

## COLLABORATION AGREEMENT

Between

**GLASGOW CITY COUNCIL**, a local authority constituted and incorporated under the Local Government etc (Scotland) Act 1994 having its principal offices at City Chambers, George Square, Glasgow, G2 1DU (the "**Lead Partner**").

and

**ABERDEEN CITY COUNCIL**, a local authority constituted and incorporated under the Local Government etc (Scotland) Act 1994 having its principal offices at Marischal College, Broad Street, Aberdeen, AB10 1FY (the "**Delivery Agent**")

(together the "**Parties**" and each being a "**Party**").

WHEREAS:

- A. The Parties, together with five other Scottish local authorities, submitted an application for ERDF grant funding for the proposed programme "Scotland's 8<sup>th</sup> City - the Smart City" as more particularly described in the Strategic Intervention Application (as hereinafter defined)(the "**Initiative**")
- B. The Local Authorities (as hereinafter defined) being the participants in the Initiative entered into the Terms of Reference (as hereinafter defined) which sets out the governance framework for the Initiative. Pursuant to the Terms of Reference, the Local Authorities resolved that Glasgow City Council would undertake the responsibilities of the Lead Partner.
- C. The Parties have agreed to enter into this Agreement in order to set out the terms on which ERDF grant funding shall be paid by the Lead Partner to the Delivery Agent in respect of any Operations to be carried out by the Delivery Agent pursuant to the Initiative.

IT IS HEREBY AGREED as follows:

### 1 DEFINITIONS AND INTERPRETATION

- 1.1 The words and phrases below shall have the following meanings:

<i>"Agreement"</i>	means this Collaboration Agreement between the Lead Partner and the Delivery Agent together with the Schedule;
<i>"Background IPR"</i>	means any pre-existing intellectual property which is utilised for the purposes of an

	Operation;
<i>"Claim"</i>	means a verified and approved claim for ERDF Grant Funding submitted by the Delivery Agent to the Lead Partner in accordance with the Programme Assurance Framework;
<i>"Claim Submission Dates"</i>	means the claim submission deadlines detailed in the Programme Assurance Framework together with any other dates or extensions notified in writing by the Lead Partner;
<i>"Confidential Information"</i>	mean all information of a commercially sensitive nature including (but not limited to) specifications, drawings, circuit diagrams, tapes, discs and other computer readable media, documents, techniques and know-how which are disclosed by one Party to the other for use in or in connection with the Operation;
<i>"Default"</i>	<p>means</p> <ul style="list-style-type: none"> <li>➤ any breach of the obligations of either party under this agreement (including but not limited to any breach of any undertaking or warranty given under or in terms of this Agreement;</li> <li>➤ any failure to perform or the negligent performance of any obligation under this Agreement;</li> <li>➤ any breach of legislation; or</li> <li>➤ any negligence or negligent or fraudulent mis-statement or misappropriation of ERDF Grant Funding, or any other default.</li> </ul> <p>In all cases by either the Delivery Agent, its employees, agents or representatives.</p>
<i>"Eligible Costs"</i>	means eligible costs in compliance with the terms of the Operation Application, the

	Scottish Government's Guidance relating to European Structural and Investment Funds 2014-2020 Programmes, the Offer of Grant and National Rules on Eligibility of Expenditure as in effect at the time such costs are incurred and as amended from time to time;
<i>"Employment Losses"</i>	means actions, proceedings, liabilities, costs, losses, damages, claims, demands and expenses (including, without limitation, all legal and professional fees and expenses on a full indemnity basis);
<i>"ERDF Grant Funding"</i>	means the European Regional Development Fund grant funding element of the eligible budget of Operations as more particularly detailed in the Offer of Grant relevant to an Operation;
<i>"Initiative"</i>	shall have the meaning ascribed to it in the preamble;
<i>"Intellectual Property"</i>	means any intellectual property rights of any description including but not limited to patents, copyrights, design rights (registered or unregistered), trademarks, know-how and database rights;
<i>"Local Authorities"</i>	means Aberdeen City Council, the City of Edinburgh Council, Dundee City Council, Glasgow City Council, Highland Council, Perth and Kinross Council and Stirling Council;
<i>"Managing Authority"</i>	means the Scottish Ministers;
<i>"Match Funding"</i>	means such portion of a Project's budget to be met by the Delivery Agent in accordance with the Operation Application;
<i>Match Funding Undertaking</i>	means the match funding guarantee letter issued by the Lead Partner and countersigned by the Delivery Agent in respect of each Project the Delivery Agent is

	to undertake pursuant to the Initiative;
<i>"Offers of Grant"</i>	means the offer of grant issued by the Managing Authority to the Lead Partner in respect of each Operation substantially in the form annexed in the Schedule, copies of the fully populated and signed Offers of Grant for Operations the Delivery Agent is involved in undertaking having been provided to the Delivery Agent prior to execution of this Agreement;
<i>"Operation"</i>	means an operation to be carried out pursuant to the Operation Application and "Operations" shall be construed accordingly;
<i>"Operation Application"</i>	means the operation application submitted to and agreed by the steering group of the Initiative and approved by the Managing Authority in respect of the relevant Operation;
<i>"Operation Outputs"</i>	means the operation outputs as for each Operation detailed in the Operation Application and relevant PID;
<i>"Parties"</i>	means the parties to this Agreement being the Lead Partner and the Delivery Agent;
<i>"PID"</i>	means the Project Initiation Document in the form contained in the Programme Assurance Framework in respect of the relevant Project;
<i>"Programme Assurance Framework"</i>	means the programme assurance framework document issued to the Local Authorities by the Lead Partner by email on 21 December 2016 and timed at 11:50;
<i>"Project"</i>	means the constituent project which a Delivery Agent undertakes pursuant to an overarching Operation;
<i>"Schedule"</i>	means the schedule annexed to and forming part of this Agreement;

<i>"Strategic Intervention"</i>	means the strategic intervention to be carried out pursuant to the Strategic Intervention Application;
<i>"Strategic Intervention Application"</i>	means the strategic intervention application entitled "Scotland's 8 <sup>th</sup> City – The Smart City" submitted by the Lead Partner on behalf of the Local Authorities to the Managing Authority on 10 March 2015;
<i>"Strategic Intervention Commencement Date"</i>	means 1 November 2015;
<i>"Strategic Intervention Intellectual Property"</i>	means all rights of ownership, including all copyrights and other intellectual property rights in books, leaflets and other printed and published materials in whatever form produced as part of the Strategic Intervention or Operation including all reports and any such published materials stored in or made available by means of an information technology system and the computer software relating thereto and all patents, trademarks, registered designs and other rights in the nature of intellectual property which are created as part of the Strategic Intervention but excluding Background IPR;
<i>"Term"</i>	shall have the meaning ascribed to it in Clause 2.1; and
<i>"Terms of Reference"</i>	means the terms of reference entered into by the Local Authorities and the Scottish Cities Alliance dated between 10 July 2015 and 6 October 2015;
<i>"TUPE Regulations"</i>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006;
<i>"Value Added Tax"</i>	means value added tax as provided for the Value Added Tax Act 1994 and any tax similar or equivalent to Value Added Tax or

	performing a similar fiscal function;
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1.2 In this Agreement, unless otherwise expressly provided or unless the context otherwise requires:-

1.2.1 References to the singular include the plural and vice versa;

1.2.2 References to words denoting any gender shall include all genders;

1.2.3 References to persons include companies, partnerships, government departments and agencies and all other forms of body corporate or unincorporated;

1.2.4 References to Clauses and Schedules are to Clauses of, and Schedules to, this Agreement;

1.2.5 References to laws and statutory provisions shall include reference to any subordinate legislation made pursuant thereto and shall be construed as referring to those laws, provisions and subordinate legislation as respectively amended or re-enacted from time to time;

1.2.6 The headings of this Agreement are for ease of reference only and are not part of this Agreement for the purposes of construction;

1.2.7 Any undertaking by a Party not to do an act or thing shall be deemed to include an undertaking not to permit or suffer such act or thing to be done by another person; and

1.2.8 References to the Parties include their respective successors in title, permitted assigns and legal personal representatives.

1.3 The Schedule forms part of this Agreement and shall have effect as if set out in full in the body of this Agreement and accordingly any reference to this Agreement includes the Schedule.

## **2 SCOPE AND TERM**

2.1 This Agreement shall have effect from the Strategic Intervention Commencement Date and shall continue in full force and effect until the completion of the Initiative (the "Term"), unless terminated earlier in accordance with the provisions of Clause 9.

### **3 CONDITIONS OF GRANT**

- 3.1 The terms of this Agreement shall apply in respect of all Projects to be carried out pursuant to an Operation of the Initiative which the Delivery Agent is to carry out.
- 3.2 Any ERDF Grant Funding provided to the Delivery Agent in accordance with this Agreement shall only be applied in respect of Eligible Costs of an Project pursuant to the Operation Application and Strategic Intervention and for no other purpose.
- 3.3 The Delivery Agent acknowledges and agrees to provide all advice and assistance to the Lead Partner to assist it in complying with its obligations to the Managing Authority in terms of the Offers of Grant.
- 3.4 The Delivery Agent shall only make a Claim in respect of ERDF Grant Funding from the Lead Partner in respect of expenditure which has been defrayed in respect of a Project prior to the date on which the Claim is submitted where it can demonstrate and evidence compliance with the obligations set out in Clause 3.5.
- 3.5 The Delivery Agent shall:-
  - 3.5.1 accept responsibility for the delivery of each Project it has undertaken to deliver and ensure that the performance indicators for the Project and overall Operation are being delivered in line with the approved Strategic Intervention Application, Operation Application and Programme Assurance Framework;
  - 3.5.2 comply with all grant conditions which apply to the relevant Operations including without limitations any grant conditions contained in the relevant Offer of Grant or as notified by the Managing Authority and notified to the Delivery Agent;
  - 3.5.3 provide such explanatory or supplementary material to the Lead Partner as has been requested by the Managing Authority as soon as possible whether before or after submission of a Claim;
  - 3.5.4 comply with the National Rules on Eligibility of Expenditure and Scottish Government Guidance relating to European Structural Investment Funds 2014-2020 Programmes as set out in the Programme Documentation section of the European Structural Investment Funds website (the "ESIF website");
  - 3.5.5 Provide all information required as requested and assist the Lead Partner in demonstrating to the Managing Authority that the Operations consider and integrate the horizontal themes of Equal Opportunities, Environmental Sustainability and Social Inclusion. Evidence required will include information relating to how baselines were determined and how targets were set for both the Strategic Intervention and subsequent Operation(s) and such information as required in accordance with the

relevant PIDs and benefits realisation plans produced in accordance with the Programme Assurance Framework.

- 3.5.6 provide such information as reasonably required by the Lead Partner to ensure it can demonstrate to the Managing Authority that the Operations are consistent with the Operation Application and the Offer of Grant.
- 3.5.7 ensure that the Delivery Agent complies in all respects with the requirements of the Data Protection Act 1998 in connection with Operations the Delivery Agent is involved in carrying out.
- 3.5.8 comply with the Publicity Guidance retained within the ESIF website in relation to any activity which includes a structural fund contribution.
- 3.5.9 The Delivery Agent shall not, without prior written consent of the Managing Authority (such consent must be requested via the Lead Partner), dispose of any asset funded, in part or in whole, with ERDF Grant Funding during the lifetime of such assets.
- 3.6 The Delivery Agent acknowledges that any expenditure or obligation to pay which it incurs prior to the approved Operation start date (detailed in the relevant Offer of Grant) may not form Eligible Costs and, in which case, shall be met by the Delivery Agent from its own resources.
- 3.7 The Delivery Agent acknowledges that the Lead Partner shall have no liability to the Delivery Agent and the Delivery Agent shall hold harmless the Lead Partner in respect of any loss incurred by the Delivery Agent in connection with any of the following matters:-
  - 3.7.1 where a Claim is rejected by the Managing Authority;
  - 3.7.2 where the Managing Authority orders the repayment of ERDF Grant Funding which has been paid to the Delivery Agent;
  - 3.7.3 any publication (i) made by the Managing Authority pursuant to section 31(3) of the Public Services Reform (Scotland) Act 2010, whereby the Scottish Ministers publish an annual statement of all payments over £25,000; or (ii) the Scottish Government's monthly report which it publishes detailing all payments over £25,000 and in circumstances where a payment is made by the Scottish Ministers in excess of £25,000 there will be disclosure (including the name of the payee, the date of the payment, the subject matter and the amount of grant) in both the monthly report and the annual Public Services Reform (Scotland) Act 2010 statement; or
  - 3.7.4 any repayment of any ERDF Grant Funding which the Delivery Agent requires to make as a result of a breach by the Delivery Agent of its obligations under Clause 3.5 or Clause 6.4.



- 3.8 The Parties agree that the Lead Partner shall have the right to undertake an audit of the Delivery Agent's delivery of the Projects it is responsible for. The Delivery Agent shall make available such reasonable facilities and information as the Lead Partner, its representatives or auditors may reasonably require in relation to or for the purposes of their inspection.

#### **4 PROJECTS**

- 4.1 The Delivery Agent shall carry out their Projects in accordance with the relevant PID, Operation Application, Strategic Intervention Application and work in collaboration with all other Local Authorities involved in delivery of the overarching Operation.
- 4.2 The Delivery Agent shall provide monthly updates on progress against Operation Outputs in accordance with the requirements of the Programme Assurance Framework.
- 4.3 The Delivery Agent shall not submit any Claim to the Lead Partner for processing prior to its delivery of a validly executed Match Funding Undertaking in respect of the full match funding requirement for the Project to the Lead Partner.

#### **5 PROCESS FOR PAYMENT**

- 5.1 Claims shall only be submitted in respect of costs which the Delivery Agent can evidence to the reasonable satisfaction of the Lead Partner have already been defrayed at the time of submission of the Claim in respect of Eligible Costs.
- 5.2 The Delivery Agent must comply with the Claims submission process set out in the Programme Assurance Framework in connection with all Claims.
- 5.3 Claims may only be submitted to the Lead Partner at the Claim Submission Date in accordance with the Programme Assurance Framework.
- 5.4 The Lead Partner shall not be responsible for processing a Claim in the event that it has not been provided with all necessary evidence and information reasonably required by the Claim Submission Dates. Responsibility for ensuring that all necessary evidence and information is provided to the Lead Partner within these timescales shall lie with the Delivery Agent.
- 5.5 In the event that the Delivery Agent fails to satisfy the submission requirements for a Claims and accordingly, the Lead Partner cannot process such a Claim, the Lead Partner shall not be responsible for any appeal to the Managing Authority for discretionary payment. The Delivery Agent shall make its own arrangements to seek to liaise directly with the Managing Authority if it is so minded to pursue such an appeal. In the event that it does not appeal to the Managing Authority or is unsuccessful in such appeal, the Delivery Agent shall be required to meet the costs contained in any unsuccessful Claim themselves.

- 5.6 No Claims shall be permissible to be made or progressed following notice of termination of the Agreement in accordance with Clause 9 unless special dispensation has been obtained in writing from the Managing Authority.

## **6 FUNDING**

- 6.1 The Delivery Agent acknowledges that all spend connected with the ERDF Grant Funding of Operations must be defrayed by the deadline set out Clause 3 in the Offer of Grant (or such other date as notified by the Managing Authority in writing) and in line with the Strategic Intervention. Failure to do so may result in funds requiring to be returned to the Managing Authority.
- 6.2 Any monies underspent against an Operation will be returned to the Managing Authority.
- 6.3 The Delivery Agent shall be responsible for repayment of any ERDF Grant Funding required by the Managing Authority as a result of the Delivery Agent's delivery of a Project including without limitation, a breach by the Delivery Agent of its obligations under this Agreement or application of ERDF Grant Funding to any costs which do not form Eligible Costs .
- 6.4 The Delivery Agent acknowledges that the Managing Authority may re-assess, vary, make a deduction from, withhold, or require immediate repayment of the ERDF Grant Funding, or any part of it, in the event that:
- 6.4.1 the Delivery Agent commits a Default;
  - 6.4.2 the Managing Authority consider that any change or departure from the purposes for which the ERDF Grant Funding was allocated warrants an alteration in the amount of the ERDF Grant Funding;
  - 6.4.3 the Local Authorities fail to carry out the approved Strategic Intervention (in which case the apportionment among the relevant Local Authorities of any such deduction or variation shall be as prescribed by the Managing Authority);
  - 6.4.4 the Delivery Agent fails to carry out any part of the Projects it is responsible for;
  - 6.4.5 in the Managing Authority's opinion, the progress on the Strategic Intervention, or any of the constituent Operations, are not satisfactory with apportionment of such deduction or variation among the relevant Local Authorities being as determined by the Managing Authority;
  - 6.4.6 in the Managing Authority's opinion, the future of the Strategic Intervention, or any constituent Operation, is in jeopardy; or

- 6.4.7 if the Strategic Intervention or constituent Operation includes any capital works that are not fully completed by 31 December 2023 (or such other date as notified by the Managing Authority).
- 6.5 In the event that the amount of the ERDF Grant Funding paid to the Delivery Agent at any point in time is found to exceed the amount due, based on the approved Strategic Intervention Application or Operation Application, the Delivery Agent shall be responsible for repayment to the Lead Partner of the amount of such excess attributable to its Operations or its proportionate share of any excess attributable to the Strategic Operation as a whole, within 7 days of receiving a written demand for it from the Lead Partner including evidence of demand by the Managing Authority.
- 6.6 If there is sufficient Match Funding which effectively removes the need for grant funding then the Managing Authority shall recover any grant funding previously paid. In the event of an under spend the European Structural Funds Grant will be the net amount required after the full value of confirmed Match Funding has been taken into account.

## **7 INTELLECTUAL PROPERTY**

- 7.1 The Parties agree and acknowledge that Background IPR shall remain the property of the Party who created it.
- 7.2 The Delivery Agent hereby grants in favour of the Lead Partner a royalty free, worldwide, non-exclusive, non-commercial licence to use Background IPR belonging to the Delivery Agent which is required for the purposes of an Operation or Operations. The Delivery Agent shall make all necessary arrangements to grant a licence on like terms in favour of the Local Authorities which require an ability to use such Background IPR for the purposes of the Strategic Intervention.
- 7.3 The Parties agree and acknowledge that all Strategic Intervention Intellectual Property shall be the property of and vest in the Crown. The Delivery Agent hereby waives any Intellectual Property rights it may have in the Strategic Intervention Intellectual Property and shall complete all necessary paperwork including assignments which the Managing Authority reasonably requires in order to complete the Crown's ownership of the Strategic Intervention Intellectual Property.
- 7.4 The Delivery Agent shall indemnify the Lead Partner against all liabilities, claims, demands, actions, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis), losses and damages (including loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses), arising from or incurred by reason of any infringement or alleged infringement (including but not limited to the defence of such alleged infringement) of any third party intellectual property

rights incurred directly as a result of an act or omission of the Delivery Agent in its delivery of any Project.

## **8 LIABILITY**

8.1 Neither Party excludes or limits liability to the other Party for death or personal injury caused by negligence or fraud or fraudulent misrepresentation.

8.2 The Delivery Agent shall indemnify the Lead Partner (in its capacity as the lead authority of the Initiative) and, on such basis, keep indemnified the Lead Partner, against: -

8.2.1 injury (including death) to any persons or loss of or damage to any property which may arise out of the act, default or negligence of the Delivery Agent, their employees, subcontractors or agents;

8.2.2 action taken by the Managing Authority against the Lead Partner in respect of any Default or act or omission of the Delivery Agent in respect of its Projects; and

8.2.3 against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto; provided that the Delivery Agent shall not be liable for nor be required to indemnify the Lead Partner against any compensation or damages for or with respect of injuries or damage to persons or property to the extent that such injuries or damage result wholly from any act, default or negligence on the part of the Lead Partner, its employees, agents or representatives.

8.3 The Delivery Agent shall ensure that they hold insurances for all insurable risks relevant to their Projects.

## **9 TERMINATION**

9.1 The Lead Partner may by written notice terminate this Agreement with immediate effect in the event that:

9.1.1 The Managing Authority terminates the relevant Offers of Grant with the Lead Partner;

9.1.2 The Delivery Agent commits a Default;

9.1.3 the Delivery Agent has consistently or persistently failed to perform its obligations under this Agreement; or

9.1.4 there is a statutory or other re-organisation of the Delivery Agent which has the effect of making the Delivery Agent no longer eligible to participate in the Initiative.

## **10 CONSEQUENCES OF TERMINATION**

10.1 The termination or expiry of this Agreement shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party.

10.2 In the event of any termination of this Agreement by the Lead Partner pursuant to Clause 9 (Termination);

10.2.1 the Lead Partner shall be entitled, without prejudice to the Lead Partner's other rights and remedies, to require the immediate repayment of ERDF Grant Funds from the Delivery Agent as required by the Managing Authority insofar as funds which have been paid to the Delivery Agent.

10.2.2 The Parties will work together and any other of the Local Authorities involved, in good faith to deal with any matters which fall within the scope of the TUPE Regulations in respect of any employees of either Party involved in Operations/Projects. In the event that TUPE Regulations apply, the Party from whom employees are transferring (the "Transferee") shall indemnify the Party to whom said employees are to transfer (the "Transferor") in full from and against all Employment Losses whatsoever and howsoever arising incurred or suffered by the Transferor in respect of any transferring employees arising from or as a result of any failure by the Transferee to comply with Regulation 13(4) of TUPE in relation to the transfer of the employment of the transferring employees to the Transferee.

10.3 In the event of the termination of this Agreement under Clause 9 (Termination), the provisions of Clauses 1 (Definitions), 3 (Conditions of Grant), 4 (Operations), 5 (Process for Payment), 6 (Funding), 7 (Intellectual Property), 8 (Liability), 10 (Consequences of Termination), 12 (Confidentiality and Freedom of Information) 11 (Dispute Resolution), 13 (Data Protection), 16 (Bribery Act) 22 (Governing Law), shall survive together with any other provision which implicitly survives termination.

## **11 DISPUTE RESOLUTION**

11.1 The Parties shall use all reasonable endeavours to resolve any dispute, claim or proceeding arising out of or relating to this Agreement and to reach an amicable and workable resolution of the matter in accordance with any guidance issued by the Managing Authority in relation to dispute resolutions and appeals. Such endeavours shall involve the escalation of the dispute to the Managing Authority for resolution. The determination of such a dispute by the Managing Authority shall be binding on both Parties.

## **12 CONFIDENTIALITY AND FREEDOM OF INFORMATION**

- 12.1 The Parties shall respect the confidentiality of any commercially sensitive information to which they have access to through the Strategic Intervention, Operations and Projects, however, this shall not preclude the Parties from providing any information this is reasonably requested by the Managing Authority, the Auditor General for Scotland, European Commission and any of their representatives with regards to fulfilling compliance or audit requirements.
- 12.2 Notwithstanding Clause 12.1, the Lead Partner may share any information about this Agreement and the Operations with the Managing Authority.
- 12.3 The Parties acknowledge that both Parties are regarded as a "Scottish public authority" under the provisions of the Freedom of Information (Scotland) Act 2002 ("FOISA") and as such are subject to the requirements of FOISA and the Environmental Information (Scotland) Regulations 2004 ("EIRs"). The Parties shall assist and cooperate with each other to enable either Party when in receipt of a valid information request, to comply with these information disclosure requirements. The Party in receipt of an information request under FOISA or EIRs shall take into account any representation made in connection with this by the other Party but the decision as to what constitutes public interest by the Party in receipt of such a request shall be final and conclusive in any dispute, difference or question arising in respect thereof. Nothing in this Clause 12.3 shall fetter the discretion of the Party in receipt of an information request to comply with its obligations under FOISA and/or EIRs

## **13 DATA PROTECTION**

- 13.1 The Delivery Agent shall ensure that it complies with its obligations under the Data Protection Act 1998 in respect of all Operations and its participation in the Strategic Intervention.

## **14 PUBLICITY**

- 14.1 Activity and Structural Fund contributions to the Strategic Intervention and the Operations must be publicised as per the Publicity Guidance retained within the ESIF Website and in accordance with the Programme Assurance Framework.

## **15 FORCE MAJEURE**

- 15.1 A Party shall not be liable for failure to perform its obligations under this Agreement, nor be liable to any claim for compensation or damage, nor be deemed to be in breach of this Agreement, if such failure arises from an occurrence or circumstances beyond the reasonable control of that Party.
- 15.2 If a Party affected by such an occurrence causes a delay of three months or more, and if such delay may reasonably be anticipated to continue, then the Parties shall, discuss whether

continuation of the Projects is viable, or whether the Projects and this Agreement should be terminated.

## **16 BRIBERY ACT**

### **16.1 The Delivery Agent shall:**

16.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");

16.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

16.1.3 have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and Clause 16.1.2, and will enforce them where appropriate;

16.1.4 promptly report to the Lead Partner any request or demand for any undue financial or other advantage of any kind received by the University in connection with the performance of this Agreement;

16.1.5 the Delivery Agent shall ensure that any person associated with the Delivery Agent who is performing services in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Delivery Agent in this Clause 16 ("Relevant Terms"). The Delivery Agent shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Lead Partner for any breach by such persons of any of the Relevant Terms.

16.2 For the purpose of Clause 16.1, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 16 a person associated with the Delivery Agent includes but is not limited to any sub-contractors of the Delivery Agent.

16.3 The Delivery Agent shall not during the term of this Agreement unlawfully discriminate within the meaning and scope of the law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) including, without limitation, the Equality Act 2010, Disability Discrimination Act 1995, Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, Fixed-Term

Employees (Prevention of Less Favourable Treatment) Regulations 2002, Employment Equality (Sexual Orientation)(Amendment) Regulation 2003, Employment Equality (Religion or Belief)(Amendment) Regulations 2003 and Employment Equality (Age)(Amendment) Regulations 2006, Employment Equality (Age)(Amendment No.2) Regulations 2006 and any statutory amendment or re-enactment thereof. In addition to their obligations to prevent unlawful discrimination, during the term of this Agreement both parties shall take all necessary steps in terms of the foregoing legislation to provide equality of opportunity irrespective of race, gender, disability, sexual orientation or age.

- 16.4 The Delivery Agent must not commit any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 or the Trade Union and Labour Relations (Consolidation) Act 1992 or commit any breach of the Data Protection Act 1998 by unlawfully processing personal data in connection with any blacklisting activities. Breach of this Clause is a material default which shall entitle the other party to terminate the Agreement with immediate effect, notwithstanding any other provision contained within this Agreement.

- 16.5 Breach of this Clause 16 shall be deemed a material breach of the Agreement.

## 17 NOTICES

- 17.1 Formal notices required shall be in writing and shall be delivered personally or by first class post or by email and shall be directed to or addressed as follows:

If to the Lead Partner to:

[REDACTED]  
[REDACTED]  
ERDF Strategic intervention: Scotland's 8th City – the Smart City  
Glasgow City Council  
231 George Street  
G1 1RX

Email: [REDACTED]@glasgow.gov.uk

If to the Delivery Agent to:

Chief Executive  
Aberdeen City Council  
Marischal College  
Broad Street  
Aberdeen  
AB10 1FY

or such other address(es) as a Party may notify to the other Party for this purpose. Notice is deemed given:-



In the case of notice serviced by mail:

- (i) if delivered personally, when the person delivering the notice obtains the signature of a person referred to above; or
- (ii) if sent by post two Business Days after it is posted.

In the case of email, the sender shall request a delivery receipt and:-

- (i) in the event that a delivery receipt is possible, at the time noted in the delivery receipt as the successful time of delivery; or
- (ii) where notification is received by the sender that a delivery receipt is not possible, at the time it leaves the senders email account.

## **18 ASSSIGNATION**

- 18.1 This Agreement or any of the rights or obligations hereunder may not be assigned or otherwise transferred or sub-contracted by any Party without the prior written consent of the other Party.

## **19 NO PARTNERSHIP**

- 19.1 Nothing in this Agreement shall create or be deemed to create a partnership or to have created the relationship of principal and agent, a membership or any other legal entity between the Parties other than as specifically set out herein.

## **20 NO WAIVER**

- 20.1 Any failure or omission by either Party to exercise, or delay by either Party in exercising, any right or remedy to which they are entitled by virtue of this Agreement shall not be construed as a waiver of such right or remedy.

## **21 SEVERABILITY**

- 21.1 If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.
- 21.2 The Parties agree, in the circumstances referred to in Clause 22.1, to attempt to substitute for any invalid or unenforceable provision a valid and enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.

## 22 GOVERNING LAW

22.1 This Agreement shall be governed by and construed in accordance with Scottish Law and each Party agrees to submit to the exclusive jurisdiction of the Scottish Courts.

IN WITNESS WHEREOF this Agreement comprising this page and the preceding 17 pages together with the Schedule annexed hereto is executed by the parties as follows:-

Executed for and on Behalf of	The Lead Partner	The Delivery Agent
Signature	[Redacted]	[Redacted]
Name (Print)	[Redacted]	[Redacted]
Job Title (Print)	EXECUTIVE LEGAL MANAGER	TEAM LEADER
Date of Signature (Print)	19.4.17	4/4/17
Location of Signature (Print)	GLASGOW	ABERDEEN
Before this witness		
Witness Signature	[Redacted]	[Redacted]
Witness Name (Print)	[Redacted]	[Redacted]
Witness Address (Print)	C/O GLASGOW CITY COUNCIL CITY CHAMBERS GLASGOW	% WOODHILL HOUSE WESTBURN ROAD ABERDEEN

**This is the Schedule referred to in the foregoing Collaboration Agreement between the Lead Partner and the Delivery Agent**