

**TERMS AND CONDITIONS OF GRANT (PROJECT) v2.1**

These common terms and conditions relate to all agreements between Jisc and other organisations or individuals unless otherwise stated and should be read in conjunction with the relevant Annexes.

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## 1. Definitions

The "**Parties**" to the Agreement are Jisc and the Provider and "**Party**" shall refer to one of the Parties. Where the Project is being delivered by a consortium, one of the consortium members shall act as the "**Lead Organisation**" and perform such specific functions as outlined in the Agreement.

"**Agreed Quality Standards**" means the agreed performance standards as set out in, or included in the Funding Letter or in any annexes from time to time.

"**Agreement**" consists of the Funding Letter, the Jisc Terms and Conditions of Grant (Project) (this document) and, if required, any annexes to the Funding Letter and, if required, the Jisc Project Management Requirements. For some agreements there will be no need for some or all of the Annexes, in which case the relevant information will be included in the main body of the Funding Letter.

"**Background IPR**" means any Intellectual Property Rights, other than Foreground IPR, that are used in the course of or in connection with the Project. This includes any IPR created prior to the Agreement or created independently by either party of their obligations under this Agreement.

"**Commencement Date**" means the date on which the Funding commences as defined in the Funding Letter.

"**Confidential Information**" means secret or confidential commercial, financial, marketing, technical or other information, including (without limitation) information in or relating to Intellectual Property Rights.

"**Consortium Member**" means, where the Project is being delivered by a consortium, a member of the consortium other than the Lead Organisation.

"**DPA**" means the Data Protection Act 1998, including applicable regulatory policies, guidelines or industry codes.

"**Deliverables**" are those set out in the Funding Letter or in any annexes

"**FOIA**" means the Freedom of Information Act 2000 and any amendments in force at Commencement Date and throughout period of Agreement.

"**Force Majeure**" means any event outside the reasonable control of either Party affecting its ability to perform any of its obligations (other than payment) under this Agreement including Act of God, fire, flood, lightning, war, revolution, act of terrorism, riot or civil commotion, strikes, lock-outs or other industrial action, whether of the affected Party's own employees or others, failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services.

**"Foreground IPR"** means any Intellectual Property Rights that arise or are obtained or developed in the course of or in connection with creating the Deliverables.

**"Funding"** means the grant set out in the Funding Letter.

**"Funding Letter"** is the grant funding letter from Jisc to the Provider.

**"Funding Period"** means the period for which Funding is awarded, as set out in the Funding Letter.

**"Governing Body"** means the governing body of the Provider including its directors or trustees.

**"Intellectual Property Rights" or "IPR"** means patents, trademarks, trade names, design rights, copyright (including rights in computer software and moral rights), database rights, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.

**"Jisc"** means Jisc, a company limited by guarantee (Registered in England and Wales No. 5747339) and charity (1149740), or its successor.

**"Jisc Project Management Requirements"** is the definition of the responsibilities of the Provider regarding the management of the Project.

**"Milestones"** are those set out in the Funding Letter or in any annexes.

**"Project"** means the project to be undertaken by the Provider for Jisc as defined in the Funding Letter or in any annexes.

**"Prohibited Act" means:**

a) offering, giving or agreeing to give Jisc any gift or consideration of any kind as an inducement or reward for:

- i) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with Jisc; or
- ii) showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with Jisc;

b) entering into this Agreement or any other contract with Jisc where a commission has been paid or has been agreed to be paid by the Provider or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to Jisc;

c) committing any offence:

- i) under the Bribery Act 2010;
- ii) under legislation creating offences in respect of fraudulent acts; or
- iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with Jisc; or

d) defrauding or attempting to defraud or conspiring to defraud Jisc.

**"Provider"** means the individual, organisation or group of organisations that is undertaking the Project.

**"Termination Date"** means the date on which the Funding ceases as set out in the Funding Letter or as subsequently varied by Jisc.

**"Third Party IPR"** means any Intellectual Property Rights that are obtained in the course of or in connection with creating the Deliverables

## 2. **Purpose of Funding**

- 2.1. The Provider shall use the Funding only for the delivery of the Project and in accordance with this Agreement. The Funding shall not be used for any other purpose without the prior written agreement of Jisc.
- 2.2. The Provider shall not make any significant change to the Project without Jisc's prior written agreement.
- 2.3. Jisc may make changes to the Project with the approval of the Provider, such approval not to be unreasonably withheld or delayed.
- 2.4. Where the Provider intends to apply to a third party for other funding for the Project, it will notify Jisc in advance of its intention to do so and, where such funding is obtained, it will provide Jisc with details of the amount and purpose of that funding. The Provider agrees and accepts that it shall not apply for duplicate funding in respect of any part of the Project or any related administration costs that Jisc is funding in full under this Agreement.

## 3. **Payment of Funding**

- 3.1. Subject to Clause 10, Jisc shall pay the Funding to the Provider in accordance with the Funding Letter, subject to the necessary funds being available when payment falls due. The Provider agrees and accepts that payments of the Funding can only be made to the extent that Jisc has available funds. Jisc will endeavor to give the Provider not less than three months' notice where there is a likelihood that funds may not be available to enable Jisc to make payment of the Funding.
- 3.2. No Funding shall be paid unless and until Jisc is satisfied that such payment will be used for proper expenditure in the delivery of the Project.

- 3.3. Payment is conditional upon satisfactory progress with Milestones, Deliverables and compliance with any Agreed Quality Standards (where applicable). The Provider must produce the Deliverables and associated documentation, or payments may be withheld.
- 3.4. The amount of the Funding shall not be increased in the event of any overspend by the Provider in its delivery of the Project.
- 3.5. The Provider shall promptly repay to Jisc any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid or where Funding monies have been paid in error before all conditions attaching to the Funding have been complied with by the Provider.
- 3.6. If Consortium Members are involved in the Project, payments will be made to the Lead Organisation. It is the responsibility of the Lead Organisation to disburse relevant funding to any Consortium Members as appropriate.

#### 4. **Use of Funding**

- 4.1. The Funding shall be used by the Provider for the delivery of the Project in accordance with the Funding Letter.
- 4.2. Other projects, services or activities provided by the Provider outside of this Agreement must not be subsidised by the Funding associated with this Agreement.
- 4.3. Where the Provider has obtained funding from a third party in relation to its delivery of the Project (including without limitation funding for associated administration and staffing costs), the Provider shall provide Jisc with a breakdown of such funding together with a clear description of what that funding shall be used for.
- 4.4. Unless agreed in writing by Jisc in advance, the Provider shall not use the Funding to:
  - i) make a purchase that involves the expenditure of 25% or more of the Funding;
  - ii) make any payment to members of its Governing Body;
  - iii) purchase buildings or land; or
  - iv) pay for any expenditure commitments of the Provider entered into before the Commencement Date.
- 4.5. Unless agreed in writing by Jisc in advance, the Provider shall not spend any part of the Funding on the delivery of the Project after the Funding Period.
- 4.6. Unless agreed in writing by Jisc in advance, should any part of the Funding remain unspent at the end of the Funding Period, the Provider shall ensure that any unspent monies are promptly returned to Jisc.
- 4.7. Any liabilities arising at the end of the Project including any redundancy liabilities for staff employed by the Provider to deliver the Project must be managed and paid for by the

Provider using the Funding or other resources of the Provider. There will be no additional funding available from Jisc for this purpose.

## 5. Data Protection

- 5.1. The Provider shall (and shall procure that any of its staff involved in connection with the activities under the Agreement shall) comply with any notification requirements under the **DPA** and both Parties will duly observe all their obligations under the DPA, which arise in connection with the Agreement.
- 5.2. Notwithstanding Clause 5.1, and unless the Provider gives written notice to Jisc, the Provider and any Consortium Members grant Jisc permission to hold their staff contact details as part of a Jisc information management system. They will be used to contact staff or send them information from other Jisc sources relating to forthcoming events or initiatives which may be of interest. This information will be made available to Jisc staff, staff within the Provider and staff within other Jisc-funded projects, services or initiatives only for the purposes described above. In accordance with Jisc's charitable objectives it may make information about its funded activities publicly available, this may include Provider contact details. It is the responsibility of the Provider to inform Jisc if they wish to have their personal details redacted (pso@jisc.ac.uk). This data will be held as long as appropriate and in compliance with the DPA.
- 5.3. It is the responsibility of the Provider to ensure that relevant Project team staff understand Jisc's policy, as set out in Clause 5.2 above in this regard.

## 6. Confidentiality

- 6.1. Notwithstanding Clauses 5.2 and 5.3, and subject to the remaining provisions of this Clause 6, any information or documents received by either Party from the other as a consequence of this Agreement and identified as such shall be treated as Confidential Information. Such Confidential Information is provided by the Parties to each other for the purposes of regulating the relationship between the Parties and ensuring compliance with this Agreement, and for no other purpose.
- 6.2. Neither Party shall, either during the term of this Agreement or after termination of this Agreement, disclose or use Confidential Information other than in accordance with this Agreement or without the written consent of the other Party.
- 6.3. The obligations of confidentiality and other obligations in this Clause 6 shall not extend to any matter which either Party can show:
  - 6.3.1. is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under this Agreement; or
  - 6.3.2. was in its written records prior to the Commencement Date and which is not Confidential Information; or

- 6.3.3. was independently disclosed to it by a third party entitled to disclose the same; or
- 6.3.4. was required to be disclosed to its professional representatives or advisers or as may be required by law or any legal or regulatory authority, including but not limited to the FOIA, as described below.

## **7. Freedom of Information**

- 7.1. Jisc is not subject to FOIA but will normally seek to provide information on request. Provider staff should therefore be aware that any contracts, information or communications in written form (including email) which are sent to Jisc may be made available to the public on receipt of a valid request. The Provider is advised to draw to Jisc's attention any material considered to be confidential, potentially commercially-sensitive or a trade secret, e.g. by extracting such information and separating it into a clearly marked Annex.
- 7.2. The Provider should be aware that educational institutions are listed as public authorities under Schedule 1 of FOIA. The information created by their staff during the course of their work in the delivery of the Project is therefore covered by the provisions of FOIA.
- 7.3. Jisc shall not disclose any information or documents received from the Provider without first informing the Provider and shall take their reasonable views into account in deciding whether or not to disclose the information.

## **8. Equality and Diversity**

- 8.1. The Provider shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and, without prejudice to the generality of the foregoing, the Provider shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation, or any statutory modification or re-enactment thereof. The Provider shall take all reasonable steps to ensure observance to these statutes by all servants, employees, agents and consultants of the Provider and all sub-contractors.
- 8.2. The Provider will not discriminate directly or indirectly against any person because of their colour, race, nationality, ethnic origin, disability, sex or sexual orientation, religion or belief or age in relation to decisions to recruit, train, promote, discipline or dismiss employees.
- 8.3. The Provider and any sub-contractor shall adopt a policy to comply with its statutory positive duties to promote race, disability and gender equality as contained within the Equality Act 2010.
- 8.4. In line with the above referenced legislation and social inclusion initiatives, and in particular the Special Educational Needs and Disability Act 2001 and the Equality Act 2010, Jisc is committed to providing resources that are accessible to a diverse range of users. In order

to achieve this, Jisc expects that all resources, including websites, meet good practice standards and guidelines pertaining to the media in which they are produced<sup>1</sup>. This includes:

- 8.4.1. web-based resources and tools being developed in line with the BS 8878: 2010 Web accessibility code of practice<sup>2</sup>;
  - 8.4.2. documents relating to the activity or produced by it should follow [good practice guidelines in accessible documents](#)<sup>3</sup>;
  - 8.4.3. media (images/videos/audio) should be accompanied by purposeful descriptions, and summaries or transcripts as appropriate to the context<sup>4</sup>; and
  - 8.4.4. user-facing artefacts, tools and resources created as part of the Project should have an easily found accessibility statement which explains in plain non-technical English how a user can personalise their experience (eg colours, font size, etc). This should also signpost known accessibility barriers where they exist.
- 8.5. Where activities are focused on a user group with specific access needs, it may be appropriate to compromise on some accessibility standards in order to maximise benefits for the target group. Where this is the case we strongly advise that you document the issues and discuss with the Jisc TechDis advisory service.

## 9. Intellectual Property Rights and Licensing

- 9.1. Background IPR are, and shall remain, the exclusive property of the party owning them (or, where applicable, the third party from whom its right to use them has derived). The Parties shall grant each a non exclusive royalty free world wide licence to use any Background IPR that they own for the purposes of delivering the Project.
- 9.2. Ownership of Foreground IPR, and the responsibility for its exploitation, rests with the Provider. It is the responsibility of the Provider to make every reasonable effort to ensure that the Foreground IPR obtained in the course of the Project, whether protected by Intellectual Property Rights or not, are used to the benefit of society and the economy. The Provider must ensure that all those associated with the provision of the Project are aware of, and accept, the agreed arrangements in this clause for licensing and exploitation of the Foreground IPR.
- 9.3. The Provider shall make the funded Deliverables available for use under the most liberal of license terms. Unless otherwise agreed by Jisc in writing, the Provider shall, where possible, make the Deliverables available under the following licensing arrangements:
  - a) Deliverables (non software): Creative Commons CC BY Licence<sup>5</sup>

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<sup>1</sup>Further advice and guidance is available from the Jisc TechDis service (<http://www.jisctechdis.ac.uk>)

<sup>2</sup>Available [for purchase from BSI shop](#) but also available in [selected libraries](#) and [summarised on the web](#).

<sup>3</sup><http://accessibilityessentials.jisctechdis.ac.uk/>

<sup>4</sup><http://www.jisctechdis.ac.uk/techdis/resources/word>

<sup>5</sup><http://creativecommons.org/licenses/by/4.0/>



- b) Descriptive Data (metadata) about the Deliverables: Creative Commons CCo Metadata Licence<sup>6</sup>
- c) Deliverables (software): Open Source Software Licence<sup>7</sup>

and if required to do so by Jisc, in compliance with Jisc's Access Management Policy as amended from time to time.

- 9.4. Collaborative arrangements are expected to be put on a formal basis through an agreement covering the contributions and rights of the organisations and individuals concerning exploitation. Such agreements must be in place before the Project begins. There may be occasions where a more loose arrangement will be acceptable. This will need to be agreed in advance with Jisc. Arrangements for collaboration and/or exploitation must not prevent the future progression of the Project and the dissemination of Project Deliverables in accordance with academic custom and practice.
- 9.5. The terms of any collaboration agreements must not conflict with these Jisc Terms and Conditions of Grant (Project) or other obligations placed on the Provider by Jisc.
- 9.6. The Provider shall ensure that all consents and permissions are sought in association with any Third Party IPR to enable the full use of the Deliverables. Particular care needs to be taken in relation to items such as software which are incorporated into any products and also in relation to the copyright documents of various forms which are incorporated into any services. It is a matter for the Provider and any Consortium Members to ensure that their rights are adequately protected.
- 9.7. Jorum provides a long-term solution for hosting and delivering any openly licensed Project Deliverables that are learning materials, case studies, teaching materials and staff development materials. Jorum is available as a national service for deposit and access to such materials and Jisc strongly encourages its use. Where Intellectual Property Rights and other conditions permit this, the use of Jorum will be mandated. Further information about Jorum, including details about the licences under which content can be deposited, can be found at <http://www.jorum.ac.uk/>. The Provider should discuss any issues regarding the use of Jorum with Jisc as appropriate.

## **10. Withholding, Suspending and Repayment of Funding**

- 10.1. Jisc's intention is that the Funding will be paid to the Provider in full. However, without prejudice to Jisc's other rights and remedies, Jisc may withhold or suspend payment of the Funding and/or require repayment of all or part of the Funding if:
  - 10.1.1. the Provider uses the Funding for purposes other than those for which they have been awarded;

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<sup>6</sup> <http://creativecommons.org/about/cc0>

<sup>7</sup> <http://oss-watch.ac.uk/resources/iprguide> & <http://oss-watch.ac.uk/resources/opensourceyourcode>

- 10.1.2. the delivery of the Project does not start within three months of the Commencement Date and the Provider has failed to provide Jisc with a reasonable explanation for the delay;
- 10.1.3. Jisc considers that the Provider has not made satisfactory progress with the delivery of the Project when measured against the agreed Milestones for the Deliverables;
- 10.1.4. the Provider is, in the reasonable opinion of Jisc, delivering the Project in a negligent manner;
- 10.1.5. the Provider obtains duplicate funding from a third party for the Project;
- 10.1.6. the Provider obtains funding from a third party which, in the reasonable opinion of Jisc, undertakes activities that are likely to bring the reputation of the Project or Jisc into disrepute;
- 10.1.7. the Provider provides Jisc with any materially misleading or inaccurate information;
- 10.1.8. the Provider commits or committed a Prohibited Act;
- 10.1.9. any member of the Governing Body, employee or volunteer of the Provider has (a) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Project or (b) taken any actions which, in the reasonable opinion of Jisc, bring or are likely to bring Jisc's name or reputation into disrepute;
- 10.1.10. the Provider ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
- 10.1.11. the Provider becomes insolvent, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due; or
- 10.1.12. the Provider fails to comply with any of the terms and conditions set out in this Agreement and fails to rectify any such failure within 30 days of receiving written notice detailing the failure.

## **11. Sub-contracting**

- 11.1. Any sub-contractor shall be bound by the terms and conditions of this Agreement as if they had been signatories to the original Agreement.

11.2. The Provider remains responsible for ensuring that the Project is provided to the Agreed Quality Standards (where applicable), even if it were to choose to sub-contract for the provision of some or all of the activities covered by this Agreement.

## **12. Reporting and Audit**

- 12.1. The Funding shall be shown in the Provider's accounts as a restricted fund and shall not be included under general funds.
- 12.2. The Provider shall keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the Funding monies received by it.
- 12.3. The Provider shall keep all invoices, receipts, and accounts and any other relevant documents relating to the expenditure of the Funding for a period of at least twelve months following the Termination Date. Jisc shall have the right to review, at Jisc's reasonable request, the Provider's accounts and records that relate to the expenditure of the Funding and shall have the right to take copies of such accounts and records.
- 12.4. The Provider shall, upon Jisc's reasonable request, comply and facilitate Jisc's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and Jisc.
- 12.5. The Provider shall closely monitor the delivery and success of the Project throughout the Funding Period to ensure that the Milestones are being met, the Deliverables are being provided and this Agreement is being adhered to.
- 12.6. Where the Provider has obtained funding from a third party for its delivery of part of the Project, the Provider shall include the amount of such funding in its financial reports together with details of what that funding has been used for.
- 12.7. The Provider shall on request provide Jisc with such further information, explanations and documents as Jisc may reasonably require in order for it to establish that the Funding has been used properly in accordance with this Agreement.
- 12.8. The Provider shall permit any person authorised by Jisc such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Provider's fulfilment of the conditions of this Agreement and shall, if so required, provide appropriate oral or written explanations from them. Any costs reasonably and properly incurred by any person so authorised shall be borne by Jisc.
- 12.9. The Provider shall provide Jisc with a final report on completion of the Funding Period which shall confirm whether the Project has been successfully and properly completed.
- 12.10. The Provider shall be required to participate in additional audit, reporting or continuous improvement processes at such times and in such formats as laid out in Annex B or the Jisc Project Management Requirements as appropriate.

### **13. Access Management**

- 13.1. If the Provider is making content available to the UK teaching, learning and research communities pursuant to the Project, it must provide access to users via SAML (Security Assertion Markup Language) compliant technologies. It is also encouraged to join the UK Access Management Federation.

### **14. Publicity and Branding**

- 14.1. The Jisc brand is highly regarded as an indication of innovation and quality. As such, the Provider must conform fully to Jisc's Brand Guidelines in any publicity material, for example Project websites, briefing papers, factsheets, news releases and face-to-face interviews.
- 14.2. The Jisc Brand Guidelines include a suite of options for the appropriate use of the Jisc logo. To receive the guidelines or if you have any queries regarding these options and the application of the guidance please contact [brand@jisc.ac.uk](mailto:brand@jisc.ac.uk).
- 14.3. The Project must carry the Jisc logo on any website, as detailed in the Jisc Brand Guidelines, and the Provider must always include 'Jisc' when writing or speaking about the Project.
- 14.4. The Provider should exercise care that it spends appropriate amounts of funds on its publicity activities in relation to the Project.
- 14.5. Jisc shall be entitled to require the Provider to remove all reference to Jisc, and all Jisc branding, if, at Jisc's discretion, it conflicts with Jisc's Brand Guidelines.
- 14.6. The Provider is expected to provide a contact for Jisc and grant Jisc access to the material created at any reasonable time, and to make a serious commitment to disseminating and sharing learning from the Project throughout the community. This may involve participating in events that Jisc attends to promote or support the initiative and contribute to evaluation activities as appropriate. The Provider must notify Jisc of all planned activity. This information should be sent to [communications@jisc.ac.uk](mailto:communications@jisc.ac.uk).

### **15. Limitation of Liability**

- 15.1. Jisc accepts no liability for any consequences, whether direct or indirect, that may come about from the Provider running the Project, the use of the Funding or from withdrawal of the Funding. .
- 15.2. Subject to Clause 15.1, Jisc's liability under this Agreement is limited to the payment of the Funding.
- 15.3. The Provider shall not be liable to Jisc for any costs, claims, damages or expenses arising out of any act or omission or any breach of contract or statutory duty or in tort calculated by reference to profits, income, production or accruals, or loss of such profits, income, production or accruals, or by reference to accruals, or such costs, claims, damages or expenses calculated on a time basis.

15.4. The aggregate liability of the Provider (whether in contract or in tort or otherwise) to Jisc for any loss or damage howsoever caused shall be limited to, and in no circumstances shall exceed, the portion of the payments received by the Provider at the date the liability was incurred. For the avoidance of doubt, the Provider does not exclude or limit its liability for death, personal injury or fraud that occurs as a result of this Agreement.

## **16. Force Majeure**

16.1. If either Party is affected by Force Majeure it shall immediately notify the other Party in writing of the matters constituting the Force Majeure and shall keep that Party fully informed of their continuance and of any relevant change of circumstances whilst such Force Majeure continues.

16.2. The Party affected by Force Majeure shall take all reasonable steps available to it to minimize the effects of Force Majeure on the performance of its obligations under this Agreement.

16.3. Save as provided in Clause 16.5, Force Majeure shall not entitle either Party to terminate this Agreement and neither Party shall be in breach of this Agreement, or otherwise liable to the other, by reason of any delay in performance, or non-performance of any of its obligations due to Force Majeure.

16.4. If the Party affected by Force Majeure fails to comply with its obligation under Clauses 16.1 and 16.2 then no relief for Force Majeure, including from the provisions of Clause 16.3, shall be available to it and the obligations of each Party shall continue in force.

16.5. If the Force Majeure continues for longer than three months either Party may at any time whilst such Force Majeure continues terminate this Agreement by notice to the other in writing.

## **17. Termination**

17.1. Either Party has the right exercisable forthwith at any time by notice in writing to the other Party to terminate this Agreement if:

17.1.1. (save in relation to a bona fide reorganisation, reconstruction or amalgamation whilst solvent) any order is made or a resolution is passed for the winding up of any Party, or if an administrative order is made in respect of any Party or if an administrator or a receiver or an administrative receiver or other similar officer is appointed in respect of any Party or all or any of its assets, or if any Party is unable to pay its debts as they fall due or if any voluntary arrangement is proposed under Section 1 of the Insolvency Act 1986 in respect of any Party; or

17.1.2. any Party commits any irremediable serious breach of any of the provisions of this Agreement; or

17.1.3. subject to Clause 17.2, any Party commits any remediable serious breach of any of the provisions of this Agreement and fails to remedy such breach within a period of 30 days from the service of a written notice specifying the breach and requiring its remedy.

17.2. Neither of the Parties shall have the right to terminate this Agreement under Clause 17.1.3 above until the dispute resolution procedure provided for in Clause 21 below has been exhausted unless the Party allegedly in breach of this Agreement fails to comply or indicates it will not comply in any material way with the dispute resolution procedure.

17.3. Termination of this Agreement, howsoever caused, shall be without prejudice to the rights and liabilities of the Parties accrued prior to termination.

## **18. Assignment and Novation**

18.1. This Agreement is personal to both Parties. Except as provided at Clause 11, neither Party shall assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under this Agreement, unless otherwise agreed in writing, other than that Jisc reserves the right to transfer this Agreement to other legal entities within its group or a successor legal body.

18.2. In any permitted assignment, the assignor shall procure and ensure that the assignee shall assume all rights and obligations of the assignor under this Agreement.

18.3. This Clause is not intended to prevent the Provider from sub-contracting any of its operations in the normal course of business.

18.4. Novation of this Agreement to another Party is permitted with the prior written consent of the Parties involved.

## **19. Variation**

19.1. This Agreement shall not be capable of being varied, modified or altered, except by prior written agreement of both Parties hereto.

## **20. Waiver**

20.1. No failure or delay by either Party to exercise any right or remedy under this Agreement shall be construed as a waiver of any other right or remedy.

## **21. Dispute Resolution Procedure**

21.1. In the event that there is a dispute, and all reasonable steps to resolve the dispute have been taken, between the Provider and:

21.1.1. Jisc, then the issue should be referred to the head of the Provider for the Project and the Chairman of Jisc, or their nominees; or

21.1.2. another Jisc supported Provider, then the Provider should refer the issue in writing to the Chief Executive of Jisc, who will use all reasonable endeavours to resolve the dispute.

21.2. In the absence of agreement under Clause 21.1, the Parties may seek to resolve the matter through mediation under the CEDR Model Mediation Procedure (or such other appropriate dispute resolution model as is agreed by both Parties). Unless otherwise agreed, the Parties shall bear the costs and expenses of the mediation equally.

## **22. Notices**

22.1. Any notice, request or consent under this Agreement shall be in writing and shall be sufficiently served if sent by Recorded Delivery post, electronic facsimile, or electronic mail to the registered office of the Party to be served.

22.2. Unless otherwise directed, the Jisc registered office and appropriate contact details are reflected in the Funding Letter.

## **23. Governing Law and Compliance**

23.1. These terms and conditions are governed by the laws of England and Wales; all matters relating to the terms and conditions will be subject to the exclusive jurisdiction of the courts of England and Wales.

23.2. If any provision of these terms and conditions is found by a court or other legitimate body to be illegal, invalid or unreasonable, it will not affect the remaining terms and conditions, which will continue in force.

23.3. The Provider and any Consortium Members must comply with any UK or EU legislation or any international treaty obligations currently in force or introduced during the timescale of the Project that has implications for the delivery of the Project and/or documents they supply and/or the progress with the Deliverables or Milestones. Jisc shall endeavour to inform the Provider of relevant legislations and supply guidance for compliance. It is the responsibility of the Lead Organisation to inform any Consortium Members accordingly. Further advice and guidance is available from the Jisc Legal Information Service at <http://www.jisclegal.ac.uk/>.

## **24. General**

24.1. This Agreement constitutes the entire agreement between the Parties relating to its subject matter. Each of the Parties confirms that in entering into this Agreement it has not relied on any statement, representation, warranty, agreement or undertaking of any person (whether a Party to this Agreement or not) other than those expressly set out in this Agreement, and that it will not have any claim, right or remedy arising out of any such statement, representation, warranty, agreement or undertaking.

- 24.2. Each of the terms herein is distinct and severable from the others and if at any time one or more of such provisions is or becomes invalid, unlawful or unenforceable (whether wholly or to any extent), the validity, lawfulness and enforceability of the remaining provisions (or the same provision to any other extent) shall not in any way be affected or impaired.
- 24.3. Nothing in this Agreement shall operate to limit or exclude any liability of one of the Parties in respect of a fraudulent misrepresentation made by that Party to the others.
- 24.4. Neither Party shall act or describe itself as the agent, employee or partner of the other, nor shall it make any commitments on the other's behalf, and nothing in this Agreement is intended to create any agency, partnership or employment relationship.
- 24.5. Except where otherwise specified, the terms of this Agreement shall apply from the date of this Agreement or the start of the Project, whichever is earlier, until the expiry of the Funding Period or for so long as any Funding monies remain unspent by the Provider, whichever is longer.
- 24.6. The following Clauses under this Agreement shall survive expiry or termination of the Agreement and continue in full force and effect: 5, 6, 9.1, 9.2, 9.3, 9.4, 9.6, 9.7, 12.3, 12.4, 12.7, 12.8, 12.9, 12.10, 14, 15, 20, 21, 23, 24.2, 24.3, 24.4, 24.5, 24.6.