

**UNIVERSITY OF THE HIGHLANDS AND ISLANDS PARTNERSHIP AGREEMENT – PART TWO**

between

**UNIVERSITY OF THE HIGHLANDS AND ISLANDS**

and

**SHETLAND UHI LTD**

**UPDATED THORNTONS DECEMBER 21**

2021

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## **INTRODUCTION**

### **Overview**

The University of the Highlands and Islands Partnership has been established for the advancement and pursuance of education, to advance all aspects of learning and knowledge and to provide and facilitate the delivery of industrial, commercial, professional, and scientific education, research, and training. The University is designated as a Regional Strategic Body (“RSB”) and is responsible for securing the coherent provision of high quality fundable further and higher education throughout the Highlands and Islands, Moray and Perthshire.

The University operates as a collegiate federal partnership and delivers tertiary education and world class research via collaboration with twelve Academic Partners. The relationship between the University of the Highlands and Islands and the Academic Partners is currently centred around three agreements; An All Party Agreement (1997-8) that affirms each Academic Partners commitment to the University Project and precludes withdrawal without consent, The Millennium Commission Distribution Agreement which regulates the allocation of funds from the University to Academic Partners and an Academic Partnership Agreement between the University and each partner that regulates the rights and obligations that exist between each party (1998-9).

These agreements whilst still valid and enforceable are now significantly out of date and require to be updated to ensure that they remain fit for purpose and appropriately reflect the parties’ obligations and how the relationship operates in practice. The agreements also need to be updated to make sure that any references to statute, third parties or regulatory regimes are accurate and up to date.

The existing partnership agreements make no reference to the Financial Memorandum, Outcome Agreements, or the FE or HE Governance Codes, they also predate the award of University title and the designation of the University of the Highlands and Islands as an RSB.

The aim of this new Academic Partnership Agreement is to provide a single, coherent document which clearly sets out the parties’ expectations of each other. Currently, the obligations of the Academic Partners to the University and vice versa are contained within several different documents and there is a lack of consistency across the partnership.

This new agreement which has been developed in collaboration with academic partner chairs and principals seeks to bring a greater degree of consistency and coherence to the various compliance/governance elements of the partnership and to

clearly articulate the principles of partnership working that will help to ensure that our learners receive an equitable experience wherever they choose to study within the University partnership.

This new agreement is separated into two parts; part one provides a high-level all-party agreement confirming a formal commitment between all the parties to cooperate and collaborate effectively together as a unified partnership and in accordance with 11 overarching guiding principles; part two comprises a template contract between the University and each academic partner setting out the legal responsibilities and obligations of the University to each partner and vice versa.

**Broadly the University commits to:**

- Provide funding and to allocate University resources to academic partners to conduct teaching and research on behalf of the University and in the name of the University,
- Make grants, loans, or other payments to academic partners for the provision of further education, higher education, research, and related activities,
- Exercise its functions with a view to securing coherent, high quality further and higher learning provision in the locality of each academic partner,
- Conduct its affairs to high standards of corporate governance and public administration and to always act reasonably based on the fullest available evidence and objective analysis,
- To be open and transparent with academic partners and other stakeholders, and to provide or be prepared to provide a public justification of any decisions,
- To always work in a spirit of partnership with the academic partner and in accordance with part one of this agreement, including maintaining regular dialogue with each partner and, where appropriate, its representative bodies.
- To work collaboratively to support each partner to deliver its strategic priorities and commitments in terms of the Regional Outcome Agreement, and to ensure that the University can deliver its regional priorities.

**and each academic partner commits to:**

- be accountable for the use of all resources allocated by the University and for the organisation and control of teaching and research conducted within the Academic Partners for and on behalf of the University,

**The University is responsible for:**

- Securing the coherent provision of high quality fundable further and higher education throughout the region
- Monitoring the performance of academic partners/assigned colleges
- Delivery of the Regional Outcome Agreement
- Providing strategic leadership for the region including development of an overarching five-year strategic plan

**and each academic partner is responsible for:**

- Financial management of the academic partner
- Delivery of their allocated contributions to the Regional Outcome Agreement

**Accountability:**

- The University is accountable to the SFC for the use of public funds provided to it and will conduct its affairs to high standards of corporate governance and public administration ensuring that funding is used economically, efficiently, and effectively. Each academic partner is accountable to the University in accordance with back-to-back arrangements.

**ACADEMIC PARTNERSHIP AGREEMENT** dated .....

between

- (1) **UNIVERSITY OF THE HIGHLANDS AND ISLANDS** 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 ( **the Fundable Body**).
- (2) **SHETLAND UHI** 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 (**the Academic Partner**).

**BACKGROUND**

- (A) The Legacy Institutions (as defined below) were members 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) The Fundable Body is designated under the FHE Acts as the regional strategic body (“RSB”) 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) The Academic Partner is a provider of Further Education and Higher Education assigned to the Fundable Body by the Assigned Colleges Order.
- (D) The Fundable Body and the Academic Partner have agreed to enter into this Agreement to provide for the delivery of Further Education and Higher Education by the Academic Partner.

**AGREED TERMS**

1. **INTERPRETATION**

The definitions and rules of interpretation set out in Part 10 of the schedule annexed as relative to this agreement shall apply throughout this Agreement.

## 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 In fulfilling their respective obligations under this Agreement, the Academic Partner and the Fundable Body agree to work with each other and the Other Academic Partners in accordance with the principles and commitments to collaborative working set out in the All Party Agreement.

3.2 The Academic Partner and the Fundable Body each acknowledge and confirm that they are committed to the University's vision for the academic partnership comprised of the Fundable Body 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;
- (d) committing to working in conjunction with each other and the Other Academic Partners to develop and deliver that vision.

3.3 In fulfilling its obligations under this Agreement, the Academic Partner undertakes to the Fundable Body to actively work towards and contribute to the delivery of the University Strategic Plan. In particular, the Academic Partner will be responsible for localising the University Strategic Plan by:-

- (a) working towards synchronising the timing of its own strategic planning activities (by adjustment of the Academic Partner'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;

- (b) working collegiately, and in accordance with the principles of the All Party Agreement, with the Fundable Body and Other Academic Partners to input into the University Strategic Plan; and
- (c) ensuring that the aims, objectives and strategies set out in its own strategic plan are consistent with and contribute to the University Strategic Plan.

3.4 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, the Fundable Body undertakes to the Academic Partner 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 the Academic Partner and the Other Academic Partners as distinctive and separate institutions;
- (c) make such representations and submissions as the Fundable Body considers appropriate (subject to sub-clause (d) below) 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 the Academic Partner, the University and the region of Highlands and Islands;
- (d) consult with and have regard to representations made by the Academic Partner in relation to any submissions or representations made pursuant to sub-clause (c) above;
- (e) consult and engage with the Academic Partner in the development of each renewal of the University Strategic Plan;
- (f) consult with and have regard to representations made by the Academic Partner in advance of making any material change to the University Strategic Plan otherwise than during the periodic planning and renewal process; and
- (g) at all times and in all respects applicable to it, comply with and conduct itself in accordance with the FHE Acts.

3.5 The Academic Partner and the Fundable Body each acknowledge and confirm that they are committed to the University Values Framework as set out in the University Strategic Plan.

#### 4. COMMITMENTS BY THE FUNDABLE BODY

- 4.1 The Fundable Body and the Academic Partner acknowledge and agree that:-
- (a) the obligations set out in this Agreement set out their respective expectations of each other as active partners in the University;
  - (b) parallel agreements have been entered into between the Fundable Body and the Other Academic Partners with a view to establishing a mutually agreed set of expectations of partners within the University of the Highlands and Islands project; and
  - (c) they will each approach the obligations set out in this Agreement in good faith, and with a spirit of mutuality and partnership working, to further the mutual aims and objectives of the University and the Academic Partner, as set out in clause 3.3 above.
- 4.2 Without limiting the provisions of clause 4.1, the parties acknowledge that within this Agreement, the Fundable Body is undertaking to do the following:
- (a) Committing to pursue and maximise the funding available and allocated to the Academic Partner as described in clause 3.4;
  - (b) To support Research Activity as described in Part 3 of the Schedule;
  - (c) To support commercialisation activity as described in clause 8.3;
  - (d) Provide the Academic Partner with the opportunity to engage with the process of agreeing renewals of the Outcome Agreement as described in clause 9.2;
  - (e) Compliance with the Financial Memorandum and such similar or related memoranda or written requirements as may be issued to the Fundable Body by the SFC from time to time, as described in clause 10.2;
  - (f) Consult on the introduction of University-wide policies as described in clause 12.2;
  - (g) Adhere to governance standards as described in clause 13.5;
  - (h) Provide the UHI Professional Services in accordance with the obligations set out in clause 15;
  - (i) Provide and engage with the UHI forums and bodies as described in clause 16.3;
  - (j) Seek to uphold and promote Academic Freedom as described in clause 17.3;



- (k) Undertakes to comply with Applicable Law as described in clauses 18.7 and 18.8;
- (l) To act in accordance with Part 5 of the Schedule in relation to FoI Legislation;
- (m) To provide assistance to the Academic Partner in engaging with the Millennium Commission in accordance with clause 21.2;
- (n) To act in accordance with Part 6 of the Schedule in respect of the sharing of personal data between the Fundable Body and the Academic Partner;
- (o) To assist the Academic Partner to apply and access grants as described in clause 22.1;
- (p) Provide funding to support HISA as set out in clause 23.2; and
- (q) Maintain the insurance policies specified in clause 25.3.

**5. PROVISION OF FURTHER EDUCATION**

Where the Academic Partner 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.

**6. PROVISION OF HIGHER EDUCATION**

Where the Academic Partner 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.

**7. UNDERTAKING OF RESEARCH ACTIVITY**

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

**8. COMMERCIALISATION ACTIVITY**

- 8.1 The Academic Partner 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 either the Academic Partner, the Fundable Body, and/ or 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 the Academic Partner, the Fundable Body and/ or the University;
- (c) which has the potential to generate supplemental income for the benefit of the Academic Partner, the Fundable Body and/ or the University; and
- (d) is consistent with and contributes to the delivery of the University's commercialisation strategy, as adopted and amended from time to time.

8.2 The Academic Partner 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, the Academic Partner will:

- (a) share details of its industry and commercial relationships with the Fundable Body and the Other Academic Partners, including by maintaining any partnership-wide record of such relationships as may be adopted from time to time (subject always to any applicable confidentiality restrictions which would prevent or restrict the Academic Partner from doing so);
- (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 to share the potential benefit of such opportunities with Other Academic Partners where possible.

8.3 The Fundable Body will provide support, and actively seek to introduce to the Academic Partner opportunities to undertake commercial activity which:

- (a) makes use of and builds on the expertise and skills within the Academic Partner, the Fundable Body and/ or 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 the Academic Partner, the Fundable Body and/ or the University;

- (c) which has the potential to generate supplemental income for the benefit of the Academic Partner, the Fundable Body and/ or the University; and
- (d) is consistent with and contributes to the delivery of the University's commercialisation strategy, as adopted and amended from time to time.

8.4 Nothing in this clause 8 shall require the Academic Partner to:

- (a) pay to or share with the Fundable Body or any Other Academic Partner any income generated by the Academic Partner from any commercial activity undertaken by the Academic Partner on its own account or through any wholly-owned subsidiary; or
- (b) decline any commercial opportunity on the grounds that it will benefit only the Academic Partner.

## 9. **OUTCOMES**

9.1 The Academic Partner will use all reasonable endeavours to make a material contribution to the University, including by contributing to:

- (a) delivery of the overall regional mission and objectives of the University;
- (b) the University Strategic Plan;
- (c) delivery of the outcomes required by the Outcome Agreement; and
- (d) collaborative working with the Other Academic Partners as part of the University.

9.2 The Fundable Body will engage with the Academic Partner in relation to any process of amendment, renewal or renegotiation of the Outcome Agreement, taking account of the undertakings by the Fundable Body in terms of clause 3.4, and will take reasonable account of any representations made by the Academic Partner in undertaking any such process.

## 10. **FINANCIAL MEMORANDUM & AUDIT**

10.1 The Academic Partner will comply with the Financial Memorandum and with such further communications relating, supplemental or ancillary to it as may

be issued in writing by the Fundable Body from time to time (including, without limitation, any communications issued by SFC to the Fundable Body as RSB under the FHE Acts, and which the Fundable Body requires to pass on to the Academic Partner as a body to which the Fundable Body distributes funding for Further Education and/ or Higher Education).

10.2 The Fundable Body will comply with:

- (a) the Financial Memorandum; and
- (b) with any financial memorandum entered into between the Fundable Body and the SFC, together with such further communications relating, supplemental or ancillary to it as may be issued in writing by the SFC to the Fundable Body from time to time.

10.3 Subject to clause 10.4, the Academic Partner will provide such information, data or evidence as the Fundable Body may reasonably require upon reasonable notice, and will allow the Fundable Body and any auditors (both internal and external) of, or other advisers to, the Fundable Body to access any of the Academic Partner's premises, personnel, data, information and records as may be reasonably required by the Fundable Body (subject to the Fundable Body providing reasonable notice to the Academic Partner, the Fundable Body complying with any appropriate or relevant policies of the Academic Partner in relation to such access, and any applicable confidentiality requirements with which the Academic Partner requires to comply) to allow the Fundable Body to undertake such monitoring and audit functions in relation to the activities of the Academic Partner under this Agreement as the Fundable Body considers appropriate from time to time.

10.4 The Fundable Body undertakes to, as far as possible, minimise duplication of effort and provision of information required from the Academic Partner 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.

## 11. **REPORTING & STATISTICAL RETURNS**

11.1 The Academic Partner will:

- (a) timeously and accurately (in all material respects), 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 the Academic Partner; and
  - (b) not less than 5 Working Days in advance of submission to SFC, provide the Fundable Body with a copy of any return to be submitted to SFC.
- 11.2 Subject to clause 10.4, the Academic Partner will timeously and accurately (in all material respects), provide such information in relation to:
  - (a) the provision of Further Education by the Academic Partner in such format as the Fundable Body may reasonably require from time to time; and
  - (b) the provision of Higher Education and undertaking of Research Activity by the Academic Partner in such format as the Fundable Body may reasonably require from time to time to enable the Fundable Body to monitor performance, comply with the Academic Quality Framework, and to enable the Fundable Body to submit any and all monitoring returns required by SFC and the Higher Education Statistics Agency from time to time.
- 11.3 The Fundable Body will, within a reasonable time, provide the Academic Partner with such information in relation to the activities of the University as the Academic Partner may reasonably request from time to time.

## 12. **POLICIES/PROCEDURES**

- 12.1 Subject to the remainder of this clause 12, the Academic Partner will implement, adopt and adhere to the University Policies.
- 12.2 The Fundable Body will consult and agree with the Academic Partner and the Other Academic Partners prior to introducing any new or revised University Policies.
- 12.3 If the Academic Partner becomes aware of any event, occurrence or practice which is materially non-compliant with or inconsistent with a University Policy, the Academic Partner will promptly advise the UHI Secretary or Academic Registrar (as applicable) of this and will take such steps as the Fundable Body may reasonably require to remedy or mitigate the effects of such non-compliance.

12.4 Where there is no applicable or readily adaptable University Policy or where the Academic Partner can demonstrate to the Fundable Body by providing a written explanation of the reasons why a University Policy is not suitable or readily applicable by it, the Academic Partner 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 the Academic Partner requires from time to time, provided that the Academic Partner will:

- (a) notify the Fundable Body via the partnership council;
- (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) if a University Policy is subsequently amended, developed and adopted in relation to that area or aspect of its operations, will adopt such University Policy in place of its own policy within a reasonable period of time.

12.5 The Academic Partner will provide the Fundable Body with copies of its policies or procedures in place or produced pursuant to clause 12.4 from time to time, and take reasonable account of any changes to such policies or procedures as the Fundable Body may reasonably request in writing from time to time.

12.6 Notwithstanding the remaining terms of this clause 12, the parties acknowledge and agree that there are opportunities for policies, procedures and processes developed or adopted by any individual the Fundable Body 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.

### 13. **GOVERNANCE**

13.1 The Academic Partner will adhere to and implement the principles and rules of governance set out in the FE Governance Code.

13.2 Subject and pursuant to clause 13.1, the Academic Partner will develop, adopt and implement such rules, policies or procedures as the Academic Partner considers appropriate to regulate its own governance and proceedings.

13.3 The Academic Partner will, upon being requested to do so by the Fundable Body, provide the UHI Secretary with copies of rules, policies or procedures in place or produced pursuant to clause 13.2.

13.4 Where the Fundable Body reasonably considers that:

- (a) there is a conflict or ambiguity between the requirements of the HE Governance Code and the governance rules, policies or procedures adopted by the Academic Partner; or
- (b) the Academic Partner is not compliant with the FE Governance Code

the Academic Partner will make such changes to such rules, policies or procedures as the Fundable Body may reasonably be agreed in writing by the Fundable Body and the Academic Partner.

13.5 The Fundable Body will adhere to and implement the principles and rules of governance set out in the HE Governance Code.

13.6 Subject and pursuant to clause 13.5, the Fundable Body will develop, adopt and implement such rules, policies or procedures as the UHI Court considers appropriate from time to time to regulate the Fundable Body's governance and proceedings.

13.7 The Academic Partner will produce, maintain and provide to the Fundable Body upon reasonable request, a risk register in such form as the Fundable Body 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 the Academic Partner.

13.8 The Fundable Body will produce, maintain and provide to the Academic Partner upon reasonable request, a risk register in such form as the Fundable Body 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 the Fundable Body.

**14. DECISIONS REQUIRING FUNDABLE BODY CONSENT**

The Academic Partner will not undertake any of the decisions, actions or matters or things listed in Part 4 of the Schedule without the prior consent of the Fundable Body.

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

15.1 The Fundable Body will provide the UHI Professional Services to the Academic Partner, as reasonably required by the Academic Partner or as the parties may agree from time to time are reasonably necessary for the purpose of enabling the Academic Partner to operate as part of the University or to perform any obligations under this Agreement, on the terms set out in this clause 15 (and in any separate service level agreement entered into between the Fundable Body and the Academic Partner in respect of any particular services from time to time).

15.2 The parties each undertake to identify and agree any of the UHI Professional Services which are critical to supporting the performance by the Academic Partner 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 the Fundable Body.

15.3 Subject to Clause 15.6, in providing UHI Professional Services to the Academic Partner, the Fundable Body will:

- (a) consult with the Academic Partner and the Other Academic Partners through the Fundable Body's committee structure (it being acknowledged that as at the Effective Date, this process is undertaken through the Fundable Body's Finance & General Purposes Committee and Partnership Council) 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 promptly make such information available to the Academic Partner upon being reasonably requested to do so;
- (c) use reasonable endeavours to provide the UHI Professional Services to the UHI Partners as may be collectively agreed amongst the Fundable Body and the UHI Partners from time to time;
- (d) exercise reasonable skill, care and diligence;



- (e) allocate sufficient resources to the provision of UHI Professional Services as agreed with the Academic Partner and the Other Academic Partners from time to time;
- (f) seek to achieve best value (including by regularly benchmarking the purchase or procurement of third party purchases of goods and/ or services) 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;
- (h) co-operate with the Academic Partner in all matters relating to UHI Professional Services; and
- (i) within 6 months of the end of each Academic Year, provide the Academic Partner with an audit and breakdown of the expenditure incurred by the Fundable Body in providing UHI Professional Services during that Academic Year, measured against the budget for that year developed pursuant to sub-clause (a) above, and identifying any material failures by the Fundable Body in terms of clause 15.5.

15.4 In relation to the UHI Professional Services, the Academic Partner will:

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

15.5 If there is a material failure by the Fundable Body to supply any UHI Professional Services as agreed from time to time, the Fundable Body will:

- (a) notify the Academic Partner promptly of the failure;
- (b) provide the Academic Partner with a remediation plan outlining the proposed steps to mitigate or remedy the failure;
- (c) take account of all reasonable representations of the Academic Partner in formulating any remediation plan in terms sub-clause (b) above;
- (d) deploy any appropriate additional resources and take such remedial action as the Fundable Body reasonably considers is necessary to rectify or to prevent the failure from recurring;

- (e) carry out the actions identified in the remediation plan produced in terms of sub-clause (b) above; and
  - (f) if the relevant the Fundable Body Professional Service is capable of being re-performed, and if reasonably requested by the Academic Partner to do so, re-perform the relevant the Fundable Body Professional Service.
- 15.6 Notwithstanding any other provision of this Agreement, the Academic Partner'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 to require the Fundable Body to implement the steps outlined in clause 15.5, and the Fundable Body will have no financial liability or obligation to refund any sums to the Academic Partner arising from such lapse or failure. If, following compliance with clause 15.5 by the Fundable Body, the Academic Partner remains dissatisfied with the resolution of any such lapse or failure on the part of the Fundable Body, the provisions of clause 31 will apply to resolve any dispute between the parties.
- 15.7 The Fundable Body will be entitled to retain from the Academic Partner 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 the Fundable Body to the Academic Partner by retaining any sums which would otherwise be distributable to the Academic Partner (including, without limitation, in respect of funding for the provision of Further Education or Higher Education pursuant to this Agreement); provided always that the Fundable Body will not, without the consent of the Academic Partner, be entitled to retain in any Academic Year a sum in excess of 35% of the Higher Education funding allocation to the Academic Partner for that Academic Year.
- 15.8 The Academic Partner will provide such services and functions to or on behalf of the University as may be agreed between the Fundable Body and the Academic Partner from time to time on such terms as may be agreed.
- 15.9 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.

**16. REPRESENTATION & PARTICIPATION IN UHI PARTNERSHIP**

16.1 The Academic Partner will use reasonable endeavours to actively participate in and, provide nominees (where requested by the Fundable Body) 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.

16.2 Without prejudice to the generality of clause 16.1, the Academic Partner will take such steps and put in place such procedures as may reasonably be required (or as the Fundable Body may reasonably require) from time to time to facilitate:

- (a) the participation by members of staff employed by the Academic Partner 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 the Academic Partner 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 the Academic Partner 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 and the Fundable Body.

16.3 The Fundable Body will:

- (a) engage with and participate in the relevant committees, boards, groups, meetings and other representative bodies or forums within the UHI partnership set out in clause 16.1; and
- (b) will facilitate and ensure the proper functioning and support of such committees, boards, groups, meetings and other representative bodies or forums.

**17. ACADEMIC FREEDOM AND OWNERSHIP OF IPR**

17.1 In relation to the provision and conduct of any Further Education, Higher Education or the undertaking of any Research Activity, the Academic Partner will:

- (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 the Fundable Body in relation to the preservation of Academic Freedom; and
- (c) not subject any person engaged by the Academic Partner 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.

17.2 Where the Academic Partner is not, for any reason, able (or is likely to be unable) to comply with the provisions of clause 17.1, it will notify the Fundable Body as soon as reasonably practical and provide a written explanation to the University Secretary as to reason for such non-compliance.

17.3 In relation to its activities under this Agreement and all relevant operations of the University, the Fundable Body undertakes to:

- (a) take such action as may be reasonably necessary to ensure and preserve the Academic Freedom of any person engaged by the Academic Partner or the Fundable Body in teaching or provision of delivery of Higher Education or Further Education, or the undertaking of any Research Activity; and
- (b) not subject any person engaged by the Academic Partner or the Fundable Body 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.

17.4 The Academic Partner 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 from time to time) in respect of any Research Activity (or other similar or related activity) undertaken by the Academic Partner that is funded by the Fundable Body, undertaken in the name of or under the auspices of the

Fundable Body, or is otherwise undertaken by or within the Academic Partner pursuant to this Agreement.

17.5 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 the Fundable Body (“HE IPR”) and the Academic Partner hereby assigns any and all rights in such HE IPR to the Fundable Body. The Fundable Body grants a non-exclusive, royalty free, non-assignable, non-sublicensable licence to the Academic Partner to use such HE IPR to deliver Higher Education while this Agreement remains in force and the Academic Partner remains an academic partner of the University.

17.6 The Academic Partner grants to the Fundable Body 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 the Academic Partner in the provision of Further Education, provided that the Fundable Body will 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 the Academic Partner for any reason.

## 18. **STATUTORY COMPLIANCE, CERTIFICATION & REPORTING**

18.1 The Academic Partner undertakes to the Fundable Body that it will at all times and in all respects applicable to it comply with and conduct itself, its provision of Further Education and Higher Education, and any Research Activity in accordance with the FHE Acts, insofar as they apply to the Academic Partner.

18.2 The Academic Partner will at all times carry out and fulfil its obligations under this Agreement in compliance in all material respects with all Applicable Law.

18.3 Without prejudice to the generality of clause 18.2, the Academic Partner will 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 the Academic Partner 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.

18.4 On 30 April in each year, the Academic Partner will issue a letter of representation to the UHI Secretary certifying that during the preceding 12 months the Academic Partner has complied in full with such statutes, statutory provisions, legislative or regulatory requirements as the Fundable Body 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 19 and Part 5 of the Schedule in relation to the FoI Legislation;
- (d) its obligations in terms of clause 20 and Part 6 of the Schedule in relation to Data Protection Legislation;
- (e) the University's Complaints policy in relation to any complaint received by it during the preceding 12 months;
- (f) The Equality Act 2010 and the University'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 the Academic Partner is unlikely to be able to certify compliance with the foregoing, it will notify the UHI Secretary in writing as far in advance as reasonably possible of 30 April in each year confirming in what respects the Academic Partner is non-compliant, the reasons for such non-

compliance and agree on an action plan with the Fundable Body to remedy or address such non-compliance.

18.5 On 28 February, 31 May, 31 August and 30 November in each year, the Academic Partner will provide to the UHI Secretary:

- (a) details of any complaints received from Higher Education students or complaints relating or relevant to the Fundable Body or the Academic Partner'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 the Academic Partner's risk register produced pursuant to clause 13.7, 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 the Fundable Body may reasonably require;
- (e) such other data, records information, returns, confirmations or certifications as the Fundable Body may reasonably require from time to time;
- (f) statutory and management accounts; and
- (g) internal and external audit reports.

18.6 Subject to clause 9.3, as requested from time to time by the Fundable Body, the Academic Partner will provide:

- (a) such financial information, estimates and forecasts as the Fundable Body may reasonably require in connection with any Financial Forecast Return (or similar financial information request) required by SFC in respect of the Academic Partner;
- (b) within such period as the Fundable Body may reasonably request, annual and medium term budgets, together with such other financial information as the Fundable Body may reasonably require, to enable the Fundable Body to appraise and the Academic Partner's financial position;
- (c) promptly upon any such potential deficit becoming apparent to the Academic Partner, notice of any forecast in-year or outturn deficit; and

- (d) details of any mitigating action proposed or undertaken by the Academic Partner to seek to address any forecast in-year or outturn deficit, together with progress reports as may be reasonably requested by the Fundable Body from time to time on such mitigating action.
- 18.7 The Fundable Body will at all times carry out and fulfil its obligations under this Agreement in compliance in all material respects with all Applicable Law.
- 18.8 Without prejudice to the generality of clause 18.7, the Fundable Body will 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 the Academic Partner 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.
- 18.9 For the avoidance of doubt, notwithstanding any other provision of this Agreement, nothing in this Agreement will prevent or restrict the Academic Partner or its Board of Management from complying with their legal obligations under the Charities Act, and in the event of any conflict or ambiguity between this Agreement and such obligations, the obligations owed by the Academic Partner or its Board of Management under the Charities Act will prevail.



**19. FREEDOM OF INFORMATION**

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

**20. DATA PROTECTION**

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

**21. MILLENNIUM GRANT**

21.1 The Fundable Body 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 The Fundable Body. UHI and the Fundable Body 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 the Fundable Body.

21.2 The Fundable Body will provide such information and assistance as the Academic Partner may reasonably request from time to time in relation to any dealing or requirement to engage with the Millennium Commission (now Big Lottery Fund) by the Academic Partner.

**22. GRANT FUNDING – GENERAL**

22.1 The Fundable Body agrees to provide such assistance as the Academic Partner may reasonably require from time to time to enable the Academic Partner as part of the University, to apply for, access and implement such grant funding programmes as the Academic Partner and the Fundable Body may agree are appropriate from time to time (including, without limitation, Research Councils, Highlands & Islands Enterprise, and European Social Fund grants). For the avoidance of doubt, nothing in this clause 22 shall require the Academic Partner to obtain the consent or approval of the Fundable Body to apply for or access any grant funding which the Academic Partner may wish to apply for or access on its own account from time to time.

22.2 Where any potential grant identified is accessible only through the Fundable Body, the Academic Partner, the Fundable Body 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, the Academic Partner will apply a partnership approach to applications for grant funding in order to avoid internal competition within the University.

- 22.3 Upon any grant application by the Fundable Body at the instigation of, on behalf of or in conjunction with the Academic Partner, or in respect of which activity will be undertaken within the Academic Partner under the auspices of the University being successful:
- (a) The Academic Partner and the Fundable Body will enter into such agreement(s) as the Fundable Body may reasonably require in terms of which the Academic Partner undertakes to the Fundable Body that it will adhere to the conditions attached to the grant or other requirement intimated to it pursuant to clause 22.3(c) and will indemnify the Fundable Body in respect of any loss, expense or claim suffered or incurred by the Fundable Body arising from any breach of the grant conditions resulting from the acts or omissions of the Academic Partner (except to the extent that such loss, expense or claim arises as a result of any act or omission of the Fundable Body);
  - (b) Upon providing evidence to the Fundable Body of a delivery plan the Fundable Body will 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 the Academic Partner, under deduction of any applicable UHI Professional Services costs associated with the grant application; and
  - (c) The Fundable Body will intimate to the Academic Partner the grant or other conditions applicable to it as the ultimate recipient of the grant or award.

## 23. HISA

- 23.1 The Academic Partner 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.
- 23.2 The Fundable Body will:
- (a) via discussion and agreement through the Partnership Council (or such other forum as may be agreed among the Fundable Body 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 the Fundable Body and the UHI Partners from time to time);
  - (c) be entitled to withhold and pay to HISA sums which would otherwise be payable to the Academic Partner to secure payment of the Academic Partner's share of the annual funding to HISA, or to direct that any sums provided by the Fundable Body to the Academic Partner be paid to and used to fund HISA, as determined by the Fundable Body; and
  - (d) attach such conditions or requirements on HISA in relation to such funding as the Fundable Body may reasonably require.
- 23.3 The Academic Partner will use reasonable endeavours to provide such local or campus facilities, services and support to HISA as may be reasonably requested by HISA or the Fundable Body from time to time.

**24. BRANDING / COMMUNICATIONS**

- 24.1 Notwithstanding any of the provisions of this Clause 24, any and all Intellectual Property Rights in and to the University of the Highlands and Islands standard branding, logo and corporate communication style shall belong to and remain vested in the Fundable Body at all times.
- 24.2 Subject to Clause 24.4 below, the Academic Partner will refer to the University of the Highlands and Islands in all external marketing and communications.
- 24.3 Subject to Clause 24.4 below, the Academic Partner will adopt the University of the Highlands and Islands standard branding and corporate communication style in such external marketing and communications as made available from the Fundable Body from time to time.
- 24.4 It is acknowledged by the parties that in limited circumstances, it may be appropriate (subject to the consent of the Fundable Body, which will not be unreasonably withheld) for the Academic Partner to use its own brand and not refer to the University of the Highlands and Islands in its external marketing and communications.

## 25. INSURANCE

25.1 Subject to clause 25.2, the Academic Partner will 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.

25.2 The parties acknowledge and agree that:

- (a) the capacity of the Academic Partner to maintain in force the insurance policies referred to in clause 25.1 is subject to a specific derogation in the Regional Financial Memorandum (as at the Start Date) to permit the Academic Partner to retain in place commercial insurance arrangements; and
- (b) to the extent that such derogation no longer applies or is not renewed or replaced, the Academic Partner will not be required to maintain in place those of the insurance policies referred to in clause 25.1 which it is no longer permitted to maintain in terms of the Regional Financial Memorandum (as amended from time to time).

25.3 The Fundable Body will 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.

**26. IMPROVEMENT NOTICES**

26.1 If reasonably requested by the Fundable Body, the parties will discuss and agree Performance Indicators to measure the performance of the Academic Partner under this Agreement.

26.2 If at any time the Fundable Body, acting reasonably, considers that:

- (a) the Academic Partner is materially or consistently failing to meet a Performance Indicator; or
- (b) there is a material or consistent breach of this Agreement by the Academic Partner; or
- (c) the Academic Partner is not fully and adequately contributing as an academic partner in the University;

the Fundable Body may, by notice served on the Academic Partner at any time:

- i. conduct such enquiries into the Academic Partner's operations and financial affairs as the Fundable Body considers appropriate, and the Academic Partner will co-operate with such enquiries and provide all information and assistance as is reasonably required by the Fundable Body for that purpose, including full access to its books and records, its premises and employees as requested by the Fundable Body;
- ii. recommend what steps (if any) should be taken to improve the performance of the Academic Partner (following discussion with the Academic Partner, and taking reasonable account of any representations made by the Academic Partner as to the content of any such improvement plan) under this Agreement and provide a timescale for the implementation of such steps, and the Academic Partner will take all steps required or necessary to implement and carry into effect the recommendations made; and/or
- iii. provide such additional support and resources as the Fundable Body considers appropriate to support the Academic Partner to implement any improvement plan developed in terms of sub-clause ii. above.

26.3 If the Academic Partner fails to comply with any notice served by the Fundable Body under clause 26.2, the terms of clause 31 will apply and the Fundable

Body will be entitled to suspend (in whole or in part) any further funding to the Academic Partner.

**27. SUPERSESION OF PREVIOUS ACADEMIC PARTNERSHIP AGREEMENT**

27.1 Subject to clause 27.2, this Agreement replaces and supersedes the Existing Academic Partner Agreements with effect from the Start Date.

27.2 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.

27.3 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.

**28. TERMINATION**

28.1 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 if 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 31;
- (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 31;

- (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 28.1(d) to clause 28.1(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.

28.2 Without affecting any other right or remedy available to it, the Academic Partner may terminate this Agreement upon giving not less than 12 months' prior written notice to the UHI Secretary, subject always to clause 29.2.

29. **CONSEQUENCES OF TERMINATION**

29.1 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 19 (Freedom of Information);
  - iii. clause 20 (Data Protection);
  - iv. clause 29 (Consequences of termination); and
  - v. clause 41 (Governing law).

29.2 Termination of this Agreement, however arising, shall be conditional upon and shall trigger obligations on the part of the Academic Partner to:

- (a) repay to the Fundable Body any sums provided by the Fundable Body 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 the Fundable Body of any sums due in connection with any grant or loan funding in terms of which any repayment or clawback from the Fundable Body is triggered (directly or indirectly) by such termination;
- (c) return to, or purchase from the Fundable Body at an objective valuation, any moveable item or equipment supplied to it by the Fundable Body for the purposes of the University;
- (d) without prejudice to sub-clauses (a), (b) or (c) above, make payment to the Fundable Body 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 the Fundable Body or which will reasonably be required by the Fundable Body to allow the Fundable Body or other Academic



Partners to continue with the provision of Further Education or Higher Education carried on by the Academic Partner;

- (f) undertake everything reasonably necessary to maintain and protect all student experience including, without prejudice to the foregoing generality co-operating with the Fundable Body and other Academic Partners and where possible allowing use of the Academic Partner premises, facilities, systems and infrastructure to allow the continued teaching of Further Education and/ or Higher Education by the Fundable Body and/or other Academic Partners for such period as may reasonably be required to allow all students enrolled with the Academic Partner on the termination date to be given the opportunity to complete their course; 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 the Academic Partner 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.

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

- (a) the Assigned Colleges [ assignment order TBC ]; or
- (b) the respective rights and obligations of the Fundable Body (as RSB) or the Academic Partner (as an assigned college) pursuant to the Further and Higher Education (Scotland) Act 2005.

29.4 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 will 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.

## 30. CONFIDENTIALITY

30.1 Subject to clause 19 and the obligations on each party in terms of FoI Legislation, each party undertakes to the other that it shall not at any time disclose to any person any confidential information concerning the business or

affairs of the other party or the Other Academic Partners except as permitted by clause 30.2.

30.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 30.2;
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority; and
- (c) to fulfil its obligations in terms of clause 19 and Part 5 of the Schedule in relation to the FoI Legislation.

### 31. **DISPUTE RESOLUTION**

31.1 The parties will 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 UHI Principal and the Principal of the Academic Partner for resolution;
- (b) if the Dispute cannot be resolved by the UHI Principal and Principal of the Academic Partner 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 will refer the Dispute to the Chair of the UHI Court and the Chair of the Academic Partner for resolution.

31.2 If the Chair of the UHI Court and the Chair of the Academic Partner 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 the Academic Partner pursuant to clause 30.1(c), the parties will:

- (a) attempt to resolve the Dispute by mediation in accordance with clause 31.3;
- (b) inform the SFC of the dispute and invite the SFC to participate in the mediation proceedings.

31.3 If, pursuant to clause 31.1 and 31.2, 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 31.3, 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 31.3(a) shall determine the procedure to be adopted for the mediation process;
- (c) both parties will, 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

31.4 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.

31.5 Nothing in this clause 31 shall prevent either party from instigating legal proceedings where an order for an interdict or interim relief or remedy is required.

31.6 Without prejudice to either party's right to seek redress in court, the parties will continue to perform their respective obligations under this Agreement notwithstanding any Dispute or the implementation of the procedures set out in this clause 31.

## 32. **VARIATION**

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

**33. WAIVER**

33.1 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.

33.2 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.

**34. 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.

**35. 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.

**36. ASSIGNATION AND OTHER DEALINGS**

36.1 Neither party may 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.

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

**37. REVIEW**

37.1 The Fundable Body and the Academic Partner, acting in good faith and in collaboration with the Other Academic Partners, agree to undertake a review of the provisions of this Agreement by no later than the second anniversary of the Start Date this Agreement and every five years thereafter. For the avoidance of doubt, unless agreed otherwise in writing by the parties, such review shall:

- (a) have the objective of agreeing the amendment, restatement and re-execution of this Agreement by the parties as the parties agree is necessary or desirable through the review process;
- (b) aim to secure the long term sustainability and operability of the Agreement (as amended as above) and the academic partnership constituted by it;
- (c) not affect the continuance in force and effect of the provisions of this Agreement until such time as this Agreement is expressly terminated, varied, restated or superseded; and
- (d) not afford any Party any additional termination rights under this Agreements if the parties are unable to agree in writing a mutually satisfactory outcome following such review.

**38. 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.

**39. NOTICES**

39.1 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).

39.2 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.

39.3 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.

40. **COUNTERPARTS**

40.1 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.

40.2 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 40.

40.3 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.

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.

41. **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 31, 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 37 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**

at.....

on the ..... day of ..... by

..... DIRECTOR

.....FULL NAME

**AND**

..... DIRECTOR

.....FULL NAME



**This is the Schedule referred to in the foregoing Academic Partnership Agreement between University of the Highlands and Islands and Shetland UHI dated \_\_\_\_\_ 2022**

**Part 1 – Provision of Further Education**

- 1. PROVISION OF FURTHER EDUCATION**
- 1.1 The Academic Partner will conduct and provide in its own name, such teaching in Further Education as shall be agreed and funded by the Fundable Body in accordance with guidelines set by the Regional Strategic Committee from time to time.
- 1.2 The Academic Partner will be responsible for and accountable to the Fundable Body for the organisation and control of Further Education conducted by the Academic Partner pursuant to the FHE Acts, to the UHI Court through the UHI Principal and the Regional Strategic Committee.
- 1.3 The principal of the Academic Partner will be accountable to the UHI Principal through the Regional Strategic Committee, for the use of all resources allocated by the Fundable Body to the Academic Partner (being a college assigned to the Fundable Body pursuant to the Assigned Colleges Order) in respect of Further Education teaching undertaken by the Academic Partner.
- 1.4 In each Academic Year, the Fundable Body will provide funding by way of grant, loan or other payment to the Academic Partner to enable the Academic Partner to provide Further Education.
- 1.5 In respect of each Academic Year, the Fundable Body will provide the Academic Partner 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 the Academic Partner will be required to deliver as early as practicable (and in any event, not later than 30 days after the date on which the Fundable Body 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, the Fundable Body will be entitled to make reasonable in-year adjustments to the funding to be provided to the Academic Partner for the provision of Further Education.
- 1.7 The Fundable Body will only be entitled to make reasonable in-year adjustments in the following circumstances:
- (a) if the level of funding provided to the Fundable Body 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 the Fundable Body will be the sole judge, acting reasonably).
- 1.8 The entitlement of the Fundable Body to make in-year adjustments provided for in paragraph 1.6 is above is without prejudice to any entitlement, function, power or right of the Fundable Body 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, the Academic Partner will comply with:
- (a) any notice, direction, instruction or guidelines issued by the Regional Strategic Committee from time to time;
  - (b) Education Scotland quality standards and guidance; and
- 1.10 In planning and providing Further Education pursuant to this Agreement, the Academic Partner 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 the Fundable Body to the Academic Partner for Further Education.

## 2. FURTHER EDUCATION – FEES

2.1 Where such fees are applicable, the Academic Partner 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, the Fundable Body will have no obligation or liability to the Academic Partner 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 The Academic Partner will:

- (a) Ensure that all students enrolled in a course or programme of Further Education are enrolled on the Academic Partner'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 the Academic Partner's terms of student enrolment and notify the Fundable Body 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 the Academic Partner relating to Further Education.

- (i) Ensure that it provides the Fundable Body as RSB under the FHE Acts with all data and information on quality and student outcomes required to enable the Fundable Body 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 The Academic Partner will conduct and provide all Higher Education teaching for and on behalf of and in the name of the Fundable Body and as part of the University, as shall be agreed and funded by the UHI Court.
- 1.2 The Academic Partner will be responsible for and accountable to the Fundable Body for the organisation and control of the Higher Education conducted by the Academic Partner for and on behalf of the Fundable Body to the UHI Court through the UHI Principal.
- 1.3 The principal of The Academic Partner will be accountable to the UHI Principal for the use of all resources allocated by the Fundable Body to the Academic Partner in respect of Higher Education teaching conducted by or through the Academic Partner.
- 1.4 The Academic Partner 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 the Fundable Body in accordance with such guidelines as may be set by the UHI Court from time to time.
- 1.5 In each Academic Year, the Fundable Body will provide funding by way of grant, loan or other payment to the Academic Partner to enable the Academic Partner to provide Higher Education.
- 1.6 In respect of each Academic Year, the Fundable Body will provide the Academic Partner 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 the Academic Partner will be required to deliver as early as practicable ( and in any event not later than 30 days after the date on which the Fundable Body 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, the Fundable Body will be entitled to make reasonable in-year adjustments to the funding to be provided to the Academic Partner for the provision of Higher Education.

- 1.8 The Fundable Body will only be entitled to make reasonable in-year adjustments in the following circumstances:
- (a) if the level of funding provided to the Fundable Body 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 the Fundable Body will be the sole judge, acting reasonably).
- 1.9 The entitlement of the Fundable Body to make in-year adjustments provided for in paragraph 1.7 is above is without prejudice to any entitlement, function, power or right of the Fundable Body 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, the Academic Partner will comply with:
- (a) the Academic Quality Framework; and
  - (b) any notice, direction, instruction or guidelines issued by the UHI Court from time to time.
- 1.11 In planning and providing Higher Education pursuant to this Agreement, the Academic Partner 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, the Academic Partner will, on behalf of and as agent for the Fundable Body, 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 The Academic Partner will adhere to, comply with and communicate to students (where appropriate), the fees policy of the Fundable Body.
- 2.3 Without prejudice to paragraph 2.1, the Academic Partner will, on behalf of and as agent for the Fundable Body, charge, collect and diligently pursue payment of any other monies or sums due to the Fundable Body from time to time by any Higher Education student. For the avoidance of doubt, the Fundable Body will have no obligation or liability to the Academic Partner 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 The Academic Partner will provide such co-operation, information, data, evidence, or access to premises, personnel and relevant records as may be reasonably required by the Fundable Body 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 the Academic Partner.

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

- 4.1 The Academic Partner will:
  - (a) Ensure that all Higher Education students enrolled in a course or programme of Higher Education are enrolled on the Fundable Body 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 the Fundable Body or the Academic Partner’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 the Fundable Body) will provide such co-operation, information and access to premises and staff as the Fundable Body may require in relation to any complaint.

- (d) Ensure that all Higher Education students are issued with, fully complete and sign an enrolment form in such form as the Fundable Body may require from time to time.
- (e) Ensure that all Higher Education students are provided with copies of or access to the Fundable Body Academic and non-Academic regulations, and the Fundable Body ICT Acceptable Use Policy and such other student-facing regulations and policies as may be required by the Fundable Body 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 The Academic Partner will conduct Research Activity for and on behalf of and in the name of the Fundable Body as part of the University.
- 1.2 The Academic Partner will be responsible for and accountable to the Fundable Body for the organisation and control of the Research Activity conducted within the Academic Partner 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 the Fundable Body and under the auspices of the University.
- 1.3 The principal of the Academic Partner will be accountable to the UHI Principal for the use of all resources allocated by the Fundable Body to the Academic Partner in respect of Research Activity (including people, equipment, finance, IT) conducted by or through the Academic Partner.

#### **2. OBLIGATIONS OF THE ACADEMIC PARTNER**

In pursuit of Research Activity, the Academic Partner will:

- 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 the Fundable Body 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 the Fundable Body and provide its submissions to the Fundable Body in a timely manner to facilitate final submissions by the Fundable Body.

- 2.6 apply for, access and implement such grant funding programmes as the Academic Partner and the Fundable Body may agree are appropriate in accordance with clause 22 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 Fundable Body research office of all Research Activity being undertaken by the Academic Partner and obtain consent from the Fundable Body 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 (the Academic Partner may be required by the Fundable Body to enter into a back to back letter of agreement with the Fundable Body regarding any obligations placed on the Fundable Body 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 the Fundable Body 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 the Fundable Body prior to the parties entering into a Letter of Agreement.
- 2.12 where it is free to do so, grant to the Fundable Body a non-exclusive, royalty free licence, with the ability to grant sub-licences to funders or other parties working with the Academic Partner 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 THE FUNDABLE BODY

The Fundable Body will make following support available to the Academic Partner 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 Fundable Body 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, the Fundable Body will, where it is free to do so, grant to the Academic Partner 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 Fundable Body consent**

The Academic Partner agrees and undertakes not to do any of the following without the prior written consent of the Fundable Body:

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 or value in excess of £50,000 on the date of such disposal where the acquisition, development or improvement of that asset was funded (wholly or partially) by sums distributed to the Academic Partner by the Fundable Body pursuant to any grant funding provided to or through the Fundable Body 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. In relation to any student studying with, enrolled through, or undertaking Research Activity in any capacity with or at the Academic Partner pursuant to or under the terms of the UKVI Licence:
  - (a) the withdrawal from any course of Further Education or Higher Education;
  - (b) suspension;
  - (c) exclusion;
  - (d) or expulsion,of any such student studying with, enrolled through, or undertaking Research Activity in any capacity with or at the Academic Partner 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 6 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 The Fundable Body and the Academic Partner 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 the Academic Partner, the Academic Partner will:

- (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 the Fundable Body to make representations regarding the handling of any such Request for Information;
- (c) without prejudice to the discretion of the Academic Partner to respond as it considers appropriate to any Request for Information, take reasonable account of any representations by the Fundable Body 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 the Fundable Body requires within five Working Days (or such other period as the Fundable Body may specify) of the Fundable Body requesting that Information; and
- (e) provide all necessary assistance as reasonably requested by the Fundable Body to enable the Fundable Body 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 the Academic Partner does not hold such Information but reasonably believes that the Fundable Body may hold such Information it will notify the applicant and the UHI Secretary accordingly.

2.4 Where any Request for Information is made to the Fundable Body under the Environmental Information Regulations and the Fundable Body does not hold such Information but reasonably believes that the Academic Partner may hold such Information it will notify the applicant and the Academic Partner 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;

**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.

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

**Shared Personal Data:** means the Personal Data and/or Special Categories of Personal Data to be shared between the parties under or in relation to this Agreement.

**Permitted Recipients:** the permitted recipients of the Personal Data as set out in Annex A.



## **2.      LAWFULNESS OF DATA SHARING**

2.1     It is acknowledged by the parties that:

2.1.1 the Academic Partner has been assigned to the Fundable Body by the Assigned Colleges Order to deliver Further Education, Higher Education and Research Activity either as funded by, or in the name of, the Fundable Body 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 Shared Personal Data as envisaged by this Part 6 of the Schedule is derived from the FHE Acts. It will serve to benefit individual students and society by delivering higher and further education in Scotland.

## **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 the Academic Partner acts as a Data Controller and the Fundable Body 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 3.1.3 together with the information required under Art 28 of the UK 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 the Fundable Body: **[Insert Details]**

(b) For the Academic Partner: **[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 the Schedule to 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 the Academic Partner, when sharing personal data with Other Academic Partners;

3.5.4 shall ensure the Shared Personal Data is restricted to that which is necessary to achieve the purpose referred to in paragraph 2.1.1 of this Part 6 of the Schedule.

3.6 **the Academic Partner Shall** on request and as soon as reasonably practicable, provide the Fundable Body with any information reasonably requested in relation to the data processing activities undertaken (or proposed to be undertaken) by the Academic Partner in order to fulfil its obligations under or in relation to this Agreement whether noted in Annex A or otherwise .

3.7 Each of the parties SPoCs shall each notify the other as soon as reasonably practicable of any issue that may arise concerning the data processing activities undertaken (or proposed to be undertaken) by such party in order to fulfil its obligations under or in relation to this Agreement whether noted in Annex A or otherwise where this includes the following matters:

- (i) a Data Security Breach;
- (ii) a Data Subject Rights Request;
- (iii) a Data Subject complaint concerning the processing of his/her Personal Data; and
- (v) processing of Special Categories of Personal Data or any Personal Data that is considered (acting reasonably) as particularly high risk

and in each case, each of the parties, shall provide such assistance as is reasonably required to enable the other party to comply with the Data Protection Legislation and confirms that it shall not respond to any Data Security Breach, Data Subject Rights Request or complaint without consulting the other party, provided this does not interfere with such party discharging its obligations under the Data Protection Legislation

3.8 Notwithstanding the mutual obligations in clause 3.7, the Academic Partner SPoCs shall also, as soon as reasonably practicable notify the Fundable Body of any issue that: (i) may arise concerning the data processing activities undertaken (or proposed to be undertaken) by the Academic Partner in order to fulfil its obligations under or in relation to this Agreement whether noted in Annex A or otherwise and which may otherwise reasonably concern or impact the Fundable Body (including bringing the Fundable Body into disrepute); (ii) data sharing with Other Academic Partners of UHI including without limitation in relation to any shared services; (iii) amendment and implementation of data

protection related policies, notices and processes; and allow UHI to make representations regarding the handling of any such matter in this clause 3.8 and provided such representations are reasonable, take account of any such representations by the Fundable Body.

#### **4. Review**

4.1 The parties shall review the effectiveness of these data sharing terms every 12 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.

4.2 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.

**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.

2.

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 32 of the Agreement; or (2) Annex A is updated by the Fundable Body 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 the Fundable Body 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**

<b><u>Processing Activity</u></b>	<b><u>Why it is necessary?</u></b>	<b><u>Category of Personal Data</u></b>	<b><u>Legal Basis (under Art 6 &amp; Art 9 of the UK GDPR)</u></b>	<b><u>Permitted Recipients:</u></b>
				<ul style="list-style-type: none"> <li>• <b><u>the Fundable Body</u></b> <b>[insert]</b></li> <li>• <b><u>the Academic Partner</u></b> <b>[insert]</b></li> </ul>

**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 &amp; Art 9 of the UK GDPR)</u>	<u>Permitted Recipients:</u>
				<ul style="list-style-type: none"> <li>• the <u>Funda</u> <u>ble</u> <u>Body</u> [insert ]</li> <li>• the <u>Acade</u> <u>mic</u> <u>Partne</u> <u>r</u> [insert ]</li> </ul>

**Section 3. Data Processing Activity where the Academic Partner is the Data Controller and the Fundable Body 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, the Fundable Body shall be responsible for providing the fair processing information to Higher Education Students with the Academic Partner being responsible for, subject to any drafts being approved by the Fundable Body in advance, providing fair processing information to all other Data Subjects (including Further Education students, the Academic Partner staff and research participants), unless otherwise agreed. Should the Academic Partner consider any changes proposed by the Fundable Body to any drafts submitted to the Fundable Body for approval in accordance with this clause may, in its reasonable opinion, breach Data Protection Legislation, then the Academic Partner is entitled to reject such changes and inform the Fundable Body of the same. Upon such

notification by the Academic Partner. each of the Parties shall each work together to promptly resolve any rejections to the parties' mutual satisfaction (both acting reasonably).

3.4 Each party shall ensure it:

(a) processes the Shared Personal Data lawfully and in doing so, has established and recorded the Legal Basis For Processing (see Annex A);

(b) in so far as it is applicable, complies with its obligations as a Joint Controller under Article 26 of the UK GDPR and:

(i) makes available to Data Subjects the essence of the arrangements contemplated by this Agreement as is required by Article 26(2) of the UK GDPR; and

(ii) acknowledges that Data Subjects may exercise their rights under the Data Protection Legislation in respect of and against each party in accordance with Article 26(3) of the UK GDPR.

#### **4. DATA QUALITY**

4.1 Each party shall use its reasonable endeavours to 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.

4.3 Shared Personal Data may be shared with each party's Permitted Recipients, subject always that each of the parties shall (i) not disclose the Shared Personal to anyone other the Permitted Recipients; and (ii) procures that those Permitted Recipients are subject to written confidentiality obligations no less onerous that imposed on the parties under this Agreement in respect of the Shared Personal Data.

#### **5. DATA SUBJECTS' RIGHTS**

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

5.1.1 the Fundable Body 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 the Academic Partner 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 sub-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 the transfer/disclosure is to a country approved under the applicable Data Protection Legislation as providing adequate protection; or (ii) there are appropriate safeguards in place pursuant to the Data Protection Legislation and provided that enforceable data subject rights and effective legal remedies for data subjects are available; or (iii) one of the derogations for specific situations in the applicable Data Protection Legislation applies to the transfer.

## **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 the Academic Partner is the Data Controller and the Fundable Body 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, the Academic Partner is the Data Controller and the Fundable Body 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 the Fundable Body, 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, the Academic Partner will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Shared Personal Data to the Fundable Body and/or lawful collection of the Shared Personal Data by the Fundable Body on behalf of the Academic Partner for the duration and purposes of this Agreement.
- 1.3** Without prejudice to the generality of paragraph 1.1, the Fundable Body 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 the Academic Partner unless the Fundable Body is required by Data Protection Legislation to otherwise process that Shared Personal Data. Where the Fundable Body is relying on Data Protection Legislation as the basis for processing Shared Personal Data, the Fundable Body shall promptly notify the Academic Partner of this before performing the processing required by the Data Protection Legislation unless those Data Protection Legislation prohibit the Fundable Body from so notifying the Academic Partner;
- 
- (b)** ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Academic Partner, 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);

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- (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 the Academic Partner been obtained and the following conditions are fulfilled:
- (i) the Academic Partner or the Fundable Body has provided appropriate safeguards in relation to the transfer;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Fundable Body complies with its obligations under the Data Protection Legislation by ensuring any such transfer meets the requirements of Chap V of the UK GDPR; and
  - (iv) the Fundable Body complies with reasonable instructions notified to it in advance by the Academic Partner with respect to the processing of the Shared Personal Data;
- (e) assist the Academic Partner, at the Academic Partner's cost (with the Fundable Body acting reasonably in this regard), 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 the Information Commissioner or regulators;
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- (f) notify the Academic Partner without undue delay on becoming aware of a Personal Data Breach;
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- (g) at the written direction of the Academic Partner delete or return the

Shared Personal Data and copies thereof to the Academic Partner on termination of the agreement unless required by Data Protection Legislation to store the Shared Personal Data; and

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**(h)** maintain complete and accurate records and information to demonstrate its compliance with this Annex C and allow for audits at the cost of the Academic Partner by the Academic Partner or the Academic Partner's designated auditor and immediately inform the Academic Partner if, in the opinion of the Fundable Body, an instruction infringes the Data Protection Legislation.

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**2.** the Academic Partner provides the Fundable Body general authorisation to engage third party processors of the Shared Personal Data. The Fundable Body shall notify the Academic Partner if it wishes to appoint or replace a relevant third party processor and allow the Academic Partner the opportunity to object to the same (acting reasonably and without undue delay). the Fundable Body 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 the Fundable Body confirms that they or they will reflect and will continue to reflect the requirements of the Data Protection Legislation.

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**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**



## Part 9 – UHI IP Policy

[ to be inserted ]

## Part 10 – Definitions

1. In this academic partner agreement, the following definitions shall apply:

**Academic Council:** the University’s Academic Council constituted under the Articles of Association of the Fundable Body.

**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 the Academic Partner.

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

**Agreement:** means this academic partnership agreement.

**All Party Agreement:** means the agreement among the Fundable Body and the UHI Partners dated [ ] and providing for [ commitment to the University vision etc. ]

**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 the Academic Partner’s obligations under this Agreement.

**Assigned Colleges Order:** the Assigned Colleges (University of the Highlands and Islands) Order [ 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 the UK GDPR; the Data Protection Act 2018; 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 the Fundable Body 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 the Fundable Body and the Academic Partner 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 the Academic Partner 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 [ ] 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 the Fundable Body and each of the Legacy Institutions dated 8 & 27 May 1997 respectively, providing for the distribution of a proportion of the Millennium Grant to the Academic Partner, copies of which are annexed as Part 7 of the Schedule.

**Millennium Grant:** means the grant funding made available to the Fundable Body 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 the Fundable Body (excluding the Fundable Body and the Academic Partner).

**Outcome Agreement:** the Highlands and Islands regional further and higher outcome agreement entered between SFC and the Fundable Body, 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 the Fundable Body and the Academic Partner.

**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 the Fundable Body 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).

**Research Activity:** activity undertaken by, within, on behalf of the University or in the name of the Fundable Body 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 the Fundable Body.

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

**UHI Partners:** together, the Academic Partner and the Other Academic Partners.

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

**UHI Professional Services:** the support services, university executive and administrative functions provided by the Fundable Body's executive office to the Academic Partner in terms of Clause 15.

**UHI Secretary:** means the University Secretary of the University.

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

**University Policies:** the common policies of the University 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 the Fundable Body 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 the Fundable Body, as such

strategic vision and plan may supplemented, amended or replaced from time to time.

**UKVI Licence:** the Fundable Body's Tier 4 Higher Education UK Visas & Immigration licence.

**University:** means the academic partnership of the University of the Highlands and Islands comprising the Fundable Body, the Academic Partner 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.

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.