goodwill, rights in designs, rights in computer software (including source code and object code), database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and similar or equivalent rights which subsist or will subsist now or in the future in any part of the world.

Legacy Institutions: means: (i) Shetland Fisheries Training Centre Trust trading as NAFC Marine Centre constituted by Deed of Trust dated [REDACTED] having a place of business at NAFC Marine Centre, Port Arthur, Scalloway, Shetland ZE1 0UN and a charity registered in Scotland with registered number SC003715; and (ii) Shetland Islands Council, in its capacity as operator of Shetland College UHI, the local authority for the said area constituted under the Local Government etc. (Scotland) Act 1994 and having its principal office at Town Hall, Lerwick, Shetland ZE1 0HB.

MG Distribution Agreement: means the distribution agreements between UHI and each of the Legacy Institutions dated 8 & 27 May 1997 respectively, providing for the distribution of a proportion of the Millennium Grant to Shetland, copies of which are annexed as Part 7 of the Schedule.

Millennium Grant: means the grant funding made available to UHI by the Millennium Commission (now Big Lottery Fund) in respect of the UHI Millennium Institute Project on or around 23 May 1997.

Other Academic Partners: the institutions which are from time to time, members of the University of the Highlands and Islands academic partnership and have entered into academic partnership agreements with UHI (excluding UHI and Shetland).

Outcome Agreement: the Highlands and Islands regional further and higher outcome agreement entered between SFC and UHI, and such other agreement(s) as may supplement, amend or replace it from time to time.

Performance Indicators: any performance measures, indicators, or targets agreed in writing from time to time by UHI and Shetland.

Personal Data: has the meaning set out in the Data Protection Legislation.

QAA: the Quality Assurance Agency for Higher Education.

Regional Strategic Committee: the committee or other body constituted under the Articles of Association of UHI with the responsibility for ensuring the strategic delivery of high quality tertiary education across the academic partnership formed by the University (or any successor committee(s) or body(ies) with the same or a similar remit).

Regulations: regulations made by the UHI Court or the Academic Council and by committees of either empowered to regulate on their behalf pursuant to the Articles of Association of UHI.

Research Activity: activity undertaken by, within, on behalf of the University or in the name of UHI which constitutes or contributes to any process of investigation which leads to the effective sharing of new insights in any field or discipline, including knowledge exchange activity.

Research Councils: the research councils operated/ co-ordinated by UK Research and Innovation.

Research Excellence Framework: the framework for assessment of Research Activity in UK higher education institutions, as such framework may be implemented, updated or amended from time to time.

Schedule: the schedule in 9 parts annexed as relative to this Agreement.

SCQF: the Scottish Credit and Qualifications Framework or such other qualifications framework as may be adopted by the SFC at any time.

SFC: the Scottish Further and Higher Education Funding Council.

Start Date: the date of this Agreement.

Student Data: means the Personal Data of any Higher Education student or Further Education student.

UHI Court: the board of governors of UHI.

UHI Foundation: the foundation of UHI as constituted pursuant to the Articles of Association of UHI.

UHI Partners: together, Shetland and the Other Academic Partners.

UHI Principal: the principal of UHI appointed pursuant to the Articles of Association of UHI, as appointed from time to time.

UHI Professional Services: the support services, university executive and administrative functions provided by UHI's executive office to Shetland in terms of Clause 14.

UHI Secretary: means the University Secretary of UHI.

University Policies: the common policies of UHI adopted across the University following approval by the Partnership Council (or any successor body), and as published from time to time at the My UHI Policies Sharepoint site (or such alternative location as may be adopted by UHI from time to time) and as such policies may be supplemented, amended or replaced from time to time (and each a **University Policy**).

University Strategic Plan: the strategic vision and plan 2015-20 for the University developed, adopted and published by UHI, as such strategic vision and plan may be supplemented, amended or replaced from time to time.

UKVI Licence: UHI's Tier 4 Higher Education UK Visas & Immigration licence.

University: means the academic partnership of the University of the Highlands and Islands comprising UHI, Shetland and the Other Academic Partners.

Working Day: a day other than a Saturday, Sunday or public holiday in Scotland when banks in Edinburgh are open for business.

1.2 The following definitions and rules of interpretation apply in this Agreement:

- (a) Clause, schedule and paragraph headings shall not affect the interpretation of the Agreement.
- (b) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- (c) The Schedule forms part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedule.
- (d) A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- (e) Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- (f) Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

- (g) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- (h) A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- (i) A reference to **writing** or **written** includes e-mail and/or electronic publication unless otherwise specifically indicated.
- (j) Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- (k) A reference to **this Agreement** or to any other agreement or document referred to in this Agreement is a reference to this Agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.
- (l) References to clauses are to the clauses of this Agreement; references to paragraphs are to paragraphs of the relevant Part of the Schedule.
- (m) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. **COMMENCEMENT AND TERM**

Notwithstanding the date or dates hereof, this Agreement shall commence on the Start Date and shall continue, unless and until terminated in accordance with its terms.

3. **COMMITMENT TO UNIVERSITY VISION AND STRATEGY**

3.1 Shetland and UHI each acknowledge and confirm that they are committed to the University's vision for the academic partnership comprised of UHI and the Other Academic Partners, including:-

- (a) the provision and delivery of high quality tertiary education throughout the region and localities of the Highlands and Islands through an integrated and collaborative partnership network of institutions;
- (b) the undertaking of high quality Research Activity to develop the research capacity and standing of the University, and to derive the maximum possible economic and teaching benefits from such Research Activity;
- (c) the development of the regional, national and international reputation of the University in both further and higher education teaching and Research Activity;

and are each committed to working in conjunction with each other and the Other Academic Partners to develop and deliver that vision.

3.2 In fulfilling its obligations under this Agreement, Shetland undertakes to UHI to actively work towards and contribute to the delivery of the University Strategic Plan. In particular, Shetland shall be responsible for localising the University Strategic Plan by:-

- (a) synchronising the timing of its own strategic planning activities (by adjustment of Shetland's strategic planning period as appropriate) to the timing of the University Strategic Plan such that the periods covered by such plans are the same; and
- (b) ensuring that the aims, objectives and strategies set out in its own strategic plan are consistent with and contribute to the University Strategic Plan.

3.3 In fulfilling its obligations under this Agreement and performing its role as the fundable body responsible for receipt and distribution of Further Education and Higher Education funding within Highlands and Islands, UHI undertakes to Shetland to:-

- (a) have regard to the diversity of the geographical area, economies and communities of the Highlands and Islands;
- (b) have regard to the character of Shetland and the Other Academic Partners as distinctive and separate institutions;
- (c) make such representations and submissions as UHI considers appropriate to maximise the available funding provided from time to time from SFC, Research Councils and such other third party funders as may be appropriate for the benefit of Shetland, the University and the region of Highlands and Islands;
- (d) consult with and have regard to representations made by Shetland in relation to any submissions or representations made pursuant to sub-clause (c) above; and
- (e) at all times and in all respects applicable to it, comply with and conduct itself in accordance with the FHE Acts.

3.4 Shetland and UHI each acknowledge and confirm that they are committed to the University Values Framework as set out in the University Strategic Plan.

4. **PROVISION OF FURTHER EDUCATION**

Where Shetland provides or delivers Further Education, the provisions set out in Part 1 of the Schedule will apply in relation to such provision of Further Education.

5. **PROVISION OF HIGHER EDUCATION**

Where Shetland provides or delivers Higher Education, the provisions set out in Part 2 of the Schedule will apply in relation to such provision of Higher Education.

6. **UNDERTAKING OF RESEARCH ACTIVITY**

Research Activity undertaken or conducted by or within Shetland will be undertaken for and on behalf of and in the name of UHI as part of the University, and the provisions set out in Part 3 of the Schedule will apply in relation to such Research Activity.

7. **COMMERCIALISATION ACTIVITY**

7.1 Shetland will actively look for, assess and seek to develop opportunities to undertake commercial activity which:-

- (a) makes use of and builds on the expertise and skills within Shetland, UHI and the University;
- (b) seeks to commercialise, apply and realise value in the product of Research Activity undertaken within the University, subject always to having due regard for the preservation of the value of that Research Activity for the benefit of Shetland, UHI and the University;
- (c) which has the potential to generate supplemental income for the benefit of Shetland, UHI and the University; and
- (d) is consistent with and contributes to the delivery of UHI's commercialisation strategy, as adopted and amended from time to time.

7.2 Shetland will have regard to the activities and relationships of the University and the Other Academic Partners in its approach to collaboration with industry and commercial partners, and will seek to maximise the benefit of such collaborative activity for the benefit of the University and the UHI academic partnership as a whole. Without prejudice to the foregoing generality, Shetland shall:-

- (a) share details of its industry and commercial relationships with UHI and the Other Academic Partners, including by maintaining any partnership-wide record of such relationships as may be adopted from time to time;
- (b) engage with third parties and Other Academic Partners on a sectoral/ industry basis to identify opportunities according to sector and expertise in addition to geographical location; and
- (c) adopt a collegiate and collaborative approach to opportunities for commercial and industrial activity with a view to avoiding internal competition within the University for such opportunities.

8. **OUTCOMES**

- 8.1 Shetland will use all reasonable endeavours to make a material contribution to:-
- (a) delivery of the overall regional mission and objectives of the University;
 - (b) the University Strategic Plan; and
 - (c) delivery of the outcomes required by the Outcome Agreement;

and alongside the Other Academic Partners as part of the University shall deliver its contribution to the University as agreed from time to time with UHI.

9. **FINANCIAL MEMORANDUM & AUDIT**

- 9.1 Shetland will comply with the Financial Memorandum and with such further communications relating, supplemental or ancillary to it as may be issued in writing by UHI from time to time (including, without limitation, any communications issued by SFC to UHI as a regional strategic body under the FHE Acts, and which UHI requires to pass on to Shetland as a body to which UHI distributes funding for Further Education and/ or Higher Education).

- 9.2 Shetland will provide such information, data or evidence as UHI may reasonably require and allow UHI and any auditors (both internal and external) of, or other advisers to, UHI to access any of Shetland's premises, personnel, data, information and records as may be reasonably required by UHI (subject to UHI providing reasonable notice to Shetland, UHI complying with any appropriate or relevant policies of Shetland in relation to such access, and any applicable confidentiality requirements with which Shetland requires to comply) to allow UHI to undertake such monitoring and audit functions as UHI considers appropriate from time.

- 9.3 UHI undertakes to, as far as possible, minimise duplication of effort and provision of information required from Shetland pursuant to the reporting and compliance requirements imposed by:-
- (a) the Financial Memorandum;
 - (b) the Outcome Agreement;
 - (c) external audit requirements; and
 - (d) this Agreement.

10. **REPORTING & STATISTICAL RETURNS**

- 10.1 Shetland shall:-

- (a) timeously and accurately complete and submit to SFC such monitoring and activity returns as may be required by SFC from time to time in relation to the provision of Further Education by Shetland; and
 - (b) not less than 5 Working Days in advance of submission to SFC, provide UHI with a copy of any return to be submitted to SFC.
- 10.2 Subject to clauses 9.3 and 10.1, Shetland shall timeously and accurately provide such information in relation to the provision of Further Education by Shetland in such format as UHI may reasonably require from time to time.
- 10.3 Shetland shall timeously and accurately provide such information in relation to the provision of Higher Education and undertaking of Research Activity by Shetland in such format as UHI may reasonably require from time to time to enable UHI to monitor performance, comply with the Academic Quality Framework, and to enable UHI to submit any and all monitoring returns required by SFC and the Higher Education Statistics Agency from time to time.
- 11. **POLICIES/PROCEDURES**
- 11.1 Shetland will implement, adopt and adhere to the University Policies.
- 11.2 UHI shall consult and agree with Shetland and the Other Academic Partners prior to introducing any new or revised University Policies.
- 11.3 If Shetland becomes aware of any event, occurrence or practice which is materially non-compliant with or inconsistent with a UHI Policy, Shetland will promptly advise the UHI Secretary or Academic Registrar (as applicable) of this and will take such steps as UHI may reasonably require to remedy or mitigate the effects of such non-compliance.
- 11.4 Where there is no applicable or readily adaptable University Policy, Shetland will be entitled to formulate, implement and maintain its own policy and procedures to cover or provide for such other areas or aspects of its operations as Shetland requires from time to time, provided that Shetland shall:-
 - (a) notify UHI via the partnership council of the lack of an applicable University Policy;
 - (b) insofar as possible, adopt or develop such policies from an existing University Policy or policies in existence elsewhere within the University, subject to such amendment or localisation as may be reasonably required; and

(c) shall adopt any such policy as a temporary and interim measure only, subject to a University-wide policy being developed and adopted as a University Policy.

11.5 Shetland will provide UHI with copies of its policies or procedures in place or produced pursuant to clause 11.4 from time to time, and make such changes to such policies or procedures as UHI may reasonably require in writing from time to time.

11.6 Notwithstanding the remaining terms of this clause 11, the parties acknowledge and agree that there are opportunities for policies, procedures and processes developed or adopted by any individual UHI Partner to be shared and applied across all of the UHI Partners by adopting these as a University Policy. The parties undertake to identify opportunities for collaboration in the development of policies, procedures and processes with a view to developing further University Policies as required from time to time to expand the range of policies and procedures covered by this, and to share knowledge, best practice and costs.

12. **GOVERNANCE**

12.1 Shetland will adhere to and implement the principles and rules of governance set out in the FE Governance Code.

12.2 Subject and pursuant to clause 12.1, Shetland will develop, adopt and implement such rules, policies or procedures as Shetland considers appropriate to regulate its own governance and proceedings.

12.3 Shetland will, upon being requested to do so by UHI, provide the UHI Secretary with copies of rules, policies or procedures in place or produced pursuant to clause 12.2, and make such changes to such rules, policies or procedures as UHI may reasonably require in writing from time to time.

12.4 UHI will adhere to and implement the principles and rules of governance set out in the HE Governance Code. In the event of any irreconcilable conflict between the FE Governance Code and the HE Governance Code, the HE Governance Code shall prevail.

12.5 Subject and pursuant to clause 12.4, UHI will develop, adopt and implement such rules, policies or procedures as the UHI Court considers appropriate from time to time to regulate UHI's governance and proceedings.

12.6 Shetland will comply with such of the rules, policies and procedures adopted by UHI from pursuant to clause 12.5 as UHI may require from time to time.

12.7 Shetland will produce, maintain and provide to UHI upon reasonable request, a risk register in such form and adopting such risk-assessment mechanisms as UHI may reasonably require from time to time identifying, assessing and outlining mitigating strategies for the key operational, financial and legal risks to the sustainability and continuing effective performance of Shetland.

13. **DECISIONS REQUIRING UHI CONSENT**

Shetland will not undertake any of the decisions, actions or matters or things listed in Part 4 of the Schedule without the prior consent of UHI.

14. **UHI PROFESSIONAL SERVICES/ RETENTION OF FUNDING TO MEET COSTS**

14.1 UHI will provide UHI Professional Services to Shetland, as reasonably required by Shetland or as the parties may agree from time to time are reasonably necessary for the purpose of enabling Shetland to operate as part of the University or to perform any obligations under this Agreement, on the terms set out in this clause 14 and in any separate service level agreement entered into between UHI and Shetland in respect of any particular services from time to time. The parties each undertake to identify and agree any of the UHI Professional Services which are critical to supporting the performance by Shetland of its obligations under this Agreement and (where the parties have not already done so) will enter into a separate service level agreement in respect of the provision of those UHI Professional Services by UHI.

14.2 Subject to Clause 14.5, in providing UHI Professional Services to Shetland, UHI will:-

- (a) consult with Shetland and the Other Academic Partners through the UHI committee structure in relation to the planning, allocation, budgeting and delivery of UHI Professional Services for each Academic Year, and will minute any points of disagreement;
- (b) maintain records and details of costs and expenditure attributable to the provision of UHI Professional Services to the UHI Partners and will make such information available to Shetland upon being reasonably requested to do so;
- (c) use reasonable endeavours to provide UHI Professional Services to the UHI Partners as may be collectively agreed amongst UHI and the UHI Partners from time to time;
- (d) exercise reasonable skill, care and diligence;
- (e) will allocate sufficient resources to the provision of UHI Professional Services as agreed from time to time;

- (f) seek to achieve best value and efficiency in the procurement and delivery of the UHI Professional Services;
- (g) ensure that all goods and services purchased or utilised in connection with provision of the UHI Professional Services are procured in accordance with all applicable procurement legislation and rules; and
- (h) co-operate with Shetland in all matters relating to UHI Professional Services.

14.3 In relation to the UHI Professional Services, Shetland will:-

- (a) co-operate with UHI in all matters relating to the UHI Professional Services; and
- (b) provide, in a timely manner, such information and documents as UHI may reasonably request from time to time, and ensure that it is accurate in all material respects.

14.4 If there is a material failure by UHI to supply any UHI Professional Services as agreed from time to time, UHI shall:

- (a) notify Shetland promptly of the failure;
- (b) provide Shetland with a remediation plan outlining the proposed steps to mitigate or remedy the failure;
- (c) deploy any appropriate additional resources and take such remedial action as UHI reasonably considers is necessary to rectify or to prevent the failure from recurring;
- (d) carry out the actions identified in the remediation plan produced in terms of clause 14.4(b); and
- (e) if the relevant UHI Professional Service is capable of being re-performed, and if reasonably requested by Shetland to do so, re-perform the relevant UHI Professional Service.

14.5 Notwithstanding any other provision of this Agreement, Shetland's sole remedy in the event of any lapse or failure to provide the UHI Professional Services or any of them at any time shall be require UHI to implement the steps outlined in clause 14.4, and UHI shall have no financial liability or obligation to refund any sums to Shetland arising from such lapse or failure.

14.6 UHI shall be entitled to retain from Shetland such sums as are reasonably necessary from time to time in respect of the cost of providing the UHI Professional Services from any funding provided by UHI to Shetland by retaining any sums which would otherwise be distributable to Shetland (including, without limitation, in respect of funding for the provision of Further Education or Higher Education pursuant to this Agreement); provided always that UHI shall not, without the consent of Shetland,

be entitled to retain in any Academic Year a sum in excess of 35% of the Higher Education funding allocation to Shetland for that Academic Year.

- 14.7 Shetland will provide such services and functions to or on behalf of the University as may be agreed between UHI and Shetland from time to time on such terms as may be agreed.
- 14.8 The parties agree that they are committed to the collective provision and sharing of administrative, technical and UHI Professional Services and functions as far as possible across the University and will work with the Other Academic Partners to develop and maximise opportunities to undertake collaborative provision of such services. The parties agree that any such shared or collaborative service provision must be subject to appropriate governance and management arrangements being put in place for the service, and the parties being satisfied as to the financial sustainability of the shared services and continuity of service provision.

15. REPRESENTATION & PARTICIPATION IN UHI PARTNERSHIP

- 15.1 Shetland shall actively participate in and, provide nominees (where requested by UHI) for all applicable committees, boards, groups, meetings and other representative bodies or forums within the UHI partnership, including (without limitation):-
- (a) the UHI Court;
 - (b) the Academic Council;
 - (c) the Partnership Council;
 - (d) the Regional Strategic Committee; and
 - (e) the UHI Foundation.
- 15.2 Without prejudice to the generality of clause 15.1, Shetland will take such steps and put in place such procedures as may reasonably be required (or as UHI may reasonably require) from time to time to facilitate:-
- (a) the participation by members of staff employed by Shetland in the election of staff Governors to the UHI Court;
 - (b) the participation of students (whether engaged in Higher Education, Further Education or Research Activity) enrolled with or through Shetland in the election of student Governors to the UHI Court; and
 - (c) the participation of students (whether engaged in Higher Education, Further Education or Research Activity) enrolled with or through Shetland in HISA;

it being acknowledged and agreed that the use of video conferencing and such other telecommunications technology as may be appropriate from time to time is an

accepted and important means of enabling communication between the UHI Partners.

16. ACADEMIC FREEDOM AND OWNERSHIP OF IPR

16.1 In relation to the provision and conduct of any Further Education, Higher Education or the undertaking of any Research Activity, Shetland shall:-

- (a) take such action as may be reasonably necessary to ensure and preserve the Academic Freedom of any person engaged in the teaching or provision of delivery of Higher Education or Further Education, or the undertaking of any Research Activity;
- (b) comply with any direction of UHI in relation to the preservation of Academic Freedom;
- (c) not subject any person engaged by Shetland to any detriment or adverse effect in relation to any appointment held, or entitlement or privilege enjoyed in connection with or arising from their role as a result of the exercise of that person's Academic Freedom.

16.2 Where Shetland is not, for any reason, able (or is likely to be unable) to comply with the provisions of clause 16.1, it will notify UHI as soon as reasonably practical and provide a written explanation to the University Secretary as to reason for such non-compliance.

16.3 Shetland will adopt, adhere to and implement the UHI IP Policy (as such policy is annexed at Part 9 of the Schedule, and as same may be updated and communicated to Shetland from time to time) in respect of any Research Activity (or other similar or related activity) undertaken by Shetland that is funded by UHI, undertaken in the name of or under the auspices of UHI, or is otherwise undertaken by or within Shetland pursuant to this Agreement.

16.4 The Intellectual Property Rights in any and all academic, course or other materials generated by either party in relation to Higher Education shall be exclusively owned by UHI ("HE IPR") and Shetland hereby assigns any and all rights in such HE IPR to UHI. UHI grants a non-exclusive, royalty free, non-assignable, non-sublicensable licence to Shetland to use such HE IPR to deliver Higher Education while this Agreement remains in force and Shetland remains an academic partner of the University.

16.5 Shetland grants to UHI a non-exclusive, royalty free, non-assignable licence to use, and to allow any Academic Partner to use, any Intellectual Property Rights in any academic, course or other materials used or generated by Shetland in the provision of Further Education, provided that UHI shall not make any use of such licence and shall not permit any other Academic Partner to make any use of such licence

otherwise than in the event of the withdrawal or cessation of provision of a course by Shetland for any reason.

17. STATUTORY COMPLIANCE, CERTIFICATION & REPORTING

17.1 Without prejudice to clause 16, Shetland undertakes to UHI that it will:-

- (a) at all times and in all respects applicable to it comply with; and
- (b) conduct itself, its provision of Further Education and Higher Education, and any Research Activity,

in accordance with the FHE Acts (including, without limitation, those provisions applicable to assigned colleges) insofar as they apply to Shetland.

17.2 Without prejudice to clauses 18 or 19, Shetland shall at all times carry out and fulfil its obligations under this Agreement in compliance with all Applicable Law. Shetland shall maintain such records as are necessary pursuant to such Applicable Law and shall promptly on reasonable request by UHI make them available for inspection by UHI or by any relevant authority that is entitled to inspect them.

17.3 Without prejudice to the generality of clause 17.2, Shetland shall at all times comply in all applicable respects with:-

- (a) The Charities & Trustee Investment (Scotland) Act 2005;
- (b) The Equality Act 2010;
- (c) The Counter-Terrorism and Security Act 2015 and any applicable guidance issued under it;
- (d) the UKVI Licence and any other UK Visas & Immigration licence of any kind or tier which Shetland may hold from time to time, and all applicable Home Office and UK Visas & Immigration guidance in relation to overseas students;
- (e) the Protection of Vulnerable Groups (Scotland) Act 2007 and the PVG Scheme;
- (f) all applicable health and safety legislation, including but not limited to the Health and Safety at Work etc. Act 1974 and Occupiers' Liability Scotland Act 1960;
- (g) The Bribery Act 2010;
- (h) Data Protection Legislation;
- (i) the University Policies.

17.4 On 30 April in each year, Shetland will issue a letter of representation to the UHI Secretary certifying that during the preceding 12 months Shetland has complied in

full with such statutes, statutory provisions, legislative or regulatory requirements as UHI may reasonably require from time to time, including (but not limited to):-

- (a) all applicable health and safety legislation, including but not limited to the Health and Safety at Work etc. Act 1974 and Occupiers' Liability Scotland Act 1960;
- (b) The Protection of Vulnerable Groups (Scotland) Act 2007 and the PVG Scheme;
- (c) its obligations in terms of clause 18 and Part 5 of the Schedule in relation to the FoI Legislation;
- (d) its obligations in terms of clause 19 and Part 6 of the Schedule in relation to Data Protection Legislation;
- (e) UHI's Complaints policy in relation to any complaint received by it during the preceding 12 months;
- (f) The Equality Act 2010 and UHI's Equality Policy;
- (g) the UKVI Licence;
- (h) The Counter-Terrorism and Security Act 2015 and any applicable guidance issued under it, and

to the extent that Shetland is unlikely to be able to certify compliance with the foregoing, it shall notify the UHI Secretary in writing as far in advance as reasonably possible of 30 April in each year confirming in what respects Shetland is non-compliant, the reasons for such non-compliance and agree on an action plan with UHI to remedy or address such non-compliance.

17.5 On 28 February, 31 May, 31 August and 30 November in each year, Shetland will provide the UHI Secretary:-

- (a) details of any complaints received from Higher Education students or complaints relating or relevant to UHI or Shetland's role as part of the University during the preceding period of 3 months or confirmation that no such complaints were received;
- (b) details of any complaints or instances of malpractice reported or arising under the University's research code;
- (c) provide a current copy of Shetland's risk register produced pursuant to clause 12.7, with a note of any changes or amendments made during the preceding quarter;
- (d) management accounts for the period ending not earlier than the month preceding the relevant quarterly date in such form as UHI may reasonably require;

- (e) such other data, records information, returns, confirmations or certifications as UHI may reasonably require from time to time;
- (f) statutory and management accounts; and
- (g) internal and external audit reports.

17.6 As requested from time to time by UHI, Shetland will provide:-

- (a) such financial information, estimates and forecasts as UHI may reasonably require in connection with any Financial Forecast Return (or similar financial information request) required by SFC in respect of Shetland;
- (b) within such period as UHI may reasonably request, annual and medium term budgets, together with such other financial information as UHI may reasonably require, to enable UHI to appraise and Shetland's financial position;
- (c) promptly upon any such potential deficit becoming apparent to Shetland, notice of any forecast in-year or outturn deficit; and
- (d) details of any mitigating action proposed or undertaken by Shetland to seek to address any forecast in-year or outturn deficit, together with progress reports as may be reasonably requested by UHI from time to time on such mitigating action.

17.7 Without prejudice to clause 3.3(e), UHI shall at all times comply in all applicable respects with:-

- (a) The Charities & Trustee Investment (Scotland) Act 2005;
- (b) The Equality Act 2010;
- (c) The Counter-Terrorism and Security Act 2015 and any applicable guidance issued under it;
- (d) the UKVI Licence and any other UK Visas & Immigration licence of any kind or tier which Shetland may hold from time to time, and all applicable Home Office and UK Visas & Immigration guidance in relation to overseas students;
- (e) the Protection of Vulnerable Groups (Scotland) Act 2007 and the PVG Scheme;
- (f) all applicable health and safety legislation, including but not limited to the Health and Safety at Work etc. Act 1974 and Occupiers' Liability Scotland Act 1960;
- (g) The Bribery Act 2010;
- (h) Data Protection Legislation; and
- (i) the University Policies.

18. **FREEDOM OF INFORMATION**

The provisions of Part 5 of the Schedule shall apply in relation to the FoI Legislation.

19. **DATA PROTECTION**

The provisions of Part 6 of the Schedule shall apply in relation to the sharing of Personal Data between the parties.

20. **MILLENNIUM GRANT**

Shetland acknowledges that it has benefited from the Millennium Grant as a result of funds disbursed by UHI to the Legacy Institutions under the MG Distribution Agreement, the benefit and burden of which has now been transferred from the Legacy Institutions to Shetland. UHI and Shetland each reaffirm the terms of the MG Distribution Agreement and acknowledge and agree that the MG Distribution Agreement remains in full force and effect, notwithstanding the merger and transfer of the Legacy Institutions' assets and liabilities to Shetland.

21. **GRANT FUNDING – GENERAL**

21.1 UHI agrees to provide such assistance as Shetland may reasonably require from time to time to enable Shetland as part of the University, to apply for, access and implement such grant funding programmes as Shetland and UHI may agree are appropriate from time to time (including, without limitation, Research Councils, Highlands & Islands Enterprise, and European Social Fund grants).

21.2 Where any potential grant identified is accessible only through UHI, Shetland, UHI and such of the Other Academic Partners as may be appropriate in the circumstances will collaborate on the submission of any application for such a grant. In all circumstances, Shetland shall apply a partnership approach to applications for grant funding in order to avoid internal competition within the University.

21.3 Upon any grant application by UHI at the instigation of, on behalf of or in conjunction with Shetland, or in respect of which activity will be undertaken within Shetland under the auspices of the University being successful:-

- (a) Shetland and UHI will enter into such agreement(s) as UHI may reasonably require in terms of which Shetland undertakes to UHI that it will adhere to the conditions attached to the grant or other requirement intimated to it pursuant to clause 21.3(c) and will indemnify UHI in respect of any loss, expense or claim suffered or incurred by UHI arising from any breach of the grant conditions resulting from the acts or omissions of Shetland;

- (b) Upon providing evidence to UHI of a delivery plan UHI shall pass on such grant funding (or the applicable proportion of it where such grant or other application is made jointly with any other party) to Shetland, under deduction of any applicable UHI Professional Services costs associated with the grant application; and
- (c) UHI will intimate to Shetland the grant or other conditions applicable to it as the ultimate recipient of the grant or award.

22. **HISA**

22.1 Shetland will ensure that all Further Education students, Higher Education students, and students engaged in Research Activity are afforded the opportunity to become members of HISA.

22.2 UHI shall:-

- (a) via discussion and agreement through the Partnership Council (or such other forum as may be agreed among UHI and the UHI Partners from time to time) determine the annual funding payable to HISA in each Academic Year;
- (b) apportion the University's aggregate liability for payment of such annual funding to HISA among the UHI Partners according to their respective numbers of full-time equivalent enrolled students (or on such other equitable basis as may be agreed among UHI and the UHI Partners from time to time);
- (c) be entitled to withhold and pay to HISA sums which would otherwise be payable to Shetland to secure payment of Shetland's share of the annual funding to HISA, or to direct that any sums provided by UHI to Shetland be paid to and used to fund HISA, as determined by UHI; and
- (d) attach such conditions or requirements on HISA in relation to such funding as UHI may reasonably require.

22.3 Shetland will provide such local or campus facilities, services and support to HISA as may be reasonably requested by HISA or UHI from time to time.

23. **BRANDING / COMMUNICATIONS**

23.1 Subject to Clause 23.3 below, Shetland shall refer to the University of the Highlands and Islands in all external marketing and communications.

23.2 Subject to Clause 23.3 below, Shetland shall use the University of the Highlands and Islands standard branding and corporate communication style in such external marketing and communications as made available from UHI from time to time.

23.3 It is acknowledged by the parties that in limited circumstances, it may be preferable (subject to the consent of UHI, which shall not be unreasonably withheld) for Shetland to use its own brand and not refer to the University of the Highlands and Islands in its external marketing and communications.

24. **INSURANCE**

24.1 Subject to clause 24.2, Shetland shall maintain in force at least the following insurance policies with reputable insurance companies to cover its relevant potential liabilities arising in connection with or related to performance of its obligation under this Agreement:

- (a) a public liability insurance policy with a limit of at least £10 million per claim;
- (b) a directors and officers liability insurance policy with a limit of at least £4 million per claim;
- (c) employer's liability insurance with a limit of at least £10 million for claims arising from a single event or series of related events in a single calendar year; and
- (d) business interruption insurance with a limit of at least £40 million for claims arising from a single event or series of related events in a single calendar year.

24.2 The parties acknowledge and agree that:-

- (a) the capacity of Shetland to maintain in force the insurance policies referred to in clause 24.1 is subject to a specific derogation in the Regional Financial Memorandum (as at the Start Date) to permit Shetland to retain in place commercial insurance arrangements; and
- (b) to the extent that such derogation no longer applies or is not renewed or replaced, Shetland shall not be required to maintain in place those of the insurance policies referred to in clause 24.1 which it is no longer permitted to maintain in terms of the Regional Financial Memorandum (as amended from time to time).

24.3 UHI shall maintain in force at least the following insurance policies with reputable insurance companies:

- (a) a public liability insurance policy with a limit of at least £10 million per claim;

- (b) a directors and officers liability insurance policy with a limit of at least £4 million per claim;
- (c) employer's liability insurance with a limit of at least £10 million for claims arising from a single event or series of related events in a single calendar year; and
- (d) business interruption insurance with a limit of at least £40 million for claims arising from a single event or series of related events in a single calendar year.

25. IMPROVEMENT NOTICES

25.1 If reasonably requested by UHI, the parties will discuss and agree Performance Indicators to measure the performance of Shetland under this Agreement.

25.2 If at any time UHI, acting reasonably, considers that:-

- (a) Shetland is not meeting a Performance Indicator; or
- (b) there is a breach of this Agreement by Shetland; or
- (c) Shetland is not fully and adequately contributing as an academic partner in the University;

UHI may, by notice served on Shetland at any time:

- i. conduct such enquiries into Shetland's operations and financial affairs as UHI considers appropriate, and Shetland shall co-operate with such enquiries and provide all information and assistance as is reasonably required by UHI for that purpose, including full access to its books and records, its premises and employees as requested by UHI; and/or
- ii. recommend what steps (if any) should be taken to improve the performance of Shetland under this Agreement and provide a timescale for the implementation of such steps, and Shetland shall take all steps required or necessary to implement and carry into effect the recommendations made.

25.3 If Shetland fails to comply with any notice served by UHI under clause 25.2, the terms of clause 29 will apply and UHI shall be entitled to suspend any further funding to Shetland.

26. SUPERSESSION OF PREVIOUS ACADEMIC PARTNERSHIP AGREEMENT

26.1 Subject to clause 26.2, this Agreement replaces and supersedes the Existing Academic Partner Agreements with effect from the Start Date.

26.2 The replacement and supersession of the Existing Academic Partner Agreement is without prejudice to any accrued rights or obligations of either party to it as at the Start Date.

26.3 In the event of any inconsistency or ambiguity between any provision of the Existing Academic Partner Agreements and this Agreement, the provision(s) of this Agreement will prevail.

27. **TERMINATION**

27.1 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice (by recorded delivery post) to the other party if:

- (a) the other party commits a material breach of any term of this Agreement which breach is irremediable;
- (b) the other party commits a material breach of any term of this Agreement which is capable of being remedied and fails to remedy that breach within a period of 90 days after being notified in writing to do so, provided that before exercising the right to terminate on this ground the party seeking to terminate has made reasonable efforts in good faith to resolve or address the relevant breach by invoking or participating in the dispute resolution process provided for in clause 29;
- (c) the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement, provided that before exercising the right to terminate on this ground the party seeking to terminate has made reasonable efforts in good faith to resolve or address the relevant breaches by invoking or participating in the dispute resolution process provided for in clause 29;
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of such party with one or more other companies or the solvent reconstruction of such party;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent

amalgamation of the other party with one or more other companies or the solvent reconstruction of such party;

- (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- (h) the holder of a qualifying floating charge over the assets of the other party has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of such party;
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 30 days;
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 27.1(d) to clause 27.1(j) (inclusive); or
- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business or ceases to provide delivery of Further Education, Higher Education or any aspects of the same.

27.2 Without affecting any other right or remedy available to it, Shetland may terminate this Agreement upon giving not less than 12 months' prior written notice to the UHI Secretary, subject always to clause 28.2.

28. **CONSEQUENCES OF TERMINATION**

28.1 On termination of the Agreement:

- (a) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected; and
- (b) the following clauses shall continue in force:
 - i. clause 1 (Interpretation);
 - ii. clause 18 (Freedom of Information);
 - iii. clause 19 (Data Protection);
 - iv. clause 28 (Consequences of termination); and

v. clause 38 (Governing law).

28.2 Termination of this Agreement, however arising, shall be conditional upon and shall trigger obligations on the part of Shetland to:-

- (a) repay to UHI any sums provided by UHI in respect of the provision of Higher Education, or the undertaking of Research Activity which has not yet been carried out at the termination date;
- (b) make payment to UHI of any sums due in connection with any grant or loan funding in terms of which any repayment or clawback from UHI is triggered (directly or indirectly) by such termination;
- (c) return to, or purchase from UHI at an objective valuation, any moveable item or equipment supplied to it by UHI for the purposes of the University;
- (d) without prejudice to paragraphs (a), (b) or (c) of this clause 28.2, make payment to UHI and/or the Big Lottery Fund (as applicable) of any clawback or repayment of the Millennium Grant or any part of it triggered (directly or indirectly) by such termination;
- (e) return and/or provide copies of all academic and course materials owned by UHI or which shall reasonably be required by UHI to allow UHI or other Academic Partners to continue with the provision of Further Education or Higher Education carried on by Shetland;
- (f) undertake everything reasonably necessary to maintain and protect all student experience including, without prejudice to the foregoing generality co-operating with UHI and other Academic Partners and where possible allowing use of Shetland premises, facilities, systems and infrastructure to allow the continued teaching of Further Education and/ or Higher Education by UHI and/or other Academic Partners; and
- (g) cease to describe itself as part of or having any connection with the University, withdraw any materials or content (whether distributed in hard copy or made available electronically by any means) in which Shetland is described as part of the University, and cease any and all use of the University of the Highlands and Islands standard branding and corporate communication style.

28.3 Termination of this Agreement, however arising, shall be without prejudice to and shall have no effect as regards:-

- (a) the Assigned Colleges (University of the Highlands and Islands) Order 2018/354; or
- (b) the respective rights and obligations of UHI (as a regional strategic body) or Shetland (as an assigned college) pursuant to the Further and Higher Education (Scotland) Act 2005.

28.4 Both parties recognise their residual obligations to students enrolled on programmes of study with the University upon termination of this Agreement for any reason, and the parties shall each use all reasonable endeavours and provide all reasonable assistance to each other in order to ensure that the residual obligations to the students on such programmes are met to ensure that any student enrolled on a relevant programme on the date of termination or expiry is given the opportunity to continue with and complete their programme.

29. **DISPUTE RESOLUTION**

29.1 The parties shall attempt, in good faith, to resolve any Dispute promptly by negotiation which shall be conducted as follows:

- (a) the Dispute shall be referred, by either party, first to the Principal of UHI and the Principal of Shetland for resolution;
- (b) if the Dispute cannot be resolved by the Principal of UHI and Principal of Shetland within 14 days after the Dispute has been referred to them, either party may give notice to the other party in writing (Dispute Notice) that a Dispute has arisen; and
- (c) within seven days of the date of the Dispute Notice, each party shall refer the Dispute to the Chair of the UHI Court and the Chair of Shetland for resolution.

29.2 If the Chair of the UHI Court and the Chair of Shetland are unable, or fail, to resolve the Dispute within 21 days of the date of the Dispute Notice, or within 14 days of the reference to the Chair of the UHI Court and the Chair of Shetland pursuant to clause 29.1(c), the parties will:-

- (a) attempt to resolve the Dispute by mediation in accordance with clause 29.3;
- (b) inform the SFC of the dispute and invite the SFC to participate in the mediation proceedings.

29.3 If, pursuant to clause 29.1 and 29.2, the parties have failed to agree on a resolution within the respective timescales provided for in those clauses, either party may refer any Dispute for mediation pursuant to this clause 29.3, but neither shall be a condition precedent to the commencement of any court proceedings, and either party may issue and commence court proceedings prior to or contemporaneously with the commencement of mediation. The following provisions shall apply to any such reference to mediation:

- (a) the reference shall be to a single independent mediator based and to operate in Scotland agreed between the parties, and in the absence of agreement as to the identity of the mediator within 7 days of either party serving written notice of such nomination on the other, to an independent

mediator appointed by the President of the Law Society of Scotland on the application of either party;

- (b) the mediator appointed pursuant to clause 29.3(a) shall determine the procedure to be adopted for the mediation process;
- (c) both parties shall, immediately on such referral, co-operate fully, promptly and in good faith with the mediator and shall do all such acts and sign all such documents as the mediator may reasonably require to give effect to such mediation; and

29.4 If and to the extent that the parties do not resolve any Dispute or any issue in the course of any mediation, either party may commence or continue court proceedings in respect of such unresolved Dispute or issue.

29.5 Nothing in this clause 29 shall prevent either party from instigating legal proceedings where an order for an interdict or interim relief or remedy is required.

29.6 Without prejudice to either party's right to seek redress in court, the parties shall continue to perform their respective obligations under this Agreement notwithstanding any Dispute or the implementation of the procedures set out in this clause 29.

30. **VARIATION**

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

31. **WAIVER**

31.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

31.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

32. **RIGHTS AND REMEDIES**

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

33. **SEVERANCE**

If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

34. **ASSIGNATION AND OTHER DEALINGS**

34.1 Shetland may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the other party.

34.2 A change in the legal status of Shetland shall not affect the validity of this agreement and this agreement shall be binding on any successor body to Shetland.

35. **NO PARTNERSHIP OR AGENCY**

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, or constitute any party the agent of another party.

36. **NOTICES**

36.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

36.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service.

36.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.

37. COUNTERPARTS

37.1 In accordance with the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015, this agreement may be executed and delivered (including by fax or email (including in PDF or JPEG format)) in any number of counterparts, each of which when executed and delivered shall constitute an original, but the counterparts shall together constitute one agreement.

37.2 Transmission of an executed counterpart of this agreement shall not take effect, notwithstanding its execution, until all parties have executed and delivered at least one counterpart in terms of this Clause 37.

37.3 Each counterpart will be held as undelivered until the parties (or their solicitors on their behalf) agree a date on which the counterparts are to be treated as delivered.

37.4 The parties agree that, if executed in counterpart, this agreement shall become effective (notwithstanding the date or dates of execution) when the date of delivery is agreed between the parties (or their solicitors on their behalf) as evidenced by the date inserted on page 1 of this agreement.

38. GOVERNING LAW

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of Scotland. Subject to clause 29, each party irrevocably agrees that the Scottish courts shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS WHEREOF: These presents consisting of this and preceding 29 pages are subscribed as follows:-

SIGNED for and on behalf of **UNIVERSITY OF THE HIGHLANDS AND ISLANDS**

at.....

on the day of by

..... DIRECTOR

.....FULL NAME

BEFORE THIS WITNESS

.....WITNESS

.....FULL NAME

.....ADDRESS

.....

SIGNED for and on behalf of **SHETLAND UHI LTD**

at.....

on the day of by

..... DIRECTOR

.....FULL NAME

BEFORE THIS WITNESS

.....WITNESS

.....FULL NAME

.....ADDRESS

.....

This is the Schedule referred to in the foregoing Academic Partnership Agreement between University of the Highlands and Islands and Shetland UHI Limited dated _____2021

Part 1 – Provision of Further Education

1. PROVISION OF FURTHER EDUCATION

- 1.1 Shetland will conduct and provide such teaching in Further Education as shall be agreed and funded by UHI, in the name of Shetland, as shall be agreed and funded by UHI in accordance with the guidelines which may be set by the Regional Strategic Committee from time to time.
- 1.2 Shetland will be responsible for and accountable to UHI for the organisation and control of Further Education conducted within or by Shetland pursuant to the FHE Acts, to the UHI Court through the UHI Principal and the Regional Strategic Committee.
- 1.3 The principal of Shetland will be accountable to the UHI Principal through the Regional Strategic Committee, for the use of all resources allocated by UHI to Shetland (being a college assigned to UHI pursuant to the Assigned Colleges Order) in respect of Further Education teaching undertaken by Shetland.
- 1.4 In each Academic Year, UHI will provide funding by way of grant, loan or other payment to Shetland to enable Shetland to provide Further Education.
- 1.5 In respect of each Academic Year, the Regional Strategic Committee will, on behalf of UHI, provide Shetland with information confirming the level of funding for the delivery of Further Education for the forthcoming Academic Year, the timing of payments and details of the extent of the Further Education provision which Shetland will be required to deliver not later than 30 days after the date on which UHI receives written confirmation from SFC of the allocation of funding for further education for the Highlands and Islands region in each Academic Year.
- 1.6 Subject to paragraphs 1.7 and 1.8 below, in each Academic Year, UHI shall be entitled to make reasonable in-year adjustments to the funding to be provided to Shetland for the provision of Further Education.

- 1.7 UHI shall only be entitled to make reasonable in-year adjustments in the following circumstances:-
- (a) if the level of funding provided to UHI by the SFC in respect of the provision of Further Education is subject to adjustment by the SFC; or
 - (b) in exceptional circumstances (of which UHI shall be the sole judge, acting reasonably).
- 1.8 The entitlement of UHI to make in-year adjustments provided for in paragraph 1.6 is above is without prejudice to any entitlement, function, power or right of UHI provided for in or constituted by the Financial Memorandum or pursuant to the FHE Acts.
- 1.9 In relation to all aspects of its provision of Further Education pursuant to this Agreement, Shetland will comply with:-
- (a) the Financial Memorandum;
 - (b) any notice, direction, instruction or guidelines issued by the Regional Strategic Committee from time to time;
 - (c) Education Scotland quality standards and guidance; and
 - (d) the Outcome Agreement.
- 1.10 In planning and providing Further Education pursuant to this Agreement, Shetland will have regard to:-
- (a) the Outcome Agreement;
 - (b) the objective of providing as broad and integrated a programme of Further Education as possible across the highlands and islands region;
 - (c) Further Education provision offered and delivered by the Other Academic Partners;
 - (d) the preservation of Academic Freedom;
 - (e) the SCQF and the desirability of providing programmes of Further Education; and
 - (f) the funding available from UHI to Shetland for Further Education.

2. **FURTHER EDUCATION – FEES**

- 2.1 Where such fees are applicable, Shetland will charge, collect and diligently pursue payment of any fees chargeable in respect of:-
- (a) any course of Further Education in respect of which such fees are payable; and

- (b) any student who is liable to pay fees in respect of any course of Further Education on which they are enrolled.

2.2 For the avoidance of doubt, UHI shall have no obligation or liability to Shetland in respect of any uncollected fees or shortfall in fee income arising from failure to collect any fees chargeable or bad debt in relation to fees.

3. **FURTHER EDUCATION - STUDENT-FACING COMPLIANCE OBLIGATIONS**

3.1 Shetland will:-

- (a) Ensure that all students enrolled in a course or programme of Further Education are enrolled on Shetland's standard terms of student enrolment or where applicable any standard terms of enrolment developed by the Regional Strategic Committee.
- (b) Provide the UHI Secretary with a copy of Shetland's terms of student enrolment and notify UHI in advance of making any change to such terms.
- (c) Take account of any applicable guidance or best practice guidelines issued by Audit Scotland, the Competition and Markets Authority or the Scottish Public Services Ombudsman in relation to delivery of Further Education from time to time.
- (d) Provide students with access to articulation arrangements, as appropriate to their circumstances, to enable them to progress as seamlessly as possible from Further Education to Higher Education.
- (e) Ensure that all Further Education students are afforded the opportunity to become members of HISA.
- (f) Ensure all Further Education students have access to appropriate student welfare support services.
- (g) Ensure all Student Data is accurate and up to date.
- (h) Provide the Regional Strategic Committee with an annual summary of all student complaints received by Shetland relating to Further Education.
- (i) Ensure that it provides the UHI as regional strategic body under the FHE Acts with all data and information on quality and student outcomes required to enable the UHI to develop and monitor the relevant aspects of the Outcome Agreement (or any successor accountability mechanism) with the Scottish Funding Council.

Part 2 – Provision of Higher Education

1. PROVISION OF HIGHER EDUCATION

- 1.1 Shetland will conduct and provide all Higher Education teaching for and on behalf of and in the name of UHI and as part of the University, as shall be agreed and funded by the UHI Court.
- 1.2 Shetland will be responsible for and accountable to UHI for the organisation and control of the Higher Education conducted within Shetland for and on behalf of UHI to the UHI Court through the UHI Principal.
- 1.3 The principal of Shetland will be accountable to the UHI Principal for the use of all resources allocated by UHI to Shetland in respect of Higher Education teaching conducted by or through Shetland.
- 1.4 Shetland may conduct such other higher education teaching and research (being higher education which does not constitute Higher Education for the purposes of the FHE Acts) funded by non-governmental or other bodies external to UHI in accordance with such guidelines as may be set by the UHI Court from time to time.
- 1.5 In each Academic Year, UHI will provide funding by way of grant, loan or other payment to Shetland to enable Shetland to provide Higher Education.
- 1.6 In respect of each Academic Year, UHI will provide Shetland with information confirming the level of funding for the delivery of Higher Education for the forthcoming Academic Year, the timing of payments, and details of the extent of the Higher Education provision which Shetland will be required to deliver not later than 30 days after the date on which UHI receives written confirmation from SFC of the allocation of funding for higher education for the University in each Academic Year.
- 1.7 Subject to paragraphs 1.8 and 1.9 below, in each Academic Year, UHI shall be entitled to make reasonable in-year adjustments to the funding to be provided to Shetland for the provision of Higher Education.
- 1.8 UHI shall only be entitled to make reasonable in-year adjustments in the following circumstances:-
 - (a) if the level of funding provided to UHI by the SFC in respect of the provision of Higher Education is subject to adjustment by the SFC; or

- (b) in exceptional circumstances (of which UHI shall be the sole judge, acting reasonably).
- 1.9 The entitlement of UHI to make in-year adjustments provided for in paragraph 1.7 is above is without prejudice to any entitlement, function, power or right of UHI provided for in or constituted by the Financial Memorandum or pursuant to the FHE Acts.
- 1.10 In relation to all aspects of its provision of Higher Education pursuant to this Agreement, Shetland will comply with:-
 - (a) the Academic Quality Framework;
 - (b) any notice, direction, instruction or guidelines issued by the UHI Court from time to time; and
 - (c) the Outcome Agreement.
- 1.11 In planning and providing Higher Education pursuant to this Agreement, Shetland will have regard to:-
 - (a) the Outcome Agreement;
 - (b) Higher Education provision offered and delivered by the Other Academic Partners;
 - (c) the SCQF;
 - (d) the preservation of Academic Freedom; and
 - (e) agreed regulations, policies and procedures for validation, approval and ongoing quality assurance of curriculum as set out in the Academic Quality Framework and UK Quality Code (being the UK Quality Code for Higher Education as may be issued and updated by QAA from time to time).

2. **HIGHER EDUCATION – FEES**

- 2.1 Where such fees are applicable, Shetland will, on behalf of and as agent for UHI, charge, collect and diligently pursue payment of any fees chargeable in respect of:-
 - (a) any course of Higher Education in respect of which such fees are payable; and
 - (b) any student who is liable to pay fees in respect of any course of Higher Education on which they are enrolled.
- 2.2 Shetland will adhere to, comply with and communicate to students (where appropriate), the UHI Fees Policy.

- 2.3 Without prejudice to paragraph 2.1, Shetland will, on behalf of and as agent for UHI, charge, collect and diligently pursue payment of any other monies or sums due to UHI from time to time by any Higher Education student. For the avoidance of doubt, UHI shall have no obligation or liability to Shetland in respect of any uncollected Higher Education fees or shortfall in Higher Education fee income arising from failure to collect any fees chargeable or bad debt in relation to Higher Education fees.

3. **HIGHER EDUCATION – QUALITY MONITORING**

- 3.1 Shetland will provide such co-operation, information, data, evidence, or access to premises, personnel and relevant records as may be reasonably required by UHI and/or QAA from time to time in relation to any monitoring or audit activity carried by QAA in relation to the University or any Higher Education activity undertaken by Shetland.

4. **HIGHER EDUCATION –STUDENT-FACING OBLIGATIONS**

- 4.1 Shetland will:-

- (a) Ensure that all Higher Education students enrolled in a course or programme of Higher Education are enrolled on the UHI terms of matriculation.
- (b) Take account of any applicable guidance or best practice guidelines issued by the Competition and Markets Authority or the Scottish Public Services Ombudsman in relation to delivery of Higher Education from time to time.
- (c) Provide the UHI Secretary with details of any complaints received from Higher Education students or complaints relating or relevant to UHI or Shetland's role as part of the University promptly upon receipt of any such complaint, and (including where any complaint or negative feedback is provided directly to UHI) will provide such co-operation, information and access to premises and staff as UHI may require in relation to any complaint.
- (d) Ensure that all Higher Education students are issued with, fully complete and sign a UHI enrolment form in such form as UHI may require from time to time.
- (e) Ensure that all Higher Education students are provided with copies of or access to the UHI Academic and non-Academic Regulations, and the UHI ICT Acceptable Use Policy and such other student-facing regulations and policies as may be required by UHI from time to time.
- (f) Ensure that all Higher Education students are afforded the opportunity to become members of HISA.

- (g) Ensure all Higher Education students have appropriate access to student welfare support services
- (h) Ensure all Student Data is accurate and kept up to date.

Part 3 – Undertaking of Research Activity

1. RESEARCH ACTIVITY

- 1.1 Shetland will conduct Research Activity for and on behalf of and in the name of UHI as part of the University.
- 1.2 Shetland will be responsible for and accountable to UHI for the organisation and control of the Research Activity conducted within Shetland for and on behalf of the University (whether solely or jointly with any third party) to the UHI Court through the UHI Principal, and will conduct all such Research Activity in the name of UHI and under the auspices of the University.
- 1.3 The principal of Shetland will be accountable to the UHI Principal for the use of all resources allocated by UHI to Shetland in respect of Research Activity (including people, equipment, finance, IT) conducted by or through Shetland.

2. OBLIGATIONS OF SHETLAND

In pursuit of Research Activity, Shetland shall:-

- 2.1 undertake Research Activity in accordance with this Part 3 of the Schedule.
- 2.2 take steps to raise its research profile both nationally and internationally by effectively disseminating its successful research and outcomes.
- 2.3 investigate with UHI possible commercialisation and licensing opportunities for research and outcomes to ensure that potential commercial value for research is realised.
- 2.4 Encourage and support academics and students to submit research and outcomes for academic publications wherever appropriate, including open access publication.
- 2.5 work within and contribute to submissions to the Research Excellence Framework in the name of UHI and provide its submissions to UHI in a timely manner to facilitate final submissions by UHI.
- 2.6 apply for, access and implement such grant funding programmes as Shetland and UHI may agree are appropriate in accordance with Clause 21 to maximise its core and non-core research funding.

- 2.7 take steps to attract PhD students and to secure funding for PhD courses and projects.
- 2.8 ensure Research Activity is conducted within the University Research Ethics framework.
- 2.9 without prejudice to paragraph 2.8, conduct all Research Activity in accordance with all relevant legal and regulatory requirements.
- 2.10 provide details to the UHI research office of all Research Activity being undertaken by Shetland and obtain consent from UHI in advance of undertaking any of the following: (i) entering into any contract, agreement, memorandum of understanding or similar arrangement (including any variation or extension of such arrangement) in respect of Research Activity (Shetland may be required by UHI to enter into a back to back letter of agreement with UHI regarding any obligations placed on UHI in relation to such Research Activity ("**Letter of Agreement**")); and/or (ii) the commercialisation, disposal or licensing (including sublicensing) of any output or result of any Research Activity.
- 2.11 undertake to comply with any and all obligations which UHI enter into in relation to any funding terms and conditions or any other terms and conditions governing specific research projects (the "**Research Terms and Conditions**") which may be entered into by UHI prior to the parties entering into a Letter of Agreement.
- 2.12 where it is free to do so, grant to UHI a non-exclusive, royalty free licence, with the ability to grant sub-licences to funders or other parties working with Shetland on the Research Activity as appropriate, to use its Background IP as is reasonably required to enable the research to be undertaken.

3. **OBLIGATIONS OF UHI**

UHI shall make following support available to Shetland in relation to Research Activity, grants and contracts:

- 3.1 Support from UHI research office:
 - (a) Supports the institutional repository (PURE) for all research outputs and facilitates Academic Partners engagement, including the provision of reports;
 - (b) Provides a service for all Academic Partners relating to open access requirements, and data management;

- (c) Ensures that there is an appropriate framework for research ethics which complies with the national standards, and supports researchers across the partnership in using this effectively;
- (d) Frames policy in research and knowledge exchange in line with sector practice and works with Academic Partners to deliver this;
- (e) Provides a full range of services for graduate students, in line with sector practice, involving registration, training, monitoring, assessing and awarding;
- (f) Provides detailed support to Academic Partners for the development of submissions for the Research Excellence Framework submissions;
- (g) Provides a number of staff development opportunities, including mini-sabbaticals and mentoring for researchers;
- (h) Runs cross partnership events such as the cross partner research conference, (every two years) and the Research Forum;
- (i) Engages with key stakeholders, such as UKRI and its research councils and SFC for the benefit of academic partners; and
- (j) Supports the four cross partnership research clusters.

3.2 Support from the UHI Grants and Contracts Team:

- (a) Provides detailed support and guidance – including in the preparation of business plans - for individual researchers as they prepare bids, and specifically supports the development of bids for research projects where the UHI has to be the named bidder;
- (b) Scans the environment for opportunities for research projects and ensures that these are disseminated to Academic Partners;
- (c) Provides support post award for research bids, including in monitoring spend and supporting the preparation of reports to funders where appropriate;
- (d) Provides support for the distribution of some core funding streams, including REG, GCRF, BEIS Research Capital, and oversees required reporting of these.

3.3 Subject to the Research Terms and Conditions, UHI shall, where it is free to do so, grant to Shetland a royalty free, non-exclusive licence on the terms set out in the Research Terms and Conditions, to use any Intellectual Property Rights which are generated or first reduced to practice directly as a result of the work undertaken in accordance with the Research Activity.

Part 4 – Decisions requiring UHI consent

Shetland agrees and undertakes not to do any of the following without the prior written consent of UHI:-

1. Disposal (by way of sale, gift, transfer, assignation, lease, licence, alienation or disposal of any kind) of any capital asset with a net book / value in excess of £50,000 where the acquisition, development or improvement of that asset was funded (wholly or partially) by sums distributed to Shetland by UHI pursuant to any grant funding provided to or through UHI including, but not limited to, the Millennium Grant, any funding provided by including but not limited to Highlands & Islands Enterprise, European Commission, EU grant funding programme, or any other grant funding programme where the conditions of grant include restrictions on disposal or transfer (including but not limited to clawback arrangements).
2. The withdrawal from any course of Further Education or Higher Education, suspension, exclusion or expulsion of any student studying with, enrolled through, or undertaking Research Activity in any capacity with or at Shetland pursuant to or under the terms of the UKVI Licence.
3. Appoint or purport to appoint any individual to the role of Principal except as provided for by paragraph 16A of Schedule 2 of the Further and higher Education (Scotland) Act 1992.

Part 5 – Compliance with Freedom of Information (Scotland) Act 2002

1. **DEFINITIONS**

In this Part 5 of the Schedule, the following definitions apply:-

FOISA: the Freedom of Information Scotland Act 2002, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or relevant government department in relation to such legislation.

Environmental Information Regulations: the Environmental Information Scotland Regulations 2004 (SI 2004/520) together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or relevant government department in relation to such regulations.

Information: has the meaning given under section 73 of FOISA.

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOISA or the Environmental Information Regulations.

2. **COMPLIANCE WITH FOISA**

2.1 UHI and Shetland each acknowledge that they are subject to the requirements of the FOISA and the Environmental Information Regulations and undertake to assist and co-operate with each other to enable them each to comply with these information disclosure requirements.

2.2 On receipt of any Request for Information by Shetland, Shetland shall:-

- (a) provide a copy of the Request for Information to the UHI Secretary as soon as practicable after receipt and in any event within two Working Days of receiving the Request for Information;
- (b) prior to disclosing any requested Information, allow UHI to make representations regarding the handling of any such Request for Information;
- (c) take account of any representations by UHI regarding exemptions under FOISA or the Environmental Regulations which may be applicable to the Request for Information;
- (d) provide the UHI Secretary with a copy of all Information in its possession or power in the form that UHI requires within five Working Days (or such other period as UHI may specify) of UHI requesting that Information; and

- (e) provide all necessary assistance as reasonably requested by UHI to enable UHI to respond to the Request for Information within the relevant time for compliance set out in FOISA or the Environmental Information Regulations.

2.3 Where any Request for Information under paragraph 2.2 is made under the Environmental Information Regulations and Shetland does not hold such Information but reasonably believes that UHI may hold such Information it shall notify the applicant and the UHI Secretary accordingly.

2.4 Where any Request for Information is made to UHI under the Environmental Information Regulations and UHI does not hold such Information but reasonably believes that Shetland may hold such Information it shall notify the applicant and Shetland accordingly.

Part 6 – Personal Data Sharing

1. DEFINITIONS

1.1 In this Part 6 of the Schedule, in addition to any terms defined in the Agreement, the following definitions apply:

Data Controller: has the meaning set out in the Data Protection Legislation.

Data Processor: has the meaning set out in the Data Protection Legislation.

Data Security Breach: a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Personal Data.

Data Subject: the data subjects (as defined in the Data Protection Legislation) that the Shared Personal Data relates to and which shall include (without limitation) students, staff and research participants;

General Data Protection Regulation or GDPR: Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of the natural person with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

Single Point of Contract or SPoC: means an individual nominated by each party to deal with data protection issues arising under or in relation to this Agreement;

Special Category Data: has the meaning set out in the Data Protection Legislation.

Shared Personal Data: means the Personal Data and/or Special Category Data to be shared between the parties under or in relation to this Agreement;

Data Subject Rights Request: means a request to exercise a data subject's right in relation to their personal data held by a party or parties as referred to in the Data Protection Legislation and specifically (without limitation) Arts 13 - 22 of GDPR.

2. LAWFULNESS OF DATA SHARING

2.1 It is acknowledged by the parties that:

2.1.1 Shetland has been assigned to UHI by the Assigned Colleges Order to deliver Further Education, Higher Education and Research Activity either as funded by, or in the name of, UHI and that it is necessary to transfer the Shared Personal Data between the parties in order to give efficacy to the relationship with a view to achieving the vision and objectives set out in Clause 3 of the Agreement to the

benefit of the regions of the Highlands and Islands; and

2.1.2 the legal power to share the Personal Data as envisaged by this Part 6 of the Schedule is derived from the FHE Acts.

3. DATA SHARING RELATIONSHIP

3.1 It is further acknowledged between the parties that the role of each party in relation to the processing of the Shared Personal Data shall depend on the purpose of the relevant processing activity and that the data sharing relationships may be as follows:

3.1.1 both parties act as a Data Controller in relation to the relevant processing activity;

3.1.2 the parties act as Joint Data Controllers in relation to the relevant processing activity; or

3.1.3 Shetland acts as a Data Controller and UHI acts as the Data Processor in relation to the relevant processing activity.

3.2 As soon as reasonably practicably following signature of this Agreement, the parties shall document in a form set out in Annex A:

3.2.1 which processing activities fall under paragraphs 3.1.1 and 3.1.2 respectively, together with a description of the processing and the legal basis; and

3.2.2 which processing activities fall under paragraph 231.3 together with the information required under Art 28 of GDPR; and

once agreed upon and signed by both parties such document shall form part of this Agreement and be referred to throughout as Annex A.

3.3 Where a processing activity (as referred under Annex A) falls under the relationships outlined in either paragraphs 3.1.1 or 3.1.2, the parties shall comply with the provisions of Annex B to this Part 6 of this Schedule.

3.4 Where a processing activity (as referred under Annex A) falls under the relationship outlined in paragraph 3.1.3, the parties shall comply with the provisions of Annex C to this Part 6 of this Schedule.

3.5 The parties agree and/or acknowledge that each party shall:

3.5.1 appoint a SPoC who will work together with the other party's SPoC to reach agreement with regards to any issues arising from data sharing under this

Agreement. The SPoC for each party is as follows (or such other party as may be nominated by each party from time to time and notified to the other party):

(a) For UHI: **[Insert Details]**

(b) For Shetland: **[Insert Details]**.

3.5.2 cooperate with the other party in so far as reasonably necessary to enable each other to perform their obligations under Data Protection Legislation and this Part 6 of this Agreement and to actively improve the effectiveness of the data sharing initiative; and

3.5.3 comply with all Data Protection Legislation when processing the Shared Personal Data as envisaged by this Agreement (including specifically as set out in Annex A) and in relation to Shetland, when sharing personal data with Other Academic Partners.

3.6 Regardless of the nature of the data processing activity, Shetland shall:

3.6.1 on request and as soon as reasonably practicable, provide UHI with any information reasonably requested in relation to its data processing activities whether referred to under this Agreement or otherwise; and

3.6.2 notify UHI's SPoC as soon as reasonably practicable of any issue that may arise concerning the data processing activities of Shetland that concern or relate to any of the processing activities referred to in Annex A or which may otherwise reasonably concern or impact UHI (including bringing UHI into disrepute), including (without limitation) the following matters:

- (i) amendment and implementation of data protection related policies, notices and processes;
- (ii) a Data Security Breach;
- (iii) a Data Subject Rights Request;
- (iv) a Data Subject complaint concerning the processing of his/her Personal Data;
- (v) processing of Special Category of Data or any Personal Data that is considered (acting reasonably) as particularly high risk;
- (vi) data sharing with Other Academic Partners of UHI including without limitation in relation to any shared services;

and subject to Annex B and C, shall allow UHI to make representations regarding the handling of any such matter and take account of any such representations by UHI.

4. Review

4.1 The parties shall review the effectiveness of these data sharing terms every 6 months. The parties shall continue or amend this Part 6 depending on the outcome of this review. The review of the effectiveness of this Part 6 of the Schedule shall include:

(a) assessing whether the information in Annex A is still correct and reflecting practice;

(b) assessing whether the parties have materially complied with the terms of this Part 6 of the Agreement.

2.9 The parties will agree to any reasonable amendment to this Part 6 to reflect any review undertaken as referred to under paragraph 4 and/or to bring it into line with any amendment to or re-enactment of any Data Protection Legislation, in particular to reflect the UK leaving the EU and the end of the UK- EU transition period, which ended on 31st December 2020.

Annex A to Part 6 of the Schedule

1. This Annex A documents the processing activities of the parties where it is necessary to share the Shared Personal Data for the efficacy of the relationship as outlined in the Agreement. In recognition that data sharing and data processing activities may change and develop during the Term of the Agreement, the parties shall review this Annex A regularly in accordance with paragraph 4 of Part 6 of the Schedule and update it as appropriate. Any revised version of Annex A shall only form part of this Agreement where: (1) it is signed by the parties as a variation to this Agreement in accordance with Clause 30 of the Agreement; or (2) Annex A is updated by UHI to record a data sharing agreement, joint-controller agreement or data processing agreement entered into between the parties; or (3) Annex A is updated by UHI to reflect an entry on a Register of Processing Activity agreed by between the parties.

Section 1. Data Processing Activity where each party is a Data Controller

<u>Processing Activity</u>	<u>Why it is necessary?</u>	<u>Category of Personal Data</u>	<u>Legal Basis (under Art 6 & Art 9 of GDPR)</u>

Section 2. Data Processing Activity where the parties are Joint Data Controllers

<u>Processing Activity</u>	<u>Why it is necessary?</u>	<u>Category of Personal Data</u>	<u>Legal Basis (under Art 6 & Art 9 of GDPR)</u>

Section 3. Data Processing Activity where Shetland is the Data Controller and UHI is the Data Processor

<u>Processing Activity</u>	<u>Duration</u>	<u>Nature</u>	<u>Purpose</u>	<u>Type of Personal Data</u>	<u>Category of Data Subject</u>

Annex B

This Annex applies where the parties share Personal Data as Data Controller and separately as Joint Data Controllers as referred to in Annex A.

1. SCOPE

- 1.1 During the term, the parties agree to transfer Shared Personal Data between each other for the purposes set out in Sections 1 and 2 of Annex A to this Part 6 of the Schedule ("**the Agreed Purpose**").
- 1.2 Where the processing activity falls under Section 1, for the purposes of the Data Protection Legislation, the parties shall be each a Data Controller. Where the processing activity falls under Section 2, for the purposes of the Data Protection Legislation, the parties shall be considered Joint Data Controllers. This Annex B shall apply equally where both parties are acting as separate Data Controllers and when they are acting as Joint Data Controllers, except where otherwise stated.

2. PURPOSE

- 2.1 The parties agree to only process the Shared Personal Data for the Agreed Purposes.
- 2.2 The parties shall not process the Shared Personal Data in a way that is incompatible with the Agreed Purposes.

3. FAIR AND LAWFUL PROCESSING

- 3.1 Each party shall ensure that it processes the Shared Personal Data fairly in accordance with the Data Protection Legislation, which shall include providing the Data Subjects with the necessary fair processing information required under the Data Protection Legislation. For the avoidance of doubt and regardless of whether the processing activity falls under Section 1 (Data Controller to Data Controller) or Section 2 (Joint Data Controllers) of Annex A, UHI shall be responsible for providing the fair processing information to Higher Education Students with Shetland being responsible for, subject to any drafts being approved by UHI in advance, providing fair processing information to all other Data Subjects (including Further Education students, Shetland staff and research participants), unless otherwise agreed.
- 3.2 Each party shall ensure it processes the Shared Personal Data lawfully and in doing so, has established and recorded the Legal Basis For Processing (see Annex A).

4. DATA QUALITY

- 4.1 Each party shall ensure that before transferring the Shared Personal Data to the other party, that the Shared Personal Data are adequate, accurate, relevant and not

excessive for the Agreed Purposes.

- 4.2 Shared Personal Data must be limited to the Shared Personal Data as detailed in Annex A.

5. DATA SUBJECTS' RIGHTS

- 5.1 Subject to paragraphs 3.6.2 of Part 6 of the Schedule:

5.1.1 UHI shall be responsible for handling any Data Subject Request or other such similar requests from Higher Education students received by either party ; and

5.1.2 Shetland shall be responsible for handling any Data Subject Request or other such similar request it receives from any other Data Subject under or in relation to this Agreement.

- 5.2 When dealing with Data Subject Rights Requests and other similar requests under paragraph 5.1, each party shall maintain a record of individual requests for information, the decisions made and any information that was exchanged. Records must include copies of the request for information, details of the data accessed and shared and where relevant, notes of any meeting, correspondence or phone calls relating to the request.

6. DATA RETENTION AND DELETION

- 6.1 The party receiving the Shared Personal Data shall not retain or process Shared Personal Data for longer than is necessary to carry out the Agreed Purposes.

- 6.2 Notwithstanding [paragraph 6.1](#), the parties shall continue to retain Shared Personal Data: (i) in accordance with any statutory or professional retention periods applicable in their industry; or (ii) where the parties are of the view (acting reasonably) that retaining the Shared Personal Data (in whole or in part) is necessary and can be justified in accordance with the Data Protection Legislation or applicable law in which case the relevant party shall specify its own retention period taking into consideration the requirements of the Data Protection Legislation or applicable law.

- 6.3 Subject to paragraph 6.2, the party receiving the Shared Personal Data shall ensure that any Shared Personal Data are returned to the disclosing party or destroyed securely (at the option of the discloser) in in the following circumstances:

(i) on termination of the Agreement;

(ii) on expiry of the term of the Agreement; and/or

(iii) once processing of the Shared Personal Data is no longer necessary for the Agreed Purposes.

- 6.4 Following the deletion of Shared Personal Data in accordance with [paragraph 6.3](#), the receiving party shall notify the disclosing party that the Shared Personal Data in

question has been deleted.

7. TRANSFERS

- 7.1 For the purposes of this paragraph 7, transfers of Shared Personal Data shall mean any sharing of Shared Personal Data by the receiving party with a third party, and shall include, but is not limited to, the following:
- (i) storing Shared Personal Data on servers outside the UK;
 - (ii) sub-contracting the processing of Shared Personal Data to data processors located outside the UK; and
 - (iii) granting third parties located outside the UK access rights to the Shared Personal Data.
- 7.2 The receiving party shall not disclose or transfer the Shared Personal Data to a third party located outside the UK without: (i) the disclosing party's prior written consent; and (ii) ensuring that such transfer is permitted under the applicable Data Protection Legislation.
- 7.3 [Paragraph 7.2](#) will not apply to any data transfers carried out by one party to this Agreement to the other party in respect of Shared Personal Data.

8. SECURITY AND TRAINING

- 8.1 Each party shall only provide the Shared Personal Data to the other by using secure methods as agreed between the parties in advance and shall only process such Shared Personal Data, once received, in accordance with appropriate technical and organisational security measures as required under the Data Protection Legislation.
- 8.2 Having regard to the state of technological development and the cost of implementing such measures, the parties acknowledge that the technical and organisational security measures they have in place are appropriate in order to:
- (a) prevent, in so far as reasonably practicable:
 - (i) unauthorised or unlawful processing of the Shared Personal Data; and
 - (ii) the accidental loss or destruction of, or damage to, the Shared Personal Data; and
 - (b) ensure a level of security appropriate to:
 - (i) the harm that might result from unauthorised or unlawful processing or accidental loss, destruction or damage of Shared Personal Data; and
 - (ii) the nature of the Shared Personal Data to be protected.

9. DATA SECURITY BREACHES AND REPORTING PROCEDURES

- 9.1 Having considered the applicable Data Protection Legislation, the parties confirm they have in place their own guidance that must be followed in the event of a Data Security Breach.
- 9.2 Notwithstanding paragraph 3.6.2 of Part 6 of the Schedule, the parties are under a strict obligation to notify any potential or actual Data Security Breach to the other party as soon as possible and, in any event, within 12 hours of identification to enable the parties to consider what action is required in order to resolve the issue in accordance with the applicable Data Protection Legislation.
- 9.3 The parties agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any Data Security Breach in an expeditious and compliant manner.

Annex C

This Annex applies where the parties share the Shared Personal Data and Shetland is the Data Controller and UHI is the Data Processor as set out in Section 3 of Annex A.

1. Data Processing Terms

- 1.1** The parties acknowledge that for the purposes of the Data Protection Legislation, Shetland is the Data Controller and UHI is the Data Processor in relation to the processing activity set out in Section 3 of Annex A (“the Services”). Section 3 of Annex A sets out the scope, nature and purpose of processing by UHI, the duration of the processing and the types of Shared Personal Data and categories of Data Subject.
- 1.2** Without prejudice to the generality of [paragraph 1.1](#), Shetland will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Shared Personal Data to UHI and/or lawful collection of the Shared Personal Data by UHI on behalf of Shetland for the duration and purposes of this Agreement.
- 1.3** Without prejudice to the generality of [paragraph 1.1](#), UHI shall, in relation to any Shared Personal Data processed in connection with the performance of the Services:
- (a)** process that Shared Personal Data only on the documented written instructions of Shetland unless UHI is required by applicable law to otherwise process that Shared Personal Data. Where UHI is relying on applicable law as the basis for processing Shared Personal Data, UHI shall promptly notify Shetland of this before performing the processing required by the applicable laws unless those applicable laws prohibit UHI from so notifying Shetland;
 - (b)** ensure that it has in place appropriate technical and organisational measures, reviewed and approved by Shetland, to protect against unauthorised or unlawful processing of Shared Personal Data and against accidental loss or destruction of, or damage to, Shared Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it);

- (c)** ensure that all personnel who have access to and/or process Shared Personal Data are obliged to keep the Personal Data confidential; and
 - (d)** not transfer any Shared Personal Data outside of the UK unless the prior written consent of Shetland has been obtained and the following conditions are fulfilled:

 - (i)** Shetland or UHI has provided appropriate safeguards in relation to the transfer;
 - (ii)** the Data Subject has enforceable rights and effective legal remedies;
 - (iii)** UHI complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv)** UHI complies with reasonable instructions notified to it in advance by Shetland with respect to the processing of the Shared Personal Data;
 - (e)** assist Shetland, at Shetland's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (f)** notify Shetland without undue delay on becoming aware of a Personal Data Breach;
 - (g)** at the written direction of Shetland delete or return the Shared Personal Data and copies thereof to Shetland on termination of the agreement unless required by applicable law to store the Shared Personal Data; and
 - (h)** maintain complete and accurate records and information to demonstrate its compliance with this Annex C and allow for audits at the cost of Shetland by Shetland or Shetland's designated auditor and immediately inform Shetland if, in the opinion of UHI, an instruction infringes the Data Protection Legislation.
- 2.** Shetland provides UHI general authorisation to engage third party processors of the Shared Personal Data. UHI shall notify Shetland if it wishes to appoint or replace a relevant third party processor and allow Shetland the opportunity to object to the same (acting reasonably and without undue delay). UHI confirms that it has entered or (as the case may be) will enter with any relevant third-party processors into a written agreement incorporating terms which are substantially similar to those set out in this Annex C and UHI confirms that they or they will reflect and will

continue to reflect the requirements of the Data Protection Legislation.

- 3.** Either party may, at any time on not less than 30 days' notice, revise this Annex C 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 replaced by attachment to this agreement).

Part 7 – Millennium Grant Agreement

[copy to be annexed for ease of reference]

Part 8 – Financial Memorandum for the Academic Partner

FINANCIAL MEMORANDUM

Introduction

Purpose of this document

1. This Financial Memorandum (FM) sets out the formal relationship between the (University of the Highlands & Islands) Regional Strategic Body and Shetland UHI and the requirements with which the College must comply in return for payment of grant by the Regional Strategic Body.

Definitions

2. University of the Highlands & Islands (Court) is the Regional Strategic Body, therefore any reference to Regional Strategic Body should be read as the University of the Highlands and Islands.
24.
3. Chief Officer is defined as the Principal and Vice Chancellor of University of the Highlands and Islands.
4. Chief Executive Officer is defined as the College Principal.

Compliance with the Financial Memorandum

5. The responsibility for ensuring that the College complies with this FM rests with the governing body of the College. Questions about the interpretation of the FM may be raised with officers of the Regional Strategic Body.
6. Where the College's interpretation of the FM differs from that of the Regional Strategic Body, the Regional Strategic Body will seek, wherever possible, to reach agreement in a spirit of partnership with the College. However, the Regional Strategic Body's interpretation of this FM shall be final.

Effective date

7. This FM shall take effect from xxxx.

Structure of this document

8. The FM is in three parts:

- Part 1: defines the relationship between the Regional Strategic Body and the College and the responsibilities of each for the proper stewardship of public funds
- Part 2: contains the general requirements that apply to the College
- Part 3: contains additional requirements for non-incorporated colleges.

Part 1: The relationship between the Regional Strategic Body and the College

Responsibilities of the Regional Strategic Body

1. The Regional Strategic Body has been established under the Further and Higher Education (Scotland) Act 2005, as amended by the Post-16 Education (Scotland) Act 2013, to support a regional approach to the planning and funding of college provision.
2. A Regional Strategic Body may make grants, loans or other payments to the governing bodies of colleges assigned to it for the provision of further education, higher education, research and related activities.
3. The legislation also confers certain duties and responsibilities on the Regional Strategic Body, including to exercise its functions with a view to securing coherent, high quality further and higher learning provision in the localities of its colleges, and monitoring the performance of its colleges.
4. Under the terms of the 2005 Act, the Regional Strategic Body may attach terms and conditions to the payment of grant made to its colleges. It is a term and condition of grant payment from the Regional Strategic Body that the governing body of the College and its designated officers comply with the requirements set out in this FM.

Accountability

5. The Regional Strategic Body is accountable to the Scottish Funding Council (SFC) for the use of public funds provided to it by SFC under the terms of the relevant legislation.
6. The Chief Officer of the Regional Strategic Body is responsible and accountable to the SFC for ensuring that funds provided to the Body are used for the purposes for which they have been given, and in ways that comply with the conditions attached to them. The Chief Officer has a personal responsibility for the propriety and regularity of the public finances provided to the Regional Strategic Body, and for ensuring that funding is used economically, efficiently and effectively.

Assurance

7. In order to meet his or her responsibilities, the Chief Officer of the Regional Strategic Body must be satisfied that the governing body of the College meets the requirements of this FM as a condition of receiving grant funding from the Regional Strategic Body. The Regional Strategic Body will therefore seek financial management and other information

from the College but, as far as possible, will rely on data and information that the College has produced to meet its own needs. If further information is required, the Regional Strategic Body will make a specific request in the context of its commitment to efficient regulation.

8. The Chief Executive Officer of the College shall provide a letter of representation (template will be provided) to the Chief Officer of the Regional Strategic Body on 30th April each year confirming that all requirements of the financial memorandum have been met. If any requirements cannot be confirmed, the reasons for non-compliance should be explained in writing by the Chief Executive Officer and actions to rectify the position agreed with the Chief Officer of the Regional Strategic Body.
9. Where the Regional Strategic Body has concerns or insufficient information to provide the assurance required, it will, in the first instance, seek to resolve matters with the Chief Executive Officer of the College. Where this has not proved possible, or in the case of significant concerns, the Chief Officer of the Regional Strategic Body will inform the Chair of the College governing body and the College's Chief Executive Officer in writing – and without delay – and will specify what action is required to address these concerns.
10. Where circumstances warrant it, the Regional Strategic Body's Chief Officer may suspend the payment of any or all grants to the College. The Regional Strategic Body may also use its powers to attend and address a meeting of the College governing body.

What the College can expect from the Regional Strategic Body

11. The Regional Strategic Body will conduct its affairs to high standards of corporate governance and public administration. It will maintain a complaints procedure and a separate appeals process for funding decisions.
12. The Regional Strategic Body will act reasonably on the basis of the fullest available evidence and objective analysis. Subject to any legal requirement to observe confidentiality, it will be open and transparent with the College, and with other stakeholders, and will give or be prepared to give a public justification of its decisions.
13. In discharging its responsibilities, the Regional Strategic Body will seek to make regulation efficient and effective.
14. The Regional Strategic Body will seek at all times to work in a spirit of partnership with the College, including maintaining regular dialogue with the College and, where appropriate, its representative bodies. The shared aim of that partnership will be to work collaboratively to support the College deliver its strategic

priorities and commitments in terms of the Regional Outcome Agreement with SFC, and to ensure that the Regional Strategic Body can deliver its regional priorities and undertake its statutory and other functions. The Regional Strategic Body recognises that the College may also undertake activities, and have to comply with legislation and regulation, which may fall outside the scope of this partnership.

15. The Regional Strategic Body will allocate and pay grant to the College in accordance with its current policies and procedures. The College will be consulted in advance and given reasonable notice of any significant change to these policies and procedures and of significant changes in overall funding levels.

The Regional Strategic Body's governance requirements of the College

16. The Regional Strategic Body must be able to rely on the whole system of governance, management and conduct of the College to safeguard all funds of the College deriving from the Regional Strategic Body and achieve the purposes for which those funds are provided.
17. The Regional Strategic Body requires the governing body of the College to comply with the principles of good governance set out in the Code of Good Governance for Scotland's Colleges. The Regional Strategic Body also requires the governing body of the College to ensure that:
 - Public funds are used in accordance with relevant legislation, the requirements of this FM and only for the purpose(s) for which they were given. Strategic, Capital or other grant funding must only be used for the purpose for which it is provided by the Regional Strategic Body
 - Subject to any legal requirement to observe confidentiality, the College will be open and transparent with the Regional Strategic Body and other stakeholders, and will give, or be prepared to give, a public justification of its decisions in relation to the use of public funds
 - The College strives to achieve value-for-money and is economical, efficient and effective in its use of public funding
 - There is effective planning and delivery of the College's activities in accordance with its mission and its commitments to the Regional Outcome Agreement agreed with SFC
 - The College plans and manages its activities to remain sustainable and financially viable. A College is being managed on a sustainable basis if, year on year, it generates sufficient income to cover its costs and allow for maintenance of and investment in its infrastructure (physical, human and intellectual) at a level which enables it to maintain adaptive capacity necessary to meet future demands

- The College has a sound system of internal management and control, including an audit committee, an effective internal audit service, and adequate procedures to prevent fraud or bribery
 - The College has an effective policy of risk management and risk management arrangements. The College complies with the Regional Strategic Body policy on risk management and risk management arrangements and shares information with the Regional Strategic Body in line with agreed protocol
 - The College has regular, timely, accurate and adequate information to monitor performance and account for the use of public funds. Such information will be made available to the Regional Strategic Body on request, as necessary, for the exercise of its functions and to gain assurance
 - The College is engaged actively in continuously enhancing the quality of its activities and involves the Regional Strategic Body, students and other stakeholders in these processes
 - The Regional Strategic Body Internal Audit Service has rights of access to all the College's premises, staff, records information and assets which it considers necessary to fulfill its role and responsibilities. Access will be arranged by prior agreement where possible
 - As well as being accountable directly to the governing body of the College for the proper conduct of the College's affairs, the Chief Executive Officer of the College is also accountable directly to the Regional Strategic Body's Chief Officer for the College's proper use of funds deriving from the Regional Strategic Body and its compliance with the requirements of this FM.
18. The Chief Executive Officer of the College must inform the Regional Strategic Body's Chief Officer without delay of any circumstance that is having, or is likely to have, a significant adverse effect on the ability of the College to deliver its education programs, and other related activity, including delivery of its commitment to the Regional Outcome Agreement with SFC. He or she must also notify the Regional Strategic Body's Chief Officer of any serious weakness, such as a significant and immediate threat to the College's financial position, significant fraud or major accounting breakdown or any material non-compliance with any requirement of this FM.
19. The Regional Strategic Body reserves the right to investigate any of the matters notified above in order to establish the facts and to determine whether appropriate actions have been or are being taken to mitigate the risk of reoccurrence.

Revisions to the Financial Memorandum

20. The Regional Strategic Body will make changes to the requirements of this FM only after consulting the SFC, the College, its representative bodies and other relevant stakeholders.

Part 2: General requirements

1. Unless otherwise stated, the following general requirements apply to the College.

Financial Memorandum

2. It is a term and condition of grant payment from the Regional Strategic Body that the governing body of the College and its designated officers comply with the requirements set out in this FM.

Post-16 Education Body criteria

3. In undertaking its functions, the governing body of the College must keep under review and have in place satisfactory provision in relation to the list of matters set out in section 7 (2) of the 2005 Act, as amended by the Post-16 Education (Scotland) Act 2013.

Outcome Agreement

4. The College must deliver its commitment to the Regional Outcome Agreement with SFC as agreed with the Regional Strategic Body.

Payment of Strategic, Capital or other Grants

5. Where the Regional Strategic Body makes a payment to the College of a Strategic, Capital or other grant, the College will be required to comply with any additional requirements attached to the grant, as well as with this FM.

Changes to grant payments

6. If the SFC revises its payment of grant to the Regional Strategic Body, then the Regional Strategic Body reserves the right to make adjustments to its payment of grant to the College.

Repayment of grant

7. If the College fails to comply with the requirements of this FM, and any other specific terms and conditions attached to the payment of grant from the Regional Strategic Body, it may be required to repay the Regional Strategic Body any sums received from it and may be required to pay interest in respect of

any period during which a sum due to the Regional Strategic Body in accordance with this or any other condition remains unpaid.

8. If, in the reasonable opinion of the Regional Strategic Body, any provision set out in this FM is not observed by the College, the Regional Strategic Body will be entitled, in respect of the payment of grant from the Regional Strategic Body:
 - In the case of funding by way of grant: to require immediate repayment of any and all grants or any part or parts of any grants at any time after the Regional Strategic Body becomes aware of such failure to observe (without prejudice to further demands until the whole of all sums made available by way of grant shall have been paid in full)
 - In the case of funding by way of loan (notwithstanding the terms of any agreement attached to the same): to require immediate repayment of the whole or part of each such loan at any time after the Regional Strategic Body becomes aware of such failure to observe (without prejudice to further demands until the whole of all sums made available by way of loan shall have been repaid in full).

Public sector pay policy

9. The College must have regard to public sector pay policy set by the Scottish Ministers.

Tuition fees

10. Where applicable, the College must charge student tuition fees at the levels set by the Scottish Ministers under either the Student Fees (Specification) (Scotland) Order 2006 or the Student Fees (Specification) (Scotland) Order 2011, whichever is applicable. However:
 - the tuition fee levels set by the Scottish Ministers under the student Fees (Specification) (Scotland) Order 2006 do not apply to students who do not have a relevant connection with the United Kingdom and Islands or are not excepted students within the meaning of the Education (Fees and Awards) (Scotland) Regulations 2007; and
 - The tuition fee levels set by the Scottish Ministers under the Student Fees (Specification) (Scotland) Order 2011 do not apply to students who do not have a relevant connection with Scotland or are not excepted students within the meaning of the Education (Fees) (Scotland) Regulations 2011, but any tuition fees charged to students from the rest of the United Kingdom must not exceed £9,000 per year.

Disposal of exchequer funded assets

11. In disposing of exchequer funded assets, the College must in the first instance notify the Regional Strategic Body and follow the guidance in the relevant procedure notes on the SFC website as amended from time-to-time.

Student activity

12. Where appropriate, the College must provide data returns requested by the SFC to the standards specified and by the deadline set by the Regional Strategic Body. For further education activity the SFC's Student Activity Data Guidance for Colleges can be found on the [SFC website](#).

Student support guidance

13. Where appropriate, the College's must follow SFC's Student Support Guidance.

European Structural and Investment Funds

14. Where the College is in receipt of European Structural and Investment Fund funding, it must follow SFC's ESIF guidance and the Regional Strategic Body protocol.

Audit and accounting

15. The governing body must appoint and have in place an effective audit committee and ensure the establishment and maintenance of effective arrangements for the provision of internal and external audit. For incorporated colleges, Audit Scotland will appoint external auditors.
16. The Audit Committee must produce an annual report to the governing body of the College.

Accounts direction

17. The College must follow the SFC's current Accounts Direction in the preparation of its annual financial statements and comply with the Regional Strategic Body requirements to facilitate the production of consolidated statutory accounts if required.

Internal audit

18. The College must have in place an effective internal audit service. The operation and conduct of the internal audit service should conform to the professional standards of the Chartered Institute of Internal Auditors.
19. The College must inform the Regional Strategic Body when an internal auditor is appointed and must inform the Regional Strategic Body immediately if the internal auditor is removed or departs before the end of their term of office.
 20. The internal audit service must provide the governing body and senior management of the College with an objective assessment of adequacy and effectiveness of risk management, internal control, governance, and value-for-money.
 21. The internal audit service must extend its review over all the financial and other management control systems, identified by the audit needs assessment process. It must cover all activities in which the College has a financial interest, including those not funded by the Regional Strategic Body. It must include review of controls – including investment procedures – that protect the College in its dealings with organisations, such as subsidiaries or associated companies, arms-length foundations, students' associations, and collaborative ventures or joint ventures with third parties.
 22. The internal audit service will work with the Regional Strategic Body Internal Audit Service to coordinate audit planning and auditing activities in an effort to optimise audit assurance and minimise duplication.
 23. The internal audit service where required by the Regional Strategic Body Internal Audit Service shall carry out audits of, but not limited to, Student statistical returns, Education Maintenance Allowances, Student Support Funds in accordance with the relevant guidance and report the findings and provide appropriate audit certificates to the Regional Strategic Body Internal Audit Service.
 24. The internal auditor must produce an annual report for the governing body of the College on its activities during the year. The report must include an opinion on the adequacy and effectiveness of the College's risk management, internal control, and governance. The report must be presented to the College's audit committee and a copy sent to the Regional Strategic Body.
 25. The College must not in any way limit the Regional Strategic Body access to assurance information and reports from the College's Internal Audit Service.

Value for money

26. The College must have a strategy for reviewing systematically management's arrangements for securing value for money.
27. As part of its internal audit arrangements, the College must obtain a comprehensive appraisal of management's arrangements for achieving value for money. A copy of this appraisal should be included in the College's Internal Auditors Annual Report.

External Audit

28. The external auditor must be entitled to receive all notices of and other communications relating to any meeting of the governing body of the College which any member of the governing body is entitled to receive. They must also be entitled to attend any such meeting and to be heard at any meeting which they attend, on any part of the business which concerns them as auditors.
29. The external auditor must also be entitled to attend the meeting of the governing body of the College or other appropriate committee at which the College's annual report and financial statements are presented. The external auditor is expected to attend, as a minimum, any meetings of the audit committee of the College where relevant matters are being considered, such as planned audit coverage, the audit report on the financial statements and the audit management letter. It is the responsibility of the secretary to the College audit committee to notify the external auditor of such meetings.
30. The external auditors, notwithstanding responsibilities to their clients, are expected to co-operate fully with any enquiries or routine monitoring that the Regional Strategic Body undertakes.
31. The College must not in any way limit the Regional Strategic Body's access to the College's external auditors.

Part 3: Additional requirements for non-incorporated colleges

1. The following additional requirements apply to non-incorporated colleges.

Insurance

2. The College is responsible for taking out and paying for adequate insurance in respect of its assets and activities.

Granting of security

3. As a result of a condition in SFC's Framework Document with the Scottish Government, the College must seek, through the Regional Strategic Body, SFC's prior written consent if it intends to offer as security for a loan any land or property which has been provided, improved, or maintained with the aid of grant.

Capital finance

4. As a condition of SFC's Framework Document with the Scottish Government, SFC is required to "make provision for the monitoring and control of borrowing by institutions to protect the public investment in institutions and to maintain accountability for the use of exchequer funds". In order that SFC can discharge this requirement, it has in place a threshold for capital finance above which the College requires, through the Regional Strategic Body, SFC's consent to undertake any new borrowing.
5. The governing body of the College in line with the Code of Good Governance for Scotland's Colleges, must, as a matter of course, satisfy itself that all of the following requirements on capital finance are met:
 - The College can demonstrate its ability to repay the finance, and to pay interest thereon, without recourse to requesting additional grant from SFC, through the Regional Strategic Body
 - The College can demonstrate that its ability to maintain financial and academic viability will not be impaired as a result
 - The College can demonstrate the value to be generated by the transaction, whether it involves refinancing, or purchase of any new investment or assets, the acquisition of which is to be financed by the borrowing
 - The College can demonstrate that any such new investment or asset acquisition is in accordance with the College's strategic plan and, where appropriate, is in line with the UHI estates strategy.

6. For the purposes of this document, 'capital finance' includes borrowing, finance and operating leases, and other schemes, such as private finance initiative projects, non-profit distribution projects, loan support projects and revolving credit facilities where borrowing is the substance of the transaction, in line with relevant accounting standards.

When SFC's formal consent is required in respect of capital finance arrangements

7. The College must obtain, through the Regional Strategic Body, prior written consent from SFC before it undertakes a level of capital finance where the annualised costs of all capital finance (being the sum of the servicing and capital repayment costs of each loan or other arrangements spread evenly over the period of the relevant loan or arrangement) would exceed 4% of

- Total income as reported in the latest audited financial statements; or
- The estimated amount of total income for the current year, if that is lower.

8. In assessing total capital finance commitments, the College must ignore low-value financial commitments, provided that the combined annualised servicing costs of such financial commitments do not exceed 0.5% of total income.

9. A revolving credit facility should be considered in the same way as an overdraft facility; for example, in terms of the College's maximum exposure over the term of the facility. An even annual cost of capital finance is assumed, unless the College can demonstrate otherwise. The College is required to provide the annualised cost of the capital finance calculation with any request to SFC for borrowing consent.

10. The College must also seek consent, through the Regional Strategic Body, from SFC before raising capital finance on the security of assets in which the Scottish Ministers have an interest. For the purposes of this document, such an interest exists where the College has used funds provided by the Scottish Ministers to acquire an interest in or to develop any land, building or other asset, and where those funds were provided subject to a condition which has the effect of requiring the College, through the Regional Strategic Body, to obtain Scottish Ministers' consent before raising capital finance on the security of those assets.

11. The Scottish Ministers have directed that SFC will exercise their functions in relation to any such interests.

12. In seeking SFC's approval, the College must demonstrate to the Regional Strategic Body and SFC, in writing, its compliance with the requirements set out above.

Contingent commitments

13. The College must seek, through the Regional Strategic Body, SFC's prior written consent if it intends to lend or give a guarantee, indemnity or letter of comfort. The value of the guarantee should be equal to the total contingent liability over the term of the guarantee. In all cases, the College must take steps to restrict the contingent liability to a minimum and should undertake a careful appraisal of the risks before accepting any contingent liability.
14. The College must also provide assurance that, in the event of the contingent liability arising, it can be met from within the College's own resource, or that appropriate insurance cover has been arranged.
15. However, SFC's written consent is not required for such arrangements if:
 - An actual or effective value is less than 4% of total income as reported in the latest audited financial statements or of the estimated amount of total income for the current year if that is lower; or
 - The indemnity is of a standard type contained in contracts and agreements for 'day-to-day' procurement of goods and services in the normal course of business.

Severance payments

16. The College must adhere to the following principles when taking decisions about severance payments, including settlement agreements:
 - The actions of those taking decisions about severance payments, and those potentially in receipt of such payments, must be governed by the standards of personal conduct set out by the Committee on Standards in Public Life (the Nolan Principles)
 - The governing body of the College must take account of the Regional Strategic Body's expectations of the College in this FM regarding the use of public funds.
17. Based on the principles above, the following requirements should be met by the College:
 - The College must have in place a clear policy on severance payments
 - Severance packages must be consistent with the College's policy and take into account contractual entitlements, for example, salary and period of notice, and any applicable statutory employment entitlements. This means that, when entering into employment contracts, remuneration committees should take care not to expose the College to excessive potential liabilities

9.

- The College's policy must include a formal statement of the types of severance arrangements that should be approved by the Remuneration Committee of the College or equivalent and approved formally by the governing body of the College. These should include any severance package that is proposed for a member of the senior management team, in recognition of the particular level of accountability that is attached to senior management positions, and also any severance package that would exceed a maximum threshold agreed by the governing body of the College
 - Where a severance package exceeds the maximum threshold agreed by the governing body of the College, the College must consult, through the Regional Strategic Body, SFC's Accountable Officer prior to approving the proposed severance package
 - The remuneration committee of the College or equivalent, when overseeing and approving severance arrangements for staff, must ensure that all decisions are recorded
 - Negotiations about severance packages and payments must be informed, on both sides, by legal advice where appropriate
 - When a severance arises following poor performance on the part of an individual, any payment must be proportionate and there should be no perception that poor performance is being rewarded
 - Final year salaries must not be inflated simply to boost pension benefits
 - Notice of termination of appointments must not be delayed in order to generate entitlement to payments in lieu of notice
18. The College must ensure that its internal auditor includes a regular review of systems for the determination and payment of severance settlements in their strategic audit plan.
19. The College must seek the view of its external auditor if it plans to make what it considers to be any novel or potentially contentious severance payments, including those that exceed the maximum threshold agreed by the governing body of the College.
20. The College's external auditor must review severance settlements. Such a review will normally take place after settlements have been agreed (normally as part of their financial statements audit) and should be carried out by senior audit staff because of the complexity and sensitivity of the issues. If final settlements do not materially conform to the terms of this FM, auditors must report the facts to the College in their management letter, and inform members of the governing body of the College. The auditors must also recommend that the College informs the Regional Strategic Body and SFC immediately.

21. Where there are settlement agreements, and it is felt that a confidentiality clause is necessary, this must not prevent the public interest being served and must be consistent with the College's whistleblowing policy.

Part 9 – UHI IP Policy

EUREKA MOMENTS AND VEILED SECRETS

DOs and DON'Ts for busy scientists and academics ...

DISCOVERIES

If you stumble on a new idea, invention, process or programme:

- 1** DO keep quiet about it
- 2** DO immediately tell your designated IP manager/Head of Department/senior management so that they may consider IP issues
- 3** DO keep your lab notes and other relevant documents accurate, up to date and comprehensive
- 4** DO mark relevant documents confidential and consider keeping them in a secure area
- 5** DO NOT talk about your discovery to anyone including at conferences, seminars, meetings etc.
- 6** DO NOT PUBLISH &
- 7** DO remember that Institutional IP Policy recognises the IP contribution of staff

CO-OPERATING, COLLABORATING, CONSORTING, CONTRACTING ETC.

If you are about to start dealings with an outside organisation that may involve confidential information, or existing or future IP:

- 8** Arrange a meeting with your designated IP Manager to discuss any potential for intellectual property (IP) 'leakage, and potential approaches to IP (see Annex 1 for details of designated posts and functions that are to be contacted/utilised as part of the IP development process)
- 9** It is likely that a NDA (Non-Disclosure Agreement) aka a CA (Confidentiality Agreement) will be recommended to protect the IP and associated confidential information
- 10** Likewise, be receptive to corresponding suggestions from the outside organisations
- 11** Have the wording prepared or checked by for example, Legal Secretary, Grants and Contracts Office or an appropriate senior management

- 12** These issues may already be part of a more comprehensive document (draft collaboration Agreement etc.). If so, refer to the draft. Sometimes, if the main agreement takes time to negotiate etc., a quick NDA at the outset may be appropriate

- 13** Be ready to:
 - i. describe the Background (existing) IP, and
 - ii. state when relevant discussions started or will start to Legal Secretary or Grants and Contracts

- 14** Where appropriate mark documents etc. 'CONFIDENTIAL'

- 15** Remind colleagues to do likewise.

1. INTRODUCTION

UHI and its Academic Partners are committed to a research strategy that includes the delivery of real world solutions to end users. In so doing, recognise that researchers and academics are often best placed to develop their outputs into new products or applications; but their intellectual work is built upon a supportive infrastructure of facilities and Professional Services, without which innovation could not thrive.

This document outlines the policies and procedures for the ownership, protection, distribution and commercial development of the 'intellectual property' of the employees of UHI and its Academic Partners.

Please note that the term Intellectual Property (IP) includes, but is not limited to, all IP, designs, information, specifications, formulae, improvements, discoveries, know-how, data, processes, methods, techniques and the intellectual property rights *therein*, including but not limited to, patents, copyrights, database rights, design rights (registered and unregistered), trademarks, trade names and service marks and the right to apply for any of the *above* as recognised in any country in the world.

This document is not intended to be an exhaustive statement of policy applicable to every situation. Instead, it is intended as a guide to general policy in relation to the handling of project IP. If any dispute in interpretation cannot be resolved by the parties directly involved, then it will be escalated to the Directorate appointed by the relevant UHI Academic Partner for decision. If the dispute is between UHI Academic Partners then the UHI Partnership Council will undertake the final decision.

Teaching materials have been dealt with at section 6 below.

2. SCOPE AND PURPOSE

UHI and its Academic Partner staff produce intellectual property (IP) in the course of their research and scholarship. Some of this IP makes a valuable contribution to the body of knowledge relating to a wide range of disciplines, but has little commercial value.

Other IP has significant potential for commercial exploitation, which can be of financial benefit to UHI and its Academic Partners and the employee concerned.

The purpose of this policy document is to provide guidance and sources of advice in order to encourage the early identification of such IP and successful exploitation for the mutual benefit of all parties.

3. DEFINITIONS

Exploitation	Action taken to ensure that appropriate Inventions and IP reach the market place and the optimal financial return is enjoyed by UHI and its Academic Partners and its employees. Following establishment of the appropriate means of protection (e.g. patenting), exploitation will typically involve licensing, company formation or other technology transfer measure.
Intellectual Property (IP)	Inventions, computer software, data, databases, technical know-how and trade secrets. Large banks of new data collected in the course of research and scholarship are also covered here only if they may reasonably be considered to have potential for exploitation.
Invention	A novel or useful idea relating to processes, machines, manufacturing or compositions of matter. It would include such things as new or improved devices, systems, computer software, circuits, chemical compounds, biomedical materials, mixtures etc. In lay terms, it is probable that an invention has been made when something new or useful has been conceived or developed, or when unusual, unexpected or non-obvious results have been obtained and can be exploited. Inventions will most commonly be developed through science, engineering and research, but can arise from any area of academic research or scholarship.
Inventor	An employee who makes an Invention or creates IP
UHI & its Academic Partners:	This term includes all employees of UHI Executive Office and EO researchers depts., including Centres and Institutes where UHI is the employer (e.g., the Dept. of Diabetes and Cardiovascular Science; The Centre for History; the Economic Intelligence Unit; etc.) "Academic Partner" covers all staff employed by any UHI affiliated institution (including: SAMS, Inverness College, Moray College, West Highland College, Perth College, Sol Mor Ostaig, Argyll College, Lews Castle College, North Highland College, Orkney College, Shetland College, NAFCMC and HTC).

4. PRINCIPLES

This policy provides a framework for the creation, use and exploitation of intellectual property at UHI and its Academic Partners and applies to all members of the organisation. It defines the rights and responsibilities of UHI and its Academic Partners, its staff and students in relation to intellectual property.

5. INTELLECTUAL PROPERTY COORDINATION

A "Designated IP Manager", will be identified in each employer institution (see Annex 1 systems and processes). The designated IP Manager will receive information about IP from the 'originator(s)' and work closely with them and project teams that wish to protect IP and investigate commercial opportunities. The designated IP Manager will be the first point of contact for any questions of guidance related to ownership, protection, distribution and commercialisation of IP. It is important to establish this dialogue early so expectations are clear and because various actions can have a detrimental effect on the ability to have certain kinds of future impact for example any publication could risk losing protection of IP, patent protection may not be possible after publishing a paper or making a presentation containing information about an 'IP'.

6. OWNERSHIP POLICY STATEMENT

The general policy is that IP created through your normal work at your employer is owned by your employer. That is the general law as between employer and employee. For most research projects, the IP stays with the employer, but the employer may, as part of a programme of contracted or collaborative research enter into a separate agreement that provides otherwise.

There are three main alternatives:

A. Where UHI or a UHI Academic Partner develops IP jointly with external collaborators, then ownership should be agreed to reflect the background IP and contribution of each partner to any new (foreground) IP.

B. Where UHI or a UHI Academic Partner (or more likely its trading company such as UHIRE(UHI Research and Enterprise Ltd)), develops IP jointly with external commercial companies, negotiations may be needed about ownership and exploitation of foreground IP.

C. Where funding which UHI is in receipt of requires IP to be owned by UHI.

In either event, the ownership may need to be decided on a case-by-case basis in a negotiation process led by the designated IP manager, Company Secretary or equivalent as assigned by each employer institution, and formalised in an IP Ownership Agreement (see Annex 2).or Consortium Agreement. This must be signed by the Company Secretary (or equivalent) and an authorised signatory for the external collaborators concerned

An IP Ownership Agreement may include the designation of a lead person/post to manage the development of joint IP. It should also include details of how any development costs

will be shared, as well as any specific revenue sharing arrangements between the parties involved.

As the owner of IP created through the work, the employer or the alternative as mentioned above, retains all patent and disposition rights including the right to decide how or whether the IP is exploited/commercialised. For IP jointly developed with external collaborators, the IP Ownership, Consortium or Funding Agreement will govern how or whether the IP is exploited/commercialised.

This policy does not apply if the creator can demonstrate that the IP already existed *e.g.* in a protected agreement, or was created:

- other than in the ordinary course of their work; and
- without conflict of interest; and
- without breaching any duty to their employer; and
- without the use of confidential or proprietary information of their employer; and
- without significant use of employer-administered resources and/or facilities.

UHI and its Academic Partner's employees accept the principles of ownership of technology as stated under this document. In furthering such undertaking, all regular as well as visiting researchers, staff, students and others may be asked to sign IP and proprietary information agreements prior to participating in research at UHI or its Academic Partners.

This policy does not apply to IP in any academic, course or other materials generated by employees for higher or further education. The ownership of such materials shall belong to UHI or the Academic Partner as agreed in a separate agreement and is not subject to this IP policy.

7. STUDENTS

The general guideline is that undergraduates and taught postgraduates own the IP that they generate, unless covered by a specific IP Agreement; as would be appropriate if external sponsorship had been provided for a specific piece of work.

Where IP is generated by postgraduate research students (PGRs) who are formally employed, the employer owns any IP generated (assuming that IP is related to their employed role). This must be explained to the student and formalised in a *Declaration of Assignment of Intellectual Property* (DoAoIP) by post-graduate students. An example of this declaration is laid out in Annex 3. In most cases, this is contained in the employment contract between UHI or its Academic Partner and the student.

In cases where a postgraduate student is on a stipend, the ownership of IP is dictated by where they are registered (*e.g.* for UHI ownership lies with the employer of the lead supervisor). Should that registration be at a different Institution (*e.g.* University of Edinburgh), then the student may need to sign a DoAoIP, reallocating the IP ownership to the relevant UHI or Academic Partner Institution. This would be decided on a case-by-case basis depending on the relative contribution of each partner and any conditions applied by

the funder.

8. CAPTURING NEW INTELLECTUAL PROPERTY

When new IP arises, the originator(s) must contact the designated IP Manager who will guide them through completion of an IP Disclosure Form (IPDF; Annex 4). This is internal to UHI and its Academic Partners and formally initiates action to (i) clarify the ownership, and then (ii) consider appropriate protection and exploitation of the IP.

The terms of agreement entered into by UHI or its Academic Partner, in particular with collaborators may create obligations with respect to the reporting of the new IP.

Therefore, the originator(s) should report promptly all IP, in the broadest definition of the term, by submitting an IPDF.

An IP Disclosure Form must include:

- full detail and description of the IP identified;
- sponsorship information; details of how the research has been funded, collaborators and non-UHI or its Academic Partners resources used;
- disclosures; any/what disclosures have been made;
- details on joint originators, including external collaborators; and
- commercial interests and conflicts of interest.

Once submitted changes should only be made in the event of incorrect information and must be agreed by all listed originators. If new IP arises that is similar to previously disclosed IP, a new IPDF should be submitted.

9. PROTECTING INTELLECTUAL PROPERTY

The rights governing ownership and use of many types of IP are known as 'intellectual property rights', which are derived primarily from legislation granting patent, copyright, design and trademark protection. Mechanisms also exist for protecting confidential information, trade secrets, know-how and other intellectual or tangible research property (*e.g.* physical prototypes).

9.1 Patents

A patent protects new IP and covers how things work, what they do, how they do it, what they are made of and how they are made. It gives the owner the right to prevent others from making, using, importing or selling the IP without permission within a specific territory for a designated period. Typically, the IP is a technical innovation of some kind with a commercial application.

To the extent that it considers appropriate, the relevant UHI institution/ Academic Partner may seek patent protection on IP where they may intend to pursue or facilitate commercial licensing or to comply with the terms of various agreements. This may include a 'literature search of prior art' being carried out by an appropriate specialist, with input

from one or more of the originators.

If the relevant UHI/AP institution decides not to patent a particular piece of IP they may consider assigning ownership to the originator(s).

While patents are granted by many different countries, procedures for filing, regulations for patentability and term of patent grant vary from country to country. In the UK, a patent affords its owner exclusivity but it must be renewed every year after the 5th year for up to 20 years protection. To be patentable the IP must be new, useful and non-obvious. Detailed up to date information on the costs and procedures required to file and maintain a patent can be found at the Intellectual Property Office web site: (<http://www.ipo.gov.uk/types/patent/p-applying/p-cost.htm>).

Good record keeping is essential for preserving intellectual property rights and in determining the date on which an invention is made, since the United States, in particular, awards patents based on first to invent rather than first to file, as in most countries. The US is a substantial market for many inventions and research notebooks, for example, may be required to be presented as legal evidence. , It is therefore recommended that:

- (i) All electronic record keeping should conform to sector norms and advice as well as the UHI retention policy and data management guide.
- (ii) Permanent bindings are used on notebooks – loose-leaf books should be avoided to prevent possible removal or substitution of pages.
- (iii) (ii) Pages should be numbered and any additional drawings, charts or computer printouts should be permanently attached to the notebook, clearly identified and have reference made to them in the notebook.
- (iv) The notebook should be reviewed regularly by someone who understands the technology involved and each page should ideally be signed by a witness. The choice of witness is important - it should preferably not be someone who may be nominated as a co-inventor. The witness should also sign and date any graph, charts or print outs, which are inserted into the notebook ensuring the signature is on both the inserted document and the notebook page.

Well-documented notebooks should demonstrate the progress of research and are an important record in the event of a dispute. They should be stored safely. The employing institution will retain these documents when the individual leaves.

Storage of all data should follow security and fire protection good practice guides.

If you have any queries regarding this activity consult your designated IP Manager.

You should disclose any possible invention to the designated IP Manager as early as possible. This will facilitate a patent application, if deemed appropriate.

In most instances, it will be necessary to engage the services of a patent lawyer to help file the patent application. This may lead to expense. There will also costs associated with keeping a patent in force.

Applying for a patent in the United Kingdom (UK) does not protect IP elsewhere. UHI and its Academic Partners can protect IP in many international countries using the [Patent Cooperation Treaty \(PCT\)](#) through the World Intellectual Property Organisation (WIPO) through the European Patent Office (EPO) or WIPO (<http://www.ipo.gov.uk/types/patent/p-manage/p-abroad/p-worldwide.htm>).

If required, you can also apply for a patent in individual countries by contacting the national patent office of each country.

9.2 Secrecy

The release of information regarding a specific discovery may preclude the ability to protect the IP in a subsequent patent application. IP which is already in the public domain – *e.g.* if it has been discussed in public (even with a small group); has been presented at a seminar or conference; or published in an academic journal – may no longer be patentable. Therefore, care should be taken when discussing any IP prior to patent filing.

Accordingly, any dissemination of new 'inventions' or 'process' should be discussed with the Company Secretary/designated IP manager before any sharing of information.

9.3 Copyright

Copyright subsists in original work of authorship, whether or not published, which has been recorded in writing or otherwise (including electronic form). Copyright laws protect literary works (including academic papers), films, sound recordings and original databases among other things. Computer programs are protected as literary works.

A copyright owner has the exclusive right (among other things) to reproduce the work, prepare derivative works, distribute by sale or otherwise, and display or perform the work publicly. Copyright protection of a work generally extends for either 70 years after the death of the originator or 70 years after the date on which the work is first lawfully made available to the public. Precise duration of protection depends on the nature of the work.

Copyright protection is important in order for UHI and its Academic Partners to license copyrightable material.

Copyright law does not always require a 'notice of copyright' to be affixed to the material however; such a notice is strongly advised. The following notice should be applied on Academic Partner owned works to protect the copyright:

"Copyright © *insert Academic Partner name* [Year(s)] - All Rights Reserved"

The date in the notice should be the year or years in which the work is created. No notice other than the foregoing is to be used for UHI or its Academic Partner owned works.

In the UK, copyright is not registered and it may be important to be able to prove the date

of first production of the work. This can be achieved by lodging the work and recording the date of conception with a third party (e.g., a solicitor, bank manager or patent agent).

For added copyright protection in jurisdictions that provide for registration (e.g., USA) certain works, as deemed appropriate, may be registered with the appropriate regulatory body (e.g., the United States Copyright Office).

Despite the statutory provision whereby the copyright in any work produced by an employee in the course of employment belongs to the employer, UHI or its Academic Partner may grant the author(s) a 'free licence to the copyright' with regard to work published in a recognised academic, scientific, technical, professional or management journal or book.

Higher Education Institutes generally do not grant such a licence to materials created by employees during the course of and related to their employment, comprising:

- Course or training materials;
- Software programs;
- Any design specification or other work which may be necessary to protect rights in commercially exploitable intellectual property

These guidelines do not supersede existing agreements with respect to course and teaching materials. UHI or its Academic Partner as the case may be, will not grant such a licence to academic, course or other materials generated by either party in relation to higher or further education to the author(s). **have been dealt with at 9.4 below.**

9.4 Design Rights

Protection for designs exists for the appearance of a product or part of it. It may arise from the features of a product, in particular, the lines, colour, shape, texture or materials of the products itself or its ornamentation. A design is not protected to the extent it is solely functional.

A design can be registered to provide protection in various countries, whether in the UK alone, throughout the EU or otherwise and protection can be obtained for a period of 5 years, renewable on payment of fees for further periods of 5 years up to a maximum of 25 years. Registered design is intended to protect the appearance of an object where aesthetic appeal of the object is of prime importance.

There is an unregistered design right, which applies throughout the European Union. Like copyright, it is not necessary to register this right but in order for the right to exist, it must have been 'recorded': *i.e.* a drawing must have been done or an article made. This right exists for 15 years from conception of the design and for not more than 10 years from the date of first sale. For the first five years, you can stop anyone from copying the design. For the rest of the time the design is subject to a 'license of right'. This means that

anyone is entitled to a licence to make and sell products copying the design.

UHI or its Academic Partners may seek to obtain registered design rights, in particular, for those designs that will be used to commercially exploit products. As with patents, a design must be new. There must be no other design identical to it. In addition, the design must have individual character: *i.e.* it must be different in the eyes of an 'informal user' from all other designs available before application to register the design.

9.5 Trademarks

A trademark is a word, name, symbol or device (or any combination of these) adopted by an organisation to identify its goods and services and distinguish them from the goods and services of others. Trademark protection may be obtained by registration of the trademark in each of the countries where the goods/services are to be sold. Unregistered trademarks may sometimes be protected by law, usually where there has been long-standing and substantial use.

A trademark may be used to protect those names and symbols associated with certain UHI or its Academic Partner's activities, products or events. Prior to registration for trademark protection, the designation "TM" after a trademark will give notice of a claim of ownership. The term 'registered' or some other description indicating that the mark is registered must not be used unless the mark has actually been registered. The designation '®' is reserved for such use.

The use of trademarks to protect UHI/AP owned properties, or to designate UHI/AP as the origin of a product, event, activity, service or the like, may be instituted only through the Company Secretary or designated IP Manager.

9.6 Confidential Information and Design Rights

In the process of working, researchers and academics may generate new information and know-how relating to work in progress that must be kept confidential in order to maintain competitive advantage. Since such information and know-how will be captured in written or otherwise reproducible form from time to time, a mechanism is required to ensure it is not misused or released publicly.

Such proprietary information and know-how, whether captured in an archival medium or not, are typically referred to as "trade secrets". Unlike copyright, there is no trade secret statute. Protection of trade secrets derives from various legal concepts, including breach of contractual obligations not to misuse or disclose information, breach of trust and breach of confidence. UHI and its Academic Partner's employment contracts and other relevant project agreements include such clauses.

The most important aspect of this type of protection is secrecy. The protection will remain legally valid only as long as the trade secret is maintained as such. In order to maintain protection while a trade secret is being used, it is necessary to bind staff having access to

any UHI/AP-derived secret, through a contractual agreement not to disclose it. Such agreements are commonly called confidentiality or non-disclosure agreements (NDAs). These agreements can be accessed through the Company Secretary/designated IP Manager.

In addition, some of external partners may be subject to freedom of information queries, which would require the release of certain company information. However, information may not have to be released if it is commercially sensitive or would otherwise damage the competitiveness of UHI Academic Partners.

9.7 Non-Commercial Dissemination

Intellectual Property owned by UHI and its Academic Partners may be distributed for research and other non-commercial purposes to other educational, scientific and research institutions, etc. particularly if the research underpinning the IP is publicly funded.

Such distribution is usually subject to the condition that any commercial development or commercial use or further transfer of the IP in question will not be pursued with regard to IP created and owned by UHI and its Academic Partners. This condition should be specifically included in a formal agreement or must be contained in a 'Non-Commercial Dissemination Agreement' (NCDA), signed by the recipient of the IP.

In addition, UHI Academic Partners may wish to control subsequent use, for example, by requiring recipients to follow a specific research protocol.

Distribution may be possible in advance of securing protections (such as patents or design rights) by using some form of contractual agreement.

IP may have potential commercial value as well as scientific value. Advice should be sought from the Company Secretary/designated IP Manager about how to make IP available for scientific use in a manner that does not diminish its value or inhibit its commercial development.

10. Commercial Development

Where appropriate, UHI and its Academic Partners will pursue the commercial exploitation of IP. The decision as to what is to be commercially exploited will be made by the UHI or Academic Partner Directorate. If there are external collaborators with ownership rights, they will be involved in decision-making.

Any decision to invest in the commercial exploitation of IP opportunities that emerge will be taken by the designated UHI/AP IP commercialisation Committee, as appropriate. Where there is shared ownership of IP, either between UHI AP's and/or with external collaborators, then a group will be set up to develop and recommend a commercial exploitation plan. This group will be drawn from the IP-owning institutions, with a nominated chair.

Commercial exploitation may include without limitation:

- researching the market for the IP;
- commercialisation through a trading subsidiary;
- entering into discussions with potential licensees;
- negotiating appropriate licenses or other agreements;
- considering spin-outs or company formation
 - UHI/AP may accept an equity position in lieu of cash royalties and fees;
- identifying third parties to commercialise it, if appropriate;
- monitoring progress;
- distributing revenue to originators in accordance with UHI/AP revenue sharing policy;
- selling the IP or the rights associated with it.

The main contact for all of the activities mentioned above is the designated IP Manager, who will involve the originators as closely as possible in any commercial activities as this is a proven approach to maximise the chances of success.

In some instances, distribution and commercialisation of IP may be accomplished by the transfer or licensing of intellectual property rights such as patent or copyright. In other instances distribution and commercialisation of IP may be aided by or depend upon access to the physical or tangible embodiment of the IP as is the case with computer software, physical prototypes or products.

11. Receipt and Distribution of Revenues

Revenue as the result of commercialisation of UHI/AP IP (*e.g.* royalties, license fees, sale proceeds, realised equity considerations, *etc.*) will be calculated on a case by case basis and distributed to all relevant collaborators at the close of the relevant financial year as follows:

1. Deduct costs that are directly attributable to a specific case (*e.g.* cost of filing/maintaining a patent application, prosecution and maintenance of such, materials and manufacturing costs, specific staff costs, marketing costs and so on). Only staff specifically hired to carry out the revenue generating activity are included in these deductions.
2. Distribute any amounts in line with the IP Ownership Agreement in place, as well as any supplementary agreements in place with other collaborators.
3. Of the UHI/AP share, the rewards from commercialisation are to be split between the named originator(s), as stated on the IP Disclosure Form, and the employer of the originator(s). For IP that generates only small gross commercial incomes (or for early revenues from a large project), the originator(s) receive a greater proportion:

Net Income Band (cumulative)	Originator(s)	Employer Institution
£0 - £10,000	80%	20%
£10,001 - £50,000	70%	30%
£50,001 - £1,000,000	50%	50%
£1,000,001+	33.33%	66.67%

Revenue-sharing distributions may be considered taxable income and it is the responsibility of the recipient to properly report and pay tax on this income to any relevant authorities.

It may be necessary to distribute revenues to former staff several years after they have departed. It is the responsibility of each member of staff to keep their contacts details up to date with UHI/AP after departing. If the former staff member cannot be contacted using the details on file six months following the date of distribution, their revenue share will be retained by the employer institution, to be invested in future activities.

ANNEX 1: Proposed systems/process requirements

Each UHI Academic Partner will agree to adopt the same basic IP policy. However, behind this there may be some variations in the detail of individual IP identification and commercialisation processes adopted.

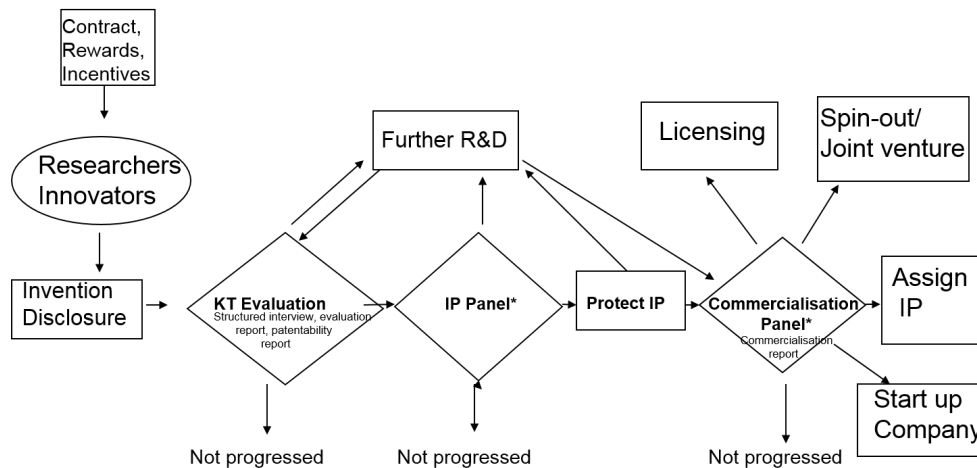
Therefore, alongside the IP policy each UHI Academic Partner/ employer institution will set up an internal IP commercialisation process that includes a designated institutional point of contact for all IP disclosures/ issues and a group/ panel that will evaluate IP opportunities and agree the next steps (see diagram below for an example of how this might be carried out for UHI owned IP).

Each UHI AP could, if required, insert their own named persons, posts or groups into their institutional version of the UHI/AP IP policy - as deemed appropriate. For example, the “designated IP contact point” could, be the employer institutions Company Secretary, the KE Manager, the Business Development Manager or the Commercialisation Manager, etc. Each UHI/AP employer institutions may also wish to insert details of any specific internal or external support staff that may be involved in developing/ commercialising the IP, where appropriate (e.g., legal assistance, grants and contracts, etc.).

Each employing institution will also agree a local Institutional arbitration process and final decision-making group, where required.

If the dispute is between UHI Academic Partner Institutions or groups, the final arbitration will rest with the UHI Partnership Council.

UHI Commercialisation Process



* (Vice Principals for Research & Enterprise, Head of Knowledge Exchange, budget holder, Company Secretary, etc.)

Where innovations are not progressed the innovator may be assigned ownership of IP

ANNEX 2: Intellectual Property Ownership Agreement

An Intellectual Property Ownership Agreement (IPOA) formalises the background IP and contribution of each partner to that innovation. Because ownership structures are based

on negotiation, and are therefore unique, there is no standard agreement template.

It may include the designation of a lead institution to manage the development and exploitation of the IP, but must include details of how any development costs will be shared across the partners, as well as any specific revenue sharing arrangements between the parties involved.

The table below outlines the subject areas, and specific considerations, that need to be included when creating an Intellectual Property Ownership Agreement.

Subject Area	Specific Considerations
The Project	<ol style="list-style-type: none"> 1. Name all parties to an IP Ownership Agreement 2. Name the lead partner (if there is one) 3. State the start date and end date for the IOA 4. If work started before agreement was signed, indicate if retrospective effect applies 5. State fully what resources (human and other) each party to the agreement shall provide 6. State fully any specific conditions that apply to the provision of partner resources (human and other) 7. Name the people who are key to the project
Project Management	<ol style="list-style-type: none"> 1. Name the Project Manager (if there is one) 2. Lay out the process, and specific actions to be followed (and by whom), for dispute resolution on IP ownership
Background IP	<ol style="list-style-type: none"> 1. State what background IP each party will provide 2. State if any party's background IP is confidential 3. Establish if any background IP may be published
IP Ownership	<ol style="list-style-type: none"> 1. Describe the IP to be covered by the IPOA 2. Lay out IP ownership split agreed between parties

Exploitation	<ol style="list-style-type: none"> 1. State which parties have rights to exploit the IP 2. State how and what development costs will be shared between parties 3. State how commercial revenue (if realised) will be shared between parties 4. Describe the patent status of the IP and how any change in status might affect exploitation strategy
Confidentiality and Publication	<ol style="list-style-type: none"> 1. State timeline for confidential information i.e. indefinitely or for a defined period 2. Affirm whether academic use/publication is permitted
Liability	<ol style="list-style-type: none"> 1. State any warranties that parties are prepared to provide that contributed/created IP does not infringe third party rights

Annex 3

Declaration of Assignment

Declaration of Assignment of Intellectual Property by Postgraduate Students

The UHI/AP Group Intellectual Property (IP) Policy recognises that, under the terms of the Copyright and Patents Act 1988, where IP is created by an employee in the course of their employment, that the Intellectual Property Right (IPR) is owned by the UHI/AP as the employer.

In order for students to benefit from the revenue sharing scheme available to UHI/AP employees, any postgraduate research students working at UHI/AP, are required to assign the rights to IP arising from their research to your employer institution.

Where research is sponsored by an external organisation, the terms of the contract between the UHI/AP and that organisation will define the ownership of the resulting IP.

UHI/AP makes no claim on inventions, or other forms of IP, which have no connection to your employer institution.

As such, students are required to read and sign two copies of their acceptance of the following declarations. One copy will be retained by the student and one by your employer institution.

COPYRIGHT

1. I will promptly disclose to my employer institution all copyright works or designs, originated, conceived or written by me, whether alone or with others during the period of my work.
2. For the purposes of Section 2(1) of the Registered Designs Act 1949 and Section 267 of the Copyright, Designs and Patents Act 1988, my employer institution shall be the proprietor of any design to which Clause 4.1 applies.
3. At the request and expense of UHI/AP, I will do all things necessary or desirable to substantiate the rights of UHI/AP under the provision of this Clause
4. I hereby irrevocably and unconditionally waive in favour of my employer institution any and all moral rights conferred upon me by Chapter 1 of Part 1 of the Copyright, Designs and Patents Act 1988 for any work in which copyright or design right is vested in my employer institution, whether by this agreement or otherwise.

INTELLECTUAL PROPERTY

1. If at any time I make or become entitled to any IP whether relating directly or indirectly to my employer institution, I shall promptly disclose full details to the designated IP Manager. This applies whether I am working alone or with other person or persons. I understand that details (including drafts, early editions, etc.) of such IP belong to UHI/AP and may be used in accordance with the provisions of Section 39 of the Patents Act 1977 in the determination of IPR ownership.
2. If the intellectual property belongs to UHI/AP in terms of paragraph 5.1, I shall hold it in trust for UHI/AP. At the expense of UHI/AP, I shall do all things necessary or desirable to enable UHI/AP or its nominee to obtain the benefit of the IP; including, should UHI/AP decide, to secure patent or other appropriate forms of protection for it throughout the world.
3. UHI/AP shall have the sole discretion over decisions as to patenting or exploitation of such intellectual property.

4. I hereby irrevocably appoint the Director/Deputy Director/Company Secretary of my employer institution to be my attorney in my name. On my behalf they will be able to execute, sign and prepare all such documents or other things and generally to use my name for the purpose of giving UHI/AP or its nominee the full benefit of the provisions of Clauses 1 to 4. As far as any third party is concerned, a written Certificate signed by the Director (or nominee) of UHI/AP shall be conclusive evidence that any document fall within the authority hereby conferred.
5. I understand that UHI/AP operates an incentive scheme to share the exploitation of IPR, details of which are available in the UHI and its Academic Partners Intellectual Property Policy.

Signed

Name in Capitals

Dated

Signed For UHI/AP

Position

Name in Capitals

Dated

ANNEX 4 – Intellectual Property Disclosure Form

Intellectual Property Disclosure Form

**Highly Confidential
Intellectual Property Disclosure**

IP Abstract

Date Submitted

Originator Details

Originator Status	Name	IP Ownership, %
Lead Originator		
Other Originator		
Other Originator		
Other Originator		
Other Party		
Other Party		

SECTION 1 – General

1.1 Is the IP a new product, process, software, machine, or composition of matter?
Please specify type.

1.2 List the possible applications of this IP.

1.3 List the novel or unused features of this IP.

1.4 Describe any further work you feel needs to be undertaken to bring your IP to a point where a commercial entity would be interested? Approximately how much would this cost and how long would it take?

SECTION 2 – IP Description

2.1 Provide a detailed description of the IP including any important key words.
The description must contain sufficient detail so that one skilled in the art could reproduce the IP artefact.

2.2 Does the IP require a government agency approval, human tests of independent trials to determine its success? List any additional steps required to advance the IP towards commercialisation.

2.3 List the advantages of this IP over currently available options / opportunities.

2.4 List any disadvantages or limitations of this IP.

2.5 List any competing 'products' in the market or any other research that you are aware of that may compete.

2.6 Have you undertaken a patent search?

SECTION 3 – Sponsorship

3.1 Please indicate how your research has been funded to date:

3.2 Have you had any support or collaborations outside your employer institution other than the named funding body?

3.3 List any non-SAMS resources including Material Transfer Agreements (MTA's) and any facilities used in the development. Include time period and extent of use.

SECTION 4 – Disclosures

4.1 Have any disclosures of this technology been made to date?

4.2 List the first date of conception, place, and corroborating person or records.

4.3 Please give the date of the first disclosure – written or oral.

4.5 Give details of the availability of any models or demonstrations of the technology

SECTION 5 – Joint Originators

5.1 List any joint inventors or collaborators from outside your employer institution. Include the institution, company or organisation of the joint originator(s).

5.2 Do you have any employment contracts external to your employer institution, if so with whom?

SECTION 6 – Commercial and Conflicts of Interest

6.1 List any companies which have expressed interest or may be interested in licensing the IP for further development or sale. Include company name, address, telephone number and contact person.

6.2 Are you a shareholder, officer, director or consultant of any companies named in the previous question?



University of the
Highlands and Islands
Oilthigh na Gàidhealtachd
agus nan Eilean