Jisc Financial X-ray Service Terms and Conditions

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires, the following meanings shall have the following meanings:

Affiliate

in relation to each Party, means and includes each parent undertaking and each subsidiary undertaking of such Party and each other undertaking which such Party owns or controls (or which such other undertaking owns or controls) and in which the terms ‘parent undertaking’ and ‘parent undertaking’ are defined in Section 236 of the Companies Act 2006;

Agreement

the Order Form and the Financial X-ray Service Terms and Conditions.

Benchmarking Data

any benchmarking data provided by Jisc as part of the Service, which allows institutions to compare certain of their own information technology costs against those of a group of peers;

Business Day

every day excluding Saturday, Sunday or a public holiday in the United Kingdom;

Comencement Date

the date specified in the Order Form, or as otherwise agreed by the Parties;

Confidential Information

any information, whether contained in documents, drawings, diagrams, models or other tangible materials, which one Party has obtained from the other Party under this Agreement (including but not limited to (i) the information in the Benchmarking Information, on IT payroll and non-payroll expenditure and corporate overheads and any other Institution Data; and (ii) in the case of Jisc, the Financial X-ray Service financial model developed by Jisc and Jisc’s costing methodology (including the standard service catalogue)); Confidential Information excludes Institution Data;

Claims

claims, demands, proceedings or other actions;

Data Controller

the Party that controls an Institution’s data;

Data Protection

any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction which relates to the protection of individuals with regards to the processing of personal data to which a Party is subject, including the GPA and Privacy and Electronic Communications (EC Directive) Regulations 2003;

Data Subject

a subject access request or a Data Subject exercising his rights under the Data Protection Legislation;

Data Protection Legislation

means the Data Protection Act 1998;

EDP

means the European Data Protection Directive 95/46/EC;

Eighth Data Protection Principle

means the eighth data protection principle set out in the GPA;

Expenses

the expenses defined in Clause 4.9 to the maximum amount payable as detailed in the Order Form;

Final Report

the final, written report prepared to the Institution by Jisc as part of the Service;

Financial X-ray Service Terms and Conditions

these terms and conditions;

Force Majeure Event

any cause beyond a Party’s reasonable control affecting the performance of its obligations under this Agreement, including the ill health or incapacity of Jisc’s representative(s);

Freedom of Information Laws

the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and any subordinate regulations relating thereto, or under these Acts, or any other similar legislation, rule or code of practice issued by the Regulator or relevant Government Department in relation to the Freedom of Information Laws;

Institution Data

all data relating to: (i) management accounting information for the IT department; (ii) costs (pay and non-pay) spent on running IT services and platforms outside the central IT department; (iii) the appropriate workforce of staff spent on various service catalogue lines and (iv) corporate overheads relating to IT (including any Personal Data) which is supplied or made available by or on behalf of the Institution to Jisc; (ii) collected, by, held on or transmitted to or through Jisc; or (iii) created or generated by either Party under this Agreement, in each case in connection with the Services;

Intellectual Property Rights

any rights in or to intellectual property, including copyright (including copyrights in computer software and related rights), patents, database rights, designs, trademarks, know-how or confidential information and any other rights in respect of any other intellectual or industrial property, whether registrable or not and wherever in the world and including all rights to apply for any of the foregoing rights;

Loss

all loss, damage, loss, damages, costs, Claims and expenses (including legal fees, disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties); the ordering of data by both Parties and the Institution shall acknowledge agreed provisions of the Service;

Order Form

the form set out in the GPA and for the purposes of this Agreement includes Sensitive Personal Data;

Processing

the processing set out in the GPA and (‘Process’ and ‘Processed’) shall be construed accordingly;

Regulator

the UK Information Commissioner (including any successor or replacement);

Regulatory Authority

any correspondence from a Regulator in relation to the Processing of the Institution Data;

Relevant Financial Year

the year detailed in the Order Form;

Results

the Final Report, Benchmarking Data and/or any financial model(s) provided to the Institution by Jisc as part of the Service;

Sensitive Personal Data

the undertaking and performance by Jisc of the analysis known as the ‘Financial X-ray Service’ for and on behalf of the Institution, using a standard service catalogue and resulting in an analysis of the Institution’s IT service costs across such service catalogue for the Relevant Financial Year, together with the provision of IT costs benchmarking using Benchmarking Data, both of which included in the Final Report;

Seventh Data Protection Principle

the seventh data protection principle set out in the GPA;

Third Party

the Party other than Jisc or the Institution to whom Jisc shall disclose or provide the Institution Data;

Term

the term of the Agreement unless terminated in accordance with Clause 11.5 (“Term”).

Term of the Agreement

3. TERMS

3.1 This Agreement commences on the Comencement Date and will run on a perpetual basis until the Expiry Date, unless terminated earlier in accordance with Clause 11.5 (“Term”).

3.2 Jisc shall commence the Service from the Comencement Date.

3.3 Jisc shall have no obligations to the Services unless and until the Institution transfers the Institution Data to Jisc and in accordance with Clause 5.1.

3.4 Following the Comencement Date, the Parties will agree a timeframe for the provision of the Service and Jisc will keep the Institution informed of the progress made. Jisc shall not be able to provide a specific data set for the provision of the Final Report and resulting completion of the Service at the Comencement Date, but shall use reasonable efforts to avoid delay in the provision of the Service.

3.5 In consideration of the Institution’s payment of the Fee, Jisc will provide the Institution with the services set out in the Specification, which services are intended to assist the Institution in improving the efficiency of its IT services.

3.6 In the event that any term of the Agreement, which Jisc has provided to the Institution, is in any way invalid or unenforceable in whole or in part, or in so far as any term of the Agreement, which Jisc no longer observes, is in any way invalid or unenforceable, then such term shall be deemed to be unenforceable and such conclusion shall not affect the validity or enforceability of the remaining terms of the Agreement or the ability of Jisc to carry out the Services for the Institution, to the extent that such services are still permissible and the Institution agrees that such services will be carried out.

3.7 Jisc shall not disclose the Institution Data to a third party in any circumstances other than:

(a) in accordance with Clause 3.1;

(b) to a sub-contractor where in accordance with Clause 8.7, or at the specific written request of the Institution; or

(c) where obliged to do so under any statutory requirement, in which case it shall use reasonable endeavours to advise the Institution in advance of such disclosure and in any event as soon as practicable thereafter.

3.8 SUB-CONTRACTING

3.8.1 If at any time during the Term, Jisc wishes to appoint a sub-contractor to Process the Institution Data for or on its behalf, then Jisc will provide the Institution with a contract which contains the same terms set out in this Agreement.

3.8.2 Jisc shall remain primarily liable to the Institution for the acts, errors and omissions of any such sub-contractor to whom it discloses Institution Data, and shall be responsible to the Institution for the acts, errors and omissions of such sub-contractor as if the acts, errors and omissions were Jisc’s own.

3.8.3 If Jisc has, and will have for the duration of the Term, full capacity and authority and all necessary rights, licences, immunities and consents to sub-contract the performance of the Services to the extent that Jisc would be liable to the Institution under this Agreement for those acts and omissions.

3.8.4 Jisc will comply with all applicable laws and other governmental, statutory or regulatory requirements and regulations which may from time to time be applicable in relation to the subject matter of this Agreement, and

3.8.5 Jisc shall not provide the Fee and Expenses to Jisc in accordance with this Clause 3.8.

3.8.6 The Fee will be paid upon the provision of the Final Report to the Institution. Jisc will invoice the Institution accordingly. The Institution shall pay the Fee within 30 days from the date of the invoice, to a bank account specified on the invoice.

3.8.7 The Institution agrees that it will pay or reimburse the reasonable expenses of Jisc’s representatives as necessarily incurred in carrying out their obligations hereunder, unless otherwise stated in the terms “bearer paying” and “parent undertaking” as defined in Section 236 of the Companies Act 2006;

3.8.8 VAT shall be payable by the Institution where applicable and shall be added by Jisc to all invoices as appropriate and at the applicable rate.
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Jisc

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Indemnity

Liability

1. The Institution acknowledges and accepts that the Jisc's records, including the Final Report, are based on the Institution Data provided by the Institution to Jisc, discussions with the Institution's staff, colleagues or other members of the Institution and any other information, assumptions and explanations that the Institution has supplied. It has not been within the scope of the Service for Jisc to verify the accuracy or completeness of the Institution Data and/or any such information, assumption or explanation, or any other information, assumption or explanation provided by any third party (together, the "Provided Information"). If the Provided Information or any part of it is inaccurate, incomplete or misleading, the results provided by Jisc, including the Final Report, may be inaccurate and Jisc shall have no liability whatsoever in respect thereof;

3. Subject to the circumstances in which either Party shall have delivered to the other for any loss of business, revenue, profits, anticipated earnings or goodwill (whether direct or indirect), (b) any indemnity or consequential loss arising out of any circumstances where the Agreement is terminated; or (c) any delay of delivery or service of any kind of the performances of this Agreement (other than for payment obligations), to the extent such delay or failure is due to a Force Majeure Event.

1. Subject to Clauses 11.3 and 11.4, each Party's maximum aggregate liability under or in connection with this Agreement, or its subject matter or the breach of this Agreement各自的 Parties will not exceed the amount in any single matter or in the aggregate the equivalent of 10% of the total fees for this Agreement (and any liability which the Party may be required to contribute to a third party shall be reduced accordingly).

Redemption

2. Subject to the limits set out in Clauses 11.3 to 11.4 (inclusive), Jisc hereby agrees to indemnify the Institution from and against any and all Losses which the Institution may suffer or incur as a result of any breach by Jisc of Clause 11.6

Freedom of Information Obligations

1. Jisc is subject to the requirement to comply with the Freedom of Information Laws and is not obliged to respond to requests for information under the Freedom of Information Laws ("Requests for Information"). Without prejudice to the foregoing, and subject to the Institution's compliance with Clause 12.4, Jisc will endeavour to respond to any Request for Information in the spirit of the Freedom of Information Laws where reasonably able to do so. Jisc and the Institution will assist and cooperate with each other if a Request for Information is received by Jisc.

1. The Institution shall be responsible for determining its absolute discretion and, notwithstanding any other provision in this Agreement or any other agreement, whether any information is exempt from disclosure in accordance with the provisions of the Freedom of Information Law. Without prejudice to the foregoing, if the Institution receives a Request for Information and such request includes commercially sensitive information or Confidential Information of Jisc under the Freedom of Information Laws, the Institution shall, as soon as reasonably practicable, notify Jisc of such request and shall consult with Jisc and consider any representations which Jisc may make in relation to the requested disclosure prior to deciding whether to comply with or refuse to comply with such request (in whole or in part);

1. Jisc acknowledges that basic details of this Agreement may be included in the appropriate online information asset register under the Institutions publication scheme. Any such publication shall be subject to the approval of Jisc.

Termination

2. Either Party may terminate this Agreement by giving one months' notice in writing to the other Party;

1. Either Party may terminate this Agreement (in whole or in part) with immediate effect by giving notice in writing to the other Party if:

1. The Institution shall be entitled to terminate this Agreement if in the Institution's reasonable opinion any breach of this Agreement will (with or without notice) be remedied or continues to be remedied, or if the breach is incapable of being remedied, the other Party fails to remedy such breach within [thirty (30)] days of written notice requiring it to do so;

1. Any encumbrance taken possession of or a receiver, administrator or similar officer is appointed over any of the property or assets of this Party or if the other Party makes any voluntary arrangement with its creditors or becomes subject to an administration order or has an administrator appointed or goes into liquidation or has its winding up passed except for the purpose of amalgamation or reconstruction not involving insolvency where the resulting entity agrees to be bound by or assumes the obligations imposed on the other Party) or anything analogous to any of these events under the law of any jurisdiction occurs in relation to the other Party or if the other Party ceases or threatens to cease to carry on business;

1. If Force Majeure Event continues for a period of 5 months or more;

1. The termination of this Agreement (howsoever caused) will not affect any rights and/or liabilities of either Party which have accrued before termination or expiry, or any provision of this Agreement which expressly or by implication is intended to come into or continue in effect after termination or expiry;

1. If the Institution wishes to terminate the engagement and the provision of the Services prior to delivery of the Final Report (other than in accordance with Clause 13.1), it may do so by notice in writing to Jisc but shall remain liable for the full amount of the Fee and shall immediately pay any amounts outstanding, together with, as soon as practicable, an amount to cover all Expenses incurred or outstanding on the date of the Institution's notice of termination.

1. If the Institution wishes to terminate the engagement and the provision of the Services prior to delivery of the Final Report (other than in accordance with Clause 13.1). It may do so by notice in writing to the Institution and the Parties shall discuss in good faith and agree what proportion (if any) of the Fee Jisc should forego in respect of such early termination, as the Institution's sole remedy. Jisc will then notify the Institutions accordingly and the Institution shall make payment within 30 days of the date of that notification.

1. Jisc shall be entitled to retain such Institution Confidential Information (including any Institution Data) as is necessary to receive the benefit of this Agreement for a period of [six (6)] months where the Jisc terminates this Agreement under Clause 13.3, Jisc will issue an invoice for the Fee and any Expenses and the Institution shall make full payment within 30 days of the date of such invoice.

1. Either Party may assign, transfer or otherwise dispose of any of its rights, liabilities and/or obligations under this Agreement on a temporary or permanent basis to an Affiliate without the prior written consent of the other Party;

1. Either Party may assign, transfer or otherwise dispose of any of its rights, liabilities and/or obligations under this Agreement on a temporary or permanent basis to an Affiliate without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed);

1. The Parties acknowledge that in entering into this Agreement they are not relying on, and shall have no rights or remedies (whether in tort, under statute or otherwise) in respect of any statements, collateral or other warranties, assurances, undertakings or representations (whether rescissory or not) negligently made by any one Party.

1. A person who is not a party to this Agreement has no rights to enforce any term of this Agreement (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise).

1. The Nature to exercise, or delay in exercising, a right, power or remedy provided by this Agreement or by law shall not constitute a waiver of that right, power or remedy. If a Party waives a breach of any provision of this Agreement shall not operate as a waiver of a subsequent breach of that provision, or as a waiver of a breach of any other provision.

1. If any of this Agreement shall be declared void in whole or in part, that part of this Agreement shall not affect the validity of any other part hereof.