

AGREEMENT

BETWEEN

NORDUnet A/S

Kastruplundgade 22

DK-2770 Kastrup

DENMARK

And

PROVIDER NAME

Provider Address Line 1

Provider Address Line 2

City/Postal Code

Country

concerning

Media Management Solution

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THIS AGREEMENT is made the [.....] day of [.....] 2017 (the “**Commencement Date**”)

BETWEEN:

- (1) **[NAME] [LIMITED] [PLC]** a corporation organised and existing under the laws of [TERRITORY] with registered number [NUMBER] and having its registered office at [ADDRESS] (“the **Provider**”);
- (2) **NORDUnet A/S** a limited company registered in Denmark and owned by the national education and research institutions in the Nordic countries (“the **Customer**”)

BACKGROUND:

- (A) NORDUnet is a joint collaboration by the five Nordic National Research and Education Networks in Denmark (DeIC), Finland (CSC/FUNET), Iceland (RHnet), Norway (UNINETT) and Sweden (SUNET) and operates a world-class Nordic and International network and eInfrastructure services for the Nordic research and educational community;
- (B) The Provider has expertise in the supply of Media Management Solution services (the “**Services**”).
- (C) The Customer has selected the Provider to provide the Services as further described in this Agreement.
- (D) This Agreement concerns the Provider’s provision of services to the Customer.

IT IS AGREED as follows:

1. Definitions and Interpretation

1.1 In this Agreement, the following expressions shall have the following meanings:

“ Acceptance Test ”	means the procedure set out in Schedule 3 - Acceptance Procedure to this Agreement.
“ Agreement ”	means all parts of this agreement together with its Schedules;
“ Business Day ”	means Monday to Friday (inclusive) except bank or public holidays in the country where the Services are provided;
“ Change ”	means any change to this Agreement and the Schedules attached;

“Change Procedure”	means the procedure for managing Changes set out in Schedule 4 (Change Procedure);
“Charges”	means the charges payable by the Customer to the Provider in consideration of the provision of the Services as calculated in accordance with the pricing set out in the Agreement and in Schedule 2 – Charges and Prices;
“Commencement Date”	means the date defined as such at the start of this Agreement;
“Confidential Information”	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of a party, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential;
“Customer”	means NORDUnet A/S.
“Data Protection Law”	means Directive 95/46/EC and all implementing national legislation, and all applicable laws and regulations relating to privacy and the processing of personal data from time to time, including Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;
“Default”	means any breach of the obligations of the Provider or the Customer (including fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of the Customer or the Provider or their respective personnel in connection with or in relation to the subject matter of this Agreement and in respect of which such party is liable to the other;
“Detailed Project Plan”	means the detailed plan for the delivery of the Services under the Agreement and agreed in accordance with clause 3.4;
“End Date”	means 4 years after the Acceptance Test Date of this Agreement with a possible extension of a maximum of 2 times 1 year;
“Force Majeure Event”	means any cause making impossible or impracticable the performance by the Provider or the Customer of its obligations arising from acts, events, omissions, happenings or non-happenings not reasonably foreseeable by the not performing party and beyond its reasonable control, including riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster, but excluding any industrial dispute relating to a party, its personnel or any other failure in the party’s or its sub-contractor’s supply chain;

“Good Value”	means that: <ul style="list-style-type: none">(a) the benchmarked Charges are within the upper quartile of the charges for comparable supply; and(b) the benchmarked Service Levels are equal to or greater than the mean average service levels for comparable supply;
“Insolvency Event”	means the Provider or the Customer, entering into administration (whether out of court or otherwise), receivership, liquidation, a formal arrangement with its creditors or any analogous proceedings or procedure, or is otherwise insolvent or ceases or threatens to cease to trade;
“Intellectual Property Rights”	means all intellectual property rights, including patents, petty patents, utility models, trademarks, design rights, applications for any of the foregoing, copyright, moral rights, database rights and semi-conductor topography rights whether registrable or otherwise, (including applications for and the right to apply for registration of any such rights), and any similar rights in any country whether currently existing or created in the future, in each case for their full term, together with any renewals or extensions;
“Laws”	means: (i) any applicable statute or proclamation or any delegated or subordinate legislation; ii) any enforceable community right within the meaning of section 2(1) European Communities Act 1972; iii) any applicable judgement of a relevant court of law, which is a binding precedent in Denmark; and iv) any requirements of any regulator, in each case in force at any time during the term where the Services is required to be delivered;
“Losses”	means all direct losses, liabilities, damages, costs, and expenses howsoever arising (including reasonable legal fees on a solicitor and own client basis and other professional advisors’ fees, and disbursements and costs of investigation, litigation, settlement, judgment, interest, penalties and remedial actions) and “Loss” shall be construed accordingly;
“Normal Working Hours”	means 8.00 am to 5.00 pm on any Business Day;
“Provider”	means the contracting party: [name etc.]
“Provider Group Member”	means the Provider and any corporation, which is from time to time a holding company of the Provider, a subsidiary of the Provider or a subsidiary of a holding company of the Provider;
“Sales Taxes”	means VAT and any other similar sales taxes, imposed on the Provider by law;
“Service(s)”	means a service or the services (including help and support), which the Provider is required to supply under the Agreement as specified in Schedule 1 – The Services;

“Service Credits”	means credits to which Customer is entitled in respect of failures by the Provider to meet Service Levels in accordance with;
“Service Levels”	means the level of service to be provided by the Provider for the Services as specified Schedule 4;
“Specifications”	means the specifications for the Services as set out in Schedule 1 – The Services;
“Term”	means the period from the Commencement Date to the End Date;
“Acceptance”	means the point at which the Acceptance Tests are successfully passed in accordance with the procedure set out in Schedule 3 - Acceptance Procedure and “Accepted” shall be construed accordingly;

2. Commencement Date and Duration

- 2.1 This Agreement shall commence on the Commencement Date and shall remain in force until the End Date unless terminated earlier in accordance with this Agreement or at law.
- 2.2 The duration of the Agreement is 4 years counting from the date of successful Acceptance Test. After the initial 4 year period the Agreement may be extended for no more than 2 periods of each 1 year upon written notice by the Customer no later than 6 months before the expiry of the then current term.

3. Implementation and Acceptance Testing

- 3.1 The Provider shall supply the Services in accordance with a Detailed Project Plan.
- 3.2 If the Services are to be provided by a Provider Group Member the Provider must issue a guarantee for the performance and the obligations according to the Agreement.
- 3.3 The Provider must prepare a draft Detailed Project Plan within 30 days from the Commencement Date, and the Customer must approve the Detailed Project Plan within 10 days from receipt of the draft Detailed Project Plan. If a Detailed Project Plan cannot be agreed, the Customer is entitled to annul the Agreement without any consequences for any of the parties to the Agreement.
- 3.4 The Detailed Project Plan must:
 - 3.4.1 contain information at the level of detail necessary to manage the project effectively and including the identification of key dates for delivery and testing (“the **Timescales**”);
 - 3.4.2 take account of all dependencies known to, or which should reasonably be known to, the Provider; and identify all Customer dependencies.
- 3.5 Once the Detailed Project Plan is agreed in writing the Provider shall ensure that it will pass the Acceptance Test in accordance with Schedule 3 (Acceptance Procedure).
- 3.6 If the Provider becomes aware that it will not (or is unlikely to) meet the Timescales set out in the Detailed Project Plan or pass any Acceptance Tests, it shall as soon as reasonably practicable:

- 3.6.1 notify the Customer of the fact of the delay and summarise the reasons for it and the likely consequences; and
 - 3.6.2 submit a draft correction plan for approval by the Customer (such approval not to be unreasonably withheld). Once the correction plan has been approved by the Customer, the Provider shall implement the correction plan.
- 3.7 Subject to clause 3.5, if the test does not pass the Acceptance Tests by the relevant date specified in the Detailed Project Plan, and this is not caused by the Customer, then as a sole and exclusive remedy of the Customer, the Provider shall pay to the Customer a delay penalty of 0,5 percent per week of the total agreed annual Charges for the first 12 months, for a maximum of 10 weeks.
- 3.8 Where a delay is attributable in part to the Customer and in part to the Provider's failure the parties shall negotiate in good faith with a view to agreeing a fair and reasonable apportionment of responsibility for the delay and the amounts specified in clause 3.7 shall be reduced accordingly.
- 3.9 Subject to clause 3.7, if the Acceptance Tests have not been accepted by the Customer within one month from the commencement of the Acceptance testing the Customer is entitled to annul the Agreement without any consequences for any of the parties to the Agreement.

4. Services

- 4.1 The Provider shall supply the Services by appropriately skilled and qualified individuals and in accordance with:
- 4.1.1 the terms of this Agreement;
 - 4.1.2 the Specifications and the Detailed Project Plan;
 - 4.1.3 the standards, the security requirements and the Service Level set out in the Schedule 1 – The Services
 - 4.1.4 good industry practice; and
 - 4.1.5 except where they impose material additional costs on the Provider, all lawful and reasonable directions, instructions and requests from the Customer.
- 4.2 Nothing in this Agreement shall operate to appoint the Provider as exclusive provider of the Services or any other goods or services to the Customer.
- 4.3 The Provider shall be responsible for the costs of implementing any changes to Services, resulting from any change in any Laws after the Commencement Date (with the exception of any changes to Laws which affect the business of the Customer and not the Provider).

5. Service Credits

- 5.1 If the Provider fails to meet a Service Level in any month, a Service Credit will be payable by the Provider to the Customer.
- 5.2 Service Credits will be calculated monthly in accordance with Schedule 1 – The Services and shall be shown as a deduction from the amount due from the Customer to the Provider in the next invoice then due to be issued. If no invoice is due to be issued then the Provider shall issue a credit note against

the previous invoice, and the amount for the Service Credits shall be repayable by the Provider as a debt within thirty (30) days of issue.

5.3 Where Service Credits are provided as a remedy for a failure to meet the Service Levels in respect of the relevant Services it shall be the Customer's exclusive financial remedy except where:

5.3.1 the failure falls below the particular Service Level as specified in the Service Catalogue;

5.3.2 the failure has arisen due to theft, gross negligence, fraud, or wilful default; or

5.3.3 the failure occurs more than three times within a 12 months' period,

in which case the Customer becomes entitled to terminate (regardless of whether it does terminate) under any of the clauses regarding termination for Default according to clause 16.

5.4 Service Credits payable by the Provider to the Customer during any 12 months' period shall be limited to and will in no circumstances whatsoever exceed 20% of the total Charges, which have been paid or will be payable under the Agreement during those 12 months.

5.5 If the Charges for the Service(s) contains a one-time payment the Service Credits for any period shall be based on the sum of a prorated part of that one-time payment and the recurring Charges. For the calculation, the one-time payment shall be equally distributed over the Term of the Agreement.

6. The Customer's Responsibilities

6.1 The Customer shall:

6.1.1 provide to the Provider such information as the Provider may reasonably require for the performance of the Service(s)

6.1.2 comply with technical and security requirements and instructions as the Provider may reasonably require for the performance of the Service(s)

6.1.3 uphold the technical standards, software and equipment required to receive the Service(s) as reasonably instructed by Provider

6.1.4 accept temporary suspension of Services without liability to Provider in case Service(s) is affected due to breach of 6.1.2 and 6.1.3. Provider shall however undertake all reasonable efforts to limit the impact and duration of the suspension.

7. Charges and Payment

7.1 In consideration of the provision of the Services by the Provider under the Agreement, the Customer will pay to the Provider the Charges set out in Schedule 2 – Charges and Prices.

7.2 Unless otherwise agreed the Charges will be invoiced by the Provider on [redacted] (tbd). Any undisputed Charges will fall due, and be paid within thirty (30) days of receipt of a valid invoice, correctly rendered together with all substantiating documentation as is reasonably required by the Customer.

7.3 All payments made by the Customer under this Agreement shall be made by wire transfer or bank draft and be free and clear of all bank charges.

- 7.4 The obligation to pay the Charges will constitute the Customer's entire payment liability to the Provider for the supply of the Services.
- 7.5 If the Customer is not able to verify or (acting reasonably) disputes any invoiced amount:
- 7.5.1 the Customer may withhold payment of the amount in question;
 - 7.5.2 the Customer and the Provider shall work together to endeavour to agree whether or not any disputed amount should have been invoiced. If the matter is not resolved within thirty (30) days, either party to the dispute in question may refer the matter to the Dispute Resolution in clause 22;
 - 7.5.3 any amounts agreed or, under the Dispute Resolution, determined to have been underpaid by the Customer shall be re-invoiced to the Customer, in accordance with this clause 7.
- 7.6 If any sum payable under this Agreement is not paid by the due date, the Provider (or the Provider Group Member to whom the same is due) reserves the right to charge interest from the date due for payment to the actual date of payment (both before and after judgment) at a yearly rate of two percent (2%) above the European Interbank Offer Rate from time to time in force. Such interest will accrue on a daily basis.
- 7.7 The prices contained in the Service Catalogue shall be in Euros, and shall only be changed by agreement in writing between the Customer and the Provider;
- 7.8 The Charges are inclusive of all taxes, fees, charges and duties, excluding Sales Taxes.

8. Benchmarking

- 8.1 The Customer and the Provider shall be entitled to benchmark the Service Levels and Charges for the Services in order to determine whether they are Good Value. Any such "benchmarking" may be conducted annually (provided no regulation of Charges shall occur in the first (tbd) years as from the Commencement Date) and may be applied to individual service elements and not just the Services as a whole.
- 8.2 In respect of each benchmarking, the parties shall jointly appoint an independent, established and industry recognised organisation that has demonstrated benchmarking expertise, methodology and data sources (the Benchmarker).
- 8.3 In respect of each benchmarking, the Benchmarker shall be required to:
- 8.3.1 provide copies of the reports of the Benchmarker's findings to the Customer and the Provider; and
 - 8.3.2 undertake to comply with the reasonable confidentiality requirements of the Customer and the Provider.
- 8.4 The Provider and the Customer shall provide full co-operation and documents to the Benchmarker in order for the Benchmarker to carry out the benchmarking, including access to relevant records and its Personnel.
- 8.5 The Customer and the Provider shall bear their own costs in respect of their respective co-operation with the Benchmarker. The costs of the Benchmarker shall be borne by the party requesting the benchmarking.

8.6 Subject to clause 8.7, if a benchmarking finds that the Service Levels and/or Charges are not Good Value, the parties shall amend this Agreement within 90 days so that they become Good Value. Benchmarking shall not have any retroactive effect on Services or projects performed or ordered prior to the said amendment

8.7 If either the Customer or the Provider disputes the findings of the benchmarking they shall be entitled to inform the Benchmarker about the areas of disagreement within twenty (20) days of the Benchmarking report being made available. The Benchmarker shall have a period of twenty (20) days to respond to any such notice and, if necessary, amend the findings of the Benchmarking or decline to do so with the reasons for this set out in a written report. If either the Customer or the Provider does not agree with the revised benchmarking or the Benchmarker's report, the matter must be settled in accordance with dispute resolution procedure in clause 22.

9. Euro Change

9.1 If the Euro ceases to be used as a currency, then:

- 9.1.1 the Customer and the Provider shall, acting reasonably and in good faith, agree an alternative currency (the "New Currency"). In the event that the parties are unable to agree on the New Currency, the New Currency shall be the Danish currency.
- 9.1.2 all charges specified in to be in Euros shall be converted into the New Currency on the date the Euro officially ceases to exist ("**Euro Expiry Date**");
- 9.1.3 any invoices which are due but have not been paid as at the Euro Expiry Date shall be converted into and paid in the New Currency (and the Provider shall reissue such invoices);
- 9.1.4 any conversion from the Euro to the New Currency shall be at the official rate of exchange recognised by the central bank of the country of the New Currency.

10. Change Procedure

10.1 Any request for a change of this Agreement or any of its Schedules shall be dealt with in accordance with the Change Procedure set out in Schedule 4 (Change Procedure).

11. Reports and Monitoring

11.1 The Provider shall:

- 11.1.1 during the Term monitor its performance against the Service Levels;
- 11.1.2 during the Term provide the Customer with a report, which details its performance against the Service Levels and any Service Credits due at the end of each month;
- 11.1.3 during the Term provide such additional reports to the Customer as it may reasonably request in order to verify the Provider's compliance with this Agreement.

12. Indemnities

12.1 The Provider will indemnify the Customer against any Losses incurred by the Customer in respect of:

- 12.1.1 any fines or other penalty imposed on the Customer under applicable Laws arising as a result of a breach by the Provider of its obligations under the Agreement;

- 12.1.2 any actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with the receipt of the benefit of the Services;
- 12.1.3 any fraud or wilful misconduct by the Provider, or any of its Personnel.
- 12.2 The Customer will indemnify the Provider against any Losses incurred by the Provider in respect of:
 - 12.2.1 any fines or other penalty imposed on the Provider under applicable Laws arising as a result of a breach by the Customer of its obligations under the Agreement;
 - 12.2.2 any actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with the receipt of the benefit of the Services;
 - 12.2.3 any fraud or wilful misconduct by the Customer or any of its Personnel.
- 12.3 If the use of the Services infringes or, in the opinion of impartial qualified legal counsel jointly appointed by both parties to the Agreement, is likely to infringe the Intellectual Property Rights of any third party, the Provider shall consider the balance in equal measure as to the possible impact to the Customer and having done so, either:
 - 12.3.1 replace or modify all or part of the Services so as to render it non-infringing, provided that it remains functionally equivalent, and reimburse to the Customer all additional costs and expenses the Customer incurs in adapting its systems to be compatible with such replaced or modified Services, or
 - 12.3.2 procure for the Customer a licence from the relevant third party to continue receiving the Services.
- 12.4 If the Provider is unable to meet its obligations under clause 12.3, this Agreement and the licences granted under clause 13 may be terminated by either party with immediate effect, without prejudice to the Customer's right to seek further remedies, including damages, for any Loss(es) arising out of such termination.

13. Intellectual Property Rights

- 13.1 The Provider and its licensors shall retain all right, title and interest in all of their pre-existing Intellectual Property Rights in any documents, software, materials or works used or provided to the Customer in connection with this Agreement, and any modifications to any of them.
- 13.2 The Customer and its licensors shall retain all right, title and interest in all of their pre-existing Intellectual Property Rights in any documents, software, materials or works used or provided to the Provider in connection with this Agreement and any modifications to any of them.
- 13.3 Subject to clause 13.1, the Intellectual Property Rights in any documents, materials or works created by the Provider or any of its Personnel in the performance of this Agreement (including any reports provided to the Customer under this Agreement, but excluding any modifications to pre-existing Provider documents, materials or works as set out in clause 13.1) ("**Bespoke Materials**") shall be owned by the Customer and shall, at the Commencement Date or (if later) on creation of the rights, vest in the Customer. The Provider assigns and agrees to assign (to the extent such Intellectual Property Rights are not capable of prospective assignment) all such Intellectual Property Rights with full title guarantee to the Customer.

- 13.4 The Customer grants to the Provider a non-exclusive, perpetual, irrevocable, royalty-free, licence to use, modify, sublicense, create derivatives of and assign the Intellectual Property Rights in Bespoke Materials for commercial and internal purposes of the Provider.
- 13.5 Notwithstanding any other provision of this Agreement, the contents of all Bespoke Materials consisting of Customer's commercial, financial, personal or other processed data shall be the Confidential Information of the Customer.
- 13.6 Subject to the payment of the applicable Charges set out in Schedule 2 – Charges and Prices, the Provider grants to the Customer a non-exclusive, royalty-free, sub-licensable licence to use the documentation, reasonably necessary for the Customer to resell the solution to the Nordic NRENs in order to allow the NREN's to resell the service to their connected member organisations. The Provider shall, to the extent such consent is required, procure the consent of any third parties to such grant at its own cost.

14. Limitation of Liability

- 14.1 This clause 14 sets out the entire liability of the parties to the Agreement ("**Party**" or collectively "**Parties**") (including any liability for the acts and omissions of their respective personnel) in respect of all claims arising under or in connection with this Agreement, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, howsoever arising.
- 14.2 Nothing in this Agreement shall limit or exclude the liability of either Party for:
 - 14.2.1 death or personal injury resulting from negligence;
 - 14.2.2 fraud or fraudulent misrepresentation;
 - 14.2.3 any repudiation or deliberate breach of this Agreement or any intentionally harmful or gross negligent act or omission of the either Party;
 - 14.2.4 any Losses recoverable by the either Party under any indemnity given by either Party in this Agreement;
 - 14.2.5 the wrongful termination or abandonment of the Agreement by the Provider; or
 - 14.2.6 any other matter in respect of which liability cannot by any applicable Law be excluded.
- 14.3 Subject to clause 14.2, neither the Customer nor the Provider shall have any liability to each other for:
 - 14.3.1 loss of goodwill or injury to reputation;
 - 14.3.2 loss of business opportunity;
 - 14.3.3 indirect, consequential or special loss or damages; and/or
 - 14.3.4 loss of profits, savings or revenue,

regardless of the form of action, whether in contract, strict liability or tort (including negligence), and regardless of whether the either Party knew or had reason to know of the possibility of the loss, injury, or damage in question.

- 14.4 The provisions of clause 14.3 shall not limit the Customer's right to recover Losses from the Provider caused by:
- 14.4.1 additional and/or administrative costs and expenses incurred by the Customer arising from a Default by the Provider including the costs of implementing any work-around in connection with such Default and the additional costs including overtime, related expenses and overheads (including travel, accommodation and wages);
 - 14.4.2 for wasted expenditure or Charges rendered unnecessary and incurred by the Customer arising from the Default of the Provider;
 - 14.4.3 the costs of any third party engaged by the Customer to make good any Default of the Provider;
 - 14.4.4 additional costs to maintain the Services arising from a Default by the Provider; and
 - 14.4.5 for any loss or corruption of data, including costs of rectification, arising out of a Default by the Provider.
- 14.5 Subject to clause 14.2, the aggregate liability of the Customer to the Provider in respect of all Losses suffered by the Provider arising out of or in connection with any and all Defaults by the Customer and any and all torts or breaches of statutory duty committed by the Customer (or, as the case may be any officer, employee, sub-contractor or agent of the Customer) in connection with the performance or purported performance of the Customer's obligations, shall be limited to and will in no circumstances whatsoever exceed 100% of total Charges paid or invoiced and due to be payable under the Agreement during the 12 months prior to the event giving rise to the relevant claim. Where the Default occurs in the first 12 months of the Agreement, such amount shall be 100% of the Charges which have been paid or are payable under the Agreement in the first 12 months of its term including - if applicable - a one-time payment divided by the number of years in the Term.
- 14.6 Subject to clause 14.2, the aggregate liability within any twelve months' period of the Provider and for each individual service under the Agreement to the Customer in respect of all Losses suffered by the Customer arising out of or in connection with any and all Defaults by the Provider and any and all torts or breaches of statutory duty committed by the Provider (or, as the case may be any officer, employee, sub-contractor or agent of the Service Provider) in connection with the performance or purported performance of the Provider's obligations shall be limited to and will in no circumstances whatsoever exceed 100% of total Charges paid or invoiced and due to be payable under the Agreement during the 12 months prior to the event giving rise to the relevant claim under the Agreement. Where the Default occurs in the first 12 months of the Agreement, such amount shall be 100% of the Charges which have been paid or are payable in the first 12 months of the Agreement term including - if applicable - a one-time payment divided by the number of years in the Term.

15. Insurance

- 15.1 The Provider shall, at its own expense, take out and maintain in force during the Term of this Agreement and for the period of 6 (six) months after termination of this Agreement with a reputable insurer approved in writing by the Customer the following insurance policies:
- 15.1.1 professional indemnity insurance for a minimum amount of EUR 1,000,000 (one million Euro) on an each and every claims basis;

- 15.1.2 public liability insurance for a minimum amount of EUR 1,000,000 (one million Euro) on an each and every claims basis;
- 15.1.3 employer's liability insurance for a minimum amount required by local law of the Customer; and
- 15.1.4 adequate insurance against all its liabilities under this Agreement, including for obligations that survive expiry or termination of this Agreement,

(together the "**Provider Policies**").

- 15.2 The Provider shall (and shall procure its personnel and sub-contractors shall) comply with all obligations on the part of the Provider and meet all conditions of the Provider Policies.
- 15.3 the Provider shall at the Customer's reasonable request from time to time, provide to the Customer proof that:
 - 15.3.1 all relevant premiums in respect of the Provider Policies have been paid and that the Provider Policies have been renewed and remain in force; and
 - 15.3.2 the Provider Policies fully conform to the requirements of this clause.
- 15.4 The Provider shall, during the Term of this Agreement and for a period of 6 (six) months after the latest termination, ensure that the terms of the Provider Policies shall not be altered in such a way as to diminish the benefit of the Provider Policies.
- 15.5 If the Provider fails to maintain any of the Provider Policies, the Customer may itself provide or arrange insurance and may charge the cost of insurance, together with a reasonable administration charge by way of deduction from the Charges or by recovering the same as a debt due to the Customer from the Provider.

All insurance proceeds received under any Provider Policy in respect of Loss or damage in relation to this Agreement shall be applied to compensate the Customer for such Loss and/or damage.

16. Termination for Default

- 16.1 The Customer may terminate the Agreement without liability in whole or in part by written notification to the Provider if:
 - 16.1.1 the Provider commits a material breach of the Agreement, which is not capable of being remedied;
 - 16.1.2 the Provider commits a material breach of the Agreement, which is capable of being remedied and following notice from the Customer requiring the Provider to cure the breach and the Provider does not cure such breach within thirty (30) days of receipt of such notice;
 - 16.1.3 the Provider is either subject to an enforcement action by any regulator or ceases to be authorised under any applicable Law, in either case preventing the Provider from lawfully performing its obligations under the Agreement;
 - 16.1.4 the Customer is subject to a fine or penalty by any regulator which arises as a result of a breach of the Agreement by the Provider (or any of its subcontractors or service personnel); or

- 16.2 The Customer may terminate the Agreement without liability in whole or in part by giving the Provider thirty (30) days written notice, if:
- 16.2.1 the Provider commits a material breach of the Agreement, remedies such breach and then commits any material breach again within twelve (12) months of curing the original material breach;
 - 16.2.2 the Provider fails to meet the Service Level under the Agreement for three (3) consecutive months;
 - 16.2.3 there are two instances or events within any twelve (12) month period under the Agreement where the Service Level for a particular Service falls below the minimum level of service for a particular Service Level as specified in the Service Catalogue; or

- 16.3 Subject to clause 16,1 and 2, the Provider may terminate the Agreement in whole upon written notification to the Customer if:

- 16.3.1 the Customer fails to make undisputed payments due to the Provider under the Agreement, which, in aggregate, exceed three (3) months' aggregate Charges under the Agreement; and
- 16.3.2 the Provider has given notice in writing of default relating to such non-payment addressed for the attention the Customer Representative according to the Agreement and further notices at thirty (30) and sixty (60) days following the initial notice; and
- 16.3.3 the Customer does not remedy such default within ninety (90) days of receipt of the initial notice of default from the Provider.

The Provider's only rights to terminate the Agreement for cause shall be in accordance with this clause 16.3 and clause 16.4.

- 16.4 Any party to this agreement shall be entitled to immediately terminate this Agreement in whole or in part by written notification to the other if the other party becomes subject to an Insolvency Event or ceases to carry on its business.

17. Consequences of Termination

- 17.1 On termination or expiry of this Agreement:

- 17.1.1 each party shall promptly return to the other party all documents and materials (and any copies) containing the other party's Confidential Information;
- 17.1.2 the Provider shall promptly refund any Charges paid in advance and relating to the period after expiry or termination on a pro rata basis;
- 17.1.3 the Customer shall pay the Provider all outstanding Charges relating to Service delivered before the date of expiry or termination within 30 days of an invoice submitted in accordance with Schedule 2 – Charges and Prices.

- 17.2 Termination or expiry of this Agreement shall not limit any of the parties' rights and remedies which have accrued as at termination. Other than as set out in this Agreement, neither party shall have any further obligation to the other under this Agreement after its termination.

17.3 Notwithstanding the expiry or termination of this Agreement for any reason, it shall continue in force to the extent necessary to give effect to those of its provisions which expressly or by implication have effect after expiry or termination.

18. Force Majeure

18.1 Subject to the provisions of this clause 18, to the extent that either the Provider or the Customer is prevented or delayed from performing its obligations under this Agreement by reason of a Force Majeure Event then that party's obligation to perform its obligations will (during the continuation of the Force Majeure Event) be read and construed as an obligation to perform such obligations to the best level reasonably achievable in the circumstances of the Force Majeure Event.

18.2 To the extent that any Force Majeure Event results in any suspension of Services then the Customer will have no liability to pay Charges in respect of such Services for the period of the suspension or non-provision.

18.3 In the event that a delay or failure arising from a Force Majeure Event extends beyond a period of 90 (ninety) days without resolution, then the non-failing party shall be entitled to terminate this Agreement by thirty (30) days' written notice to the failing party. On the expiry of this notice period, this Agreement will terminate and such termination shall be without prejudice to the rights of the relevant parties in respect of any breach of this Agreement occurring prior to such termination.

18.4 The party claiming to be affected by a Force Majeure Event will not be entitled to invoke the provisions of clause 18.1 unless it fully performs the following obligations:

18.4.1 on becoming aware of any Force Majeure Event which gives rise, or which is likely to give rise, to any failure in the performance of its obligations under this Agreement, it promptly notifies the other party, giving details of the nature and extent of the Force Majeure Event, the obligations on its part which are affected and its reasonable estimate of the period for which such failure will continue; and

18.4.2 it takes all reasonable steps to prevent, avoid, overcome and mitigate the effects of such Force Majeure Event; and

18.5 Where the performance of an obligation under this Agreement, which is required to be performed on or before a specific date or within a specific period of time is affected by a Force Majeure Event any party so affected will be entitled to such extension of time for the performance of that obligation as is reasonable in all the circumstances and the parties will use their reasonable endeavours to agree any consequential changes to any timetable for the performance of any other obligation which is affected by the delay.

19. Confidentiality and Publicity

19.1 Subject to clause 19.2, each party shall treat all Confidential Information as strictly confidential and shall not disclose Confidential Information to any person except as necessary for the performance of this Agreement, in which case the disclosing party shall ensure that any recipient is bound by obligations of confidence no less stringent than those in this Agreement. Each party will be liable for its officers', employees', representatives' or subcontractors' disclosure or misuse of the other party's Confidential Information.

19.2 A party to this Agreement may disclose Confidential Information:

19.2.1 if expressly permitted under this Agreement;

- 19.2.2 if and to the extent required by Law or order of the courts, or by any securities exchange or regulatory or governmental body to which such party is subject or submits, wherever situated (whether or not the requirement for information has the force of law) provided that unless prohibited by Law from doing so the party subject to such request gives the other party written notice prior to disclosing any of the Confidential Information and the disclosure is made only to the extent required and for the purpose of complying with the requirement and all reasonable measures to ensure the continued confidentiality of any Confidential Information so disclosed are taken;
- 19.2.3 on a necessary basis and on conditions of confidentiality to the professional advisers, auditors and bankers of such party;
- 19.2.4 if such Confidential Information was published, known publicly or otherwise in the public domain or has come into the public domain other than by a breach of any obligation of confidentiality; or
- 19.2.5 with the prior written approval of the other party (such approval not to be unreasonably withheld or delayed).

19.3 Neither party shall issue any press release and/or make public announcements or statements (including on its website) in relation to the existence or subject matter of this Agreement without the prior written consent of the other party.

20. Data Protection

- 20.1 This clause 20 shall apply only to the extent that the Provider processes personal data, which it receives in connection with this Agreement.
- 20.2 In this clause 20 the terms “personal data” and “process” (including derivatives thereof) shall have the meanings attributed to them by the Data Protection Law.
- 20.3 The Provider shall only process personal data for the purposes of fulfilling its obligations under this Agreement and in accordance with applicable Laws, and shall not by its act or omission cause the Customer to be in breach of applicable Laws in relation to data protection.
- 20.4 The Provider shall not transfer any personal data outside the European Economic Area without the prior written approval of the Customer.

21. Notices

21.1 Any notice or notification to be given under or in connection with this Agreement – including Change Notice - must be in the English language, in writing and delivered to the other party by any of the methods set out in the left-hand column below, and will be deemed to be received on the corresponding day set out in the right-hand column:

Method of service	Deemed day of receipt
By hand or courier	the day of delivery
By email	When the email is confirmed received by the recipient

21.2 The parties' respective representatives for the receipt of notices are, until changed by notice given in accordance with this clause, as follows:

Provider: Address:

Attention:

Email:

Customer: Address:

Attention:

Email:

22. Dispute Resolution

22.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it ("**Dispute**") then, except as expressly provided in this Agreement the parties to the Agreement, shall comply with the following provisions:

22.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**");

22.1.2 the representatives of the Provider and of the Customer (acting in good faith) shall meet to attempt to resolve the Dispute;

22.1.3 if the Dispute remains unresolved ten (10) days following of the Dispute arising, the Senior Vice President or equivalent officer of each party (acting in good faith) shall meet to attempt to resolve the Dispute;

22.1.4 if the Dispute is not resolved within thirty-five (35) days of the Dispute arising, the Dispute shall be finally settled in accordance with the Rules of Arbitration adopted by the Danish Institute of Arbitration. The place of arbitration shall be Copenhagen, Denmark. All negotiations and arbitration will be conducted in the English language; and

22.1.5 all negotiations connected with the Dispute shall be conducted in complete confidence, and the parties to the Dispute undertake not to divulge details if such negotiations except to their professional advisors who shall also be subject to such confidentiality and shall be without prejudice to the rights of the parties in any future proceedings.

22.1.6 Nothing in this clause 22.1 shall operate to prevent the Customer requiring an issue to be escalated to the level it determines to be appropriate.

22.2 Prior to the commencement of arbitration, neither party may commence any court proceedings in relation to any Dispute unless such proceedings:

22.2.1 are for interim relief (including injunctive relief);

22.2.2 would be prejudiced by any delay; or

22.2.3 are intended to preserve a superior position with regard to the creditors of the other party.

22.3 Unless agreed otherwise, the parties to the Dispute shall continue to comply with their respective obligations under the Agreement regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.

23. Assignment and Novation

23.1 The Provider shall not subcontract its obligations under this Agreement, nor shall it assign, novate or otherwise transfer any of its rights and obligations under this Agreement whether in whole or in part without the prior written consent of the Customer (not to be unreasonably withheld or delayed).

23.2 Where the Customer has given its prior written consent to a subcontract, such sub-contractor will not be entitled to further subcontract the performance of the Services without the Customer's prior written consent. If the Customer consents to such further delegation the terms of this clause 23.2 shall, as applicable, apply to the subcontractor as if it were the Provider.

24. Amendments

24.1 No amendment to this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties in accordance with the Change Procedure in Schedule 4 to this Agreement.

25. General

25.1 Each party to this Agreement shall bear its own legal costs associated with the preparation, negotiation and execution of this Agreement and any documents referred to in it.

26. Governing Law and Jurisdiction

26.1 This Agreement shall be governed by and construed in accordance with the laws of Denmark.

26.2 Any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) must be referred to the Danish Institute of Arbitration Copenhagen, Denmark in accordance with clause 22.

SIGNED by the authorised representatives of the parties.

SIGNED for and on behalf of **the Customer**

Signature:

.....

Name:

.....

Position:

.....

Date:

.....

SIGNED for and on behalf of **the PROVIDER**

Signature:

.....

Name:

.....

Position:

.....

Date:

.....

27. Schedule 1 – The Services

[Include detailed specifications of the Services]

[This schedule must include:

- Standards and Security

- Service Levels and Service Credits (including Delay Payments and Service Level thresholds)]

28. Schedule 2 – Charges and Prices

29. Schedule 3 - Acceptance Procedure

1. Testing Methodology

- 1.1 The Acceptance Test must include Test Items covering all integrations, migrations and other deliverables as described in the Detailed Project Plan.
- 1.2 The Provider will give the Customer at least seven (7) days' notice of the date on which all or any Test Item is ready for Acceptance Testing.
- 1.3 The Customer shall permit the Provider to observe all or any part of the testing.
- 1.4 If the proposed date for any Acceptance Test is not suitable for the Customer the Parties shall try to re-arrange the test date, provided that the Acceptance Test dates will not be changed in any way that may adversely affect the Provider's ability to meet the Detailed Project Plan for the relevant Test Item.
- 1.5 After completion of the Acceptance Test:
 - 1.5.1 The Customer shall provide the Provider with a copy of the test results. Where the Provider is not present at the Acceptance Test the results shall be delivered to the Provider by e-mail.
 - 1.5.2 If a Test Item meets all of the Acceptance Criteria for that Test Item, it shall be deemed to have passed the Acceptance Test and be Accepted.
 - 1.5.3 If any Test Item fails to meet any of the Acceptance Test criteria it shall be deemed to have failed the Acceptance Test. In such event, the Customer shall, within seven (7) days from the completion of the Acceptance Test or any part thereof and receipt of the results of such Acceptance Test or part thereof, provide a written notice to the Provider to this effect, giving details of such failure(s). The Provider shall remedy the defects and deficiencies and the relevant test(s) shall be repeated within a reasonable time, not to exceed fourteen (14) days.
- 1.6 If any Test Item fails to pass any repeated Acceptance Test within two weeks from the date of its second submission to the Acceptance Test, then the Customer may, by written notice to the Provider, choose at its sole discretion:
 - 1.6.1 to request a repeat test, and if the Test Item or part of it fails such further test, then the Customer may request another repeat test under this paragraph 1.6.1 or proceed under paragraphs 1.6.2 or 1.6.3;
 - 1.6.2 to conditionally accept the Test Item or part of it in its absolute discretion. The conditions of acceptance shall be as the Customer may reasonably determine and notify to the Provider provided that such conditions may not without the prior written agreement of the Provider increase the obligations or restrict any right or remedy of the Provider under this Agreement. Unless otherwise agreed in writing between the Customer and the Provider conditional acceptance shall constitute Acceptance of the Test Item or part of it provided that all the relevant conditions have been met within the period, specified by the Customer. If all the relevant conditions have not been met within the period specified by the Customer, the Customer shall be entitled to proceed under paragraph 1.6.3;
 - 1.6.3 if the Provider is unable to correct the defects within a period of one month from the commencement of Acceptance Test under paragraph 1.6, to reject the Test Item as not conforming to the Agreement, in which event the Customer is entitled to annul the Agreement without any consequences for any of the parties to the Agreement, however subject to clause 3.7 of the Agreement.

2. Form of Acceptance Certificate

The following form of Acceptance Certificate shall be used:

“This Acceptance Certificate is delivered on the date set forth below by the Customer to the **Provider** pursuant to the Agreement dated [DATE] between the Customer and the Provider (the “**Agreement**”). Terms used in this Acceptance Certificate shall have the meaning given for such terms in the Agreement.

The Customer hereby confirms to the Provider that [insert name/description of relevant Test Item] [subject to the conditions listed below being met by [insert date]] [meets all relevant acceptance criteria] [and] [has been Accepted].

Signed by..... [()]

For and on behalf of the Customer.

Date”

3. Reserved Rights

- 3.1 Unless indicated otherwise in this Agreement, Acceptance of any Test Item shall be without limit to any other rights or remedies of the Customer in relation to any other Test Items.

30. Schedule 4 - Change Procedure

1. General

Requests for Changes to this Agreement (including the Detailed Project Plan, may be initiated by the Customer (the “**Customer**”) or the Provider (in each case a “**Party**” and collectively the “**Parties**”).

- 1.1 Until such time as a Change Notice (“**CN**”) has been signed by the Parties, the Provider shall continue to perform its obligations in accordance with this Agreement.
- 1.2 Any work undertaken in connection with any proposed Change by the Provider, or its Personnel, unless agreed otherwise by the Parties, shall be undertaken at no additional cost to the Customer.
- 1.3 A CN signed by the Parties shall constitute an amendment to this Agreement.

2. Procedure

- 2.1 Where a written request for a Change is received from the Customer, the Provider shall, unless otherwise agreed in writing, submit two copies of a completed CN signed by the Provider to the Customer within seven (7) days following the appropriate technical evaluation.
- 2.2 A request for a Change originated by the Provider shall be submitted direct to the Customer in the form of two copies of a CN signed by the Provider.
- 2.3 Each CN shall be in the form set out below and contain all details reasonably necessary for the Customer to evaluate the Change.
- 2.4 For each CN submitted, the Customer shall within fourteen (14) days evaluate the CN and as appropriate:
 - 2.4.1 request further information;
 - 2.4.2 arrange for two copies of the CN to be signed by or on behalf of the Customer and return one of the copies to the Provider; or
 - 2.4.3 notify the Provider of the rejection of the CN.
- 2.5 Should a Party require a longer period of time to prepare, evaluate or agree any CN then they shall make a request for such extension to the other Party with an indication of the extension time required. The other Party shall not unreasonably refuse this request.
- 2.6 Where any Change results in any change or upgrade to the Services, such Services shall be subject to Acceptance Test in accordance with the procedure in Schedule 3;.

Appendix 1 to Schedule 4

CHANGE NOTICE (CN) for Changes to the Agreement

By and between:

1. **[NAME]**, a corporation organised and existing under the laws of [TERRITORY] with registered number [NUMBER] and having its registered office at [ADDRESS] (the “**Customer**”); and
2. **[NAME]**, a corporation organised and existing under the laws of [TERRITORY] with registered number [NUMBER] and having its registered office at [ADDRESS] (the “**Provider**”),

CN STATUS:

Accepted 📅 **Date:** **Rejected** 📅 **Date:** **On Hold** 📅 **Date:** **Approved** **Date:**

(a) Agreement Details	(b) Change Notice Details
Title and/or Ref. No: Learning Management System	Reference No:
Date of Agreement:	CN Date:
(c) Raised by: _____ Tel: _____ Location: _____	
(d) Priority: Immediate action required 📌 High level of impact on hardware 📌 Low impact scheduled event 📌	
(e) Reason for the change:	
(f) Description of the change:	
(g) Timetable for the change & commencement date:	
(h) Change to Charges (if applicable):	
(j) Impact Statement:	
(k) CN Expiry Date:	
(l) Other details as required:	
(m) Amended Document attached: 📎	

The Parties hereby agree to change the Agreement in the manner and in consideration of the terms set out above. Save as expressly set out in this Change Notice the terms and conditions of the Agreement shall remain in full force and effect.

For and on behalf of the Provider

For and on behalf of the Customer

Signed: _____

Printed Name: _____

Title: _____

Date: _____

31. Schedule 5: Extract of Providers Reply to the ITSFB

Insert relevant sections of the Providers reply to ITSFB decided by the Customer.