



THE UNIVERSITY
of EDINBURGH

Research Software Maintenance Fund (RSMF)

GRANT AGREEMENT

ERO Contracts
Edinburgh Research Office
The University of Edinburgh
Room 2.15, Charles Stewart House
9-16 Chambers Street
Edinburgh EH1 1HT

ERO.contracts@ed.ac.uk

Ref: [insert ERO reference number]

- (1) **THE UNIVERSITY COURT OF THE UNIVERSITY OF EDINBURGH** a charitable body registered in Scotland under registration number SC005336, incorporated under the Universities (Scotland) Acts and having its main administrative offices at Old College, South Bridge, Edinburgh EH8 (**the Institution**);
- and
- (2) **[INSERT NAME] [LIMITED] OR [PLC]**, [[a company registered in [under number [insert number], whose registered office is at [insert address of registered office]] OR [[insert status of the Recipient, e.g. NHS Trust] of [insert address of principal office]] (the Recipient).

BACKGROUND

- (A) Whereas **the Institution** has been awarded an Award from UKRI (“the Funder”) (Grant ref AH/Z000144/1) relative to The Software Sustainability Institute (Phase 4) in respect of the Project entitled The Software Sustainability Institute - Phase 4 (“SSI-4”) all as more fully described in the **Proposal** attached at Part 1A of the Schedule;
- (B) The Software Maintenance Funding Pilot forms part of SSI-4 and in terms of the Head Terms (a copy of which is attached at Part 1 B of the Schedule) the Institution administers the **Research Software Maintenance Fund (“RSMF”)** funded by the Award;
- (C) The Recipient has applied to the Institution for a grant from the RSMF to carry out activities (“**RSMF Project**”) described in the **RSMF Project Plan** attached at Part 2 of the Schedule;
- (D) The Institution has agreed to make an award of funding (“**the RSMF Funds**”) to the Recipient on the terms and conditions in this Agreement.

NOW THEREFORE THE PARTIES AGREE TO ENTER INTO AN AGREEMENT ON THE FOLLOWING TERMS

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the following expressions have the meaning set opposite:

Academic Publication: the publication of an abstract, article or paper in a journal or an electronic repository, or its presentation at a conference or seminar; and in clauses 5 and 6 **to Publish** and **Publication** are to be construed as meaning such publication;

Academic and Research Purposes: Research, teaching, and education;

Approved Project Partner: a Third Party (not being an individual) referenced in the Proposal approved by the Institution as a collaborator or subcontractor on the RSMF Project and referred to at Part 8 of the Schedule.

Award:	the sums by the Funder to the Institution in terms of the Head Terms;
this Agreement:	this document, including its Schedule, as amended from time to time in accordance with clause 11.8;
the Financial Management Conditions	means the Auditing and Assurance Conditions and the Financial Management Conditions set out at Paragraph 5 of Part 6 of the Schedule
Background:	information, data, techniques, Know-how, inventions, discoveries, software and materials (regardless of the form or medium in which they are disclosed or stored) which are provided by one Party (whether belonging to that Party or to a Third Party) to the other Party for use in the Project, and whether before or after the date of this Agreement, except any Result;
a Business Day:	Monday to Friday (inclusive) except bank or public holidays in Scotland;
the Commencement Date:	[insert the date on which the RSMF Project is to start/started];
Confidential Information:	a Party's confidential information is: any Background disclosed by that Party to the other Party for use in the Project; any of the Results in which that Party owns the Intellectual Property Rights; any other information disclosed by that Party to the other Party for use in the Project or under this Agreement;
Control:	the ability to direct the affairs of another person, whether by virtue of the ownership of shares, by contract, or in any other way;
the RSMF Funds:	The funding provided by Institution to the Recipient under this Agreement as detailed in the budget at Part 3 of the Schedule;
The Funder:	UKRI;
The Head Terms:	The Funder's Award terms and conditions a copy of which is attached to this Agreement as Part 1B of the Schedule;
The Funding Conditions:	the conditions set out at Part 6 of the Schedule;

the Fund Purpose:	the permitted uses of the RSMF Funds described in Part 7 of the Schedule;
the Good Data Management Practices:	the practices and procedures set out in Paragraph 4 of Part 6 of the Schedule;
a Group Company:	any undertaking which for the time being Controls, or is Controlled by the Recipient or which for the time being is Controlled by a third person which also Controls the Recipient;
Intellectual Property Rights:	patents, rights to inventions, trade-marks, service marks, registered designs, copyrights and related rights, database rights, design rights, rights to use and protect confidential information, in each case whether registered or unregistered, including rights to apply for and be granted applications for any of the above and any continuations, continuations-in-part, divisional applications, renewals or extensions of, and rights to claim priority from, those rights, and any similar right recognised from time to time in any jurisdiction, together with all rights of action in relation to the infringement of any of the above;
Know-how:	unpatented technical information (including information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions) which is not in the public domain;
a Party:	the Institution or the Recipient and together they are the Parties ;
the RSMF Project:	the programme of work described in the RSMF Project Plan;
the RSMF Activities	activities described in the RSMF Project Plan funded by RSMF Funds;
the Project Period:	the period described in clause 2.1;
the RSMF Project Plan:	the project plan annexed to this Agreement as Part 2 of the Schedule, as varied from time to time under the terms of this Agreement;
the Results:	all information, data, techniques, Know-how, results, inventions, discoveries, software and materials (regardless of the form or medium in

which they are disclosed or stored) identified or first reduced to practice or writing or developed in the course of the Project;

the Project Lead: means [] being the individual identified in the RSMF Project Plan (employed by the Recipient) and managing the RSMF Project on behalf of the Recipient.

Third Party: any individual or corporate person other than the Institution or the Recipient.

a Variation Agreement: a written agreement signed by or on behalf of the Parties and any proposed new party to this Agreement; and

VAT: value added tax chargeable under the Value Added Tax Act 1994, or any tax replacing that tax.

- 1.2 The headings in this Agreement are for ease of reference only; they do not affect its construction or interpretation.
- 1.3 References in this Agreement to a person include a natural person, corporate or unincorporated body (whether or not it has a separate legal personality).
- 1.4 A reference in this Agreement to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and includes all subordinate legislation made from time to time under that statute or statutory provision.
- 1.5 A reference in this Agreement to writing or written includes email.
- 1.6 A reference in this Agreement to any other agreement or document is a reference to that other agreement or document as varied or novated (in each case, unless in breach of this Agreement) from time to time.
- 1.7 References in this Agreement to clauses and Schedule are to the clauses and Schedule of this Agreement and references to paragraphs are to paragraphs of the Schedule.
- 1.8 Any words in this Agreement following the expression including, include or in particular, or any similar expression, are to be construed as illustrative and do not limit the sense of the words preceding that expression.
- 1.9 The acts and omissions of its Group Companies are deemed to be within the Recipient's control, the acts and omissions of students are deemed to be within the Institution's control and the acts and omissions of any contractor are deemed to be within the control of the Party engaging that contractor.
- 1.10 Words and phrases defined in the Funding Conditions and not defined in this Agreement have the meaning given to them in the Funding Conditions when used in this Agreement.

- 1.11 If there is any conflict between the terms of this Agreement and the Head Terms, this Agreement will prevail in relation to the arrangements as between the Parties, but it will not affect the Institution's obligations to the Funder.

2 THE PROJECT

- 2.1 The Project [will begin on] the Commencement Date and will continue until the earlier of the withdrawal of the External Funding and the completion of the Project or any later date agreed in writing between the Parties, or until this Agreement is terminated in accordance with clause 8 or 9. If this Agreement is entered into after the Commencement Date, it will apply retrospectively to work carried out in relation to the Project on or after the Commencement Date.
- 2.2 The Recipient will carry out the activities described in the RSMF Project Plan. The Project will be carried out under the direction and supervision of the Project Lead
- 2.3 The Recipient will obtain and maintain all regulatory and ethical licences, consents and approvals necessary to allow it to carry out the activities in the RSMF Project Plan and will carry out the RSMF Project in accordance with all laws and regulations which apply to its activities under or pursuant to this Agreement.
- 2.4 The Recipient will ensure that its employees and students (if any) involved in the Project (i) observe the conditions attaching to any regulatory and ethical licences, consents and approvals; (ii) keep complete and accurate records of all research, development and other work carried out in connection with the RSMF Project and of all Results (signed by the people who obtained or made each Result);
- 2.5 The Recipient shall comply with the Good Data Management Practices described at Paragraph 4 of Part 6 of the Schedule. Institution may on not less than 30 days written notice, to visit the other Recipient (and any Approved Project Partner) to ensure that Recipient is complying with the above practices and procedures.
- 2.6 Each Party will ensure that its staff and students (if any) (including in the case of the Recipient, any staff of any Group Company) involved in the Project, when working on or visiting the other Party's premises, comply with the other Party's health and safety and security policies and procedures and, when accessing or using the other Party's information systems, comply with the other Party's information security policies and procedures.
- 2.7 The Recipient will comply with the Head Terms (as applicable to the carrying out of the RSMF Project) and the Funding Conditions.
- 2.8 The Recipient shall free and relieve Institution of any loss and or liability arising from the Recipient's breach or non- observance of the Head Terms or resulting from any act or omission by Recipient or any Approved Project Partner. Further, if the Funder requires the reimbursement by the Institution of any part of the Award, then to the extent that such requirement arises from the acts or omissions of the Recipient (or any Approved Project Partner) , the Recipient agrees to reimburse the Institution together with any interest charged thereon by the Funder. This clause 2.8 is without prejudice to the Financial Management Conditions.
- 2.9 The Recipient shall comply with the Funding Conditions and shall indemnify Institution against any loss, damage or liability resulting from Recipient's failure (or the failure of any Approved Project Partner) to comply with the Head Terms.

- 2.10 The Recipient will use reasonable endeavours to carry out the RSMF Project in accordance with the RSMF Project Plan and in alignment with the Fund Purpose. Neither Party undertakes that any research will lead to any particular result, nor does it guarantee a successful outcome to the RSMF Project.
- 2.11 The Recipient will provide the Institution with quarterly reports summarising the progress of the Project and a copy of all of the Results.
- 2.12 Promptly after identifying any Result the Recipient will notify the Institution of such Results in the reports provided under clause 2.11.
- 2.13 The Recipient warrants to the Institution that it has full power and authority under its constitution, and has taken all necessary actions and obtained all authorisations, licences, consents and approvals, to allow it to enter into and perform this Agreement and it is not in breach of the Head Terms or the Funding Conditions.

3 APPROVED PROJECT PARTNERS

- 3.1 Subject to clause 3.2 of this Agreement, the Recipient shall not collaborate with any Third Party on RSMF Project Activities or subcontract any RSMF Project Activities to any Third Party except with the prior written consent of Institution.
- 3.2 The Recipient may collaborate with Approved Project Partners in respect of RSMF Project Activities and/or sub-contract RSMF Project Activities to Approved Project Partners referred to at Part 8 of the Schedule provided that the Recipient enters into collaboration agreements (or, as applicable, sub -contract agreements) in no less onerous terms than the terms of this Agreement with the Approved Project Partners to ensure that Approved Project Partners (i) undertake the activities assigned to them in terms of the RSMF Project Plan; and (ii) comply with the terms of this Agreement.
- 3.3 Recipient shall not disburse RSMF Funds to any Approved Project Partners except in respect of RSMF Project Activities.

4 RSMF FUNDS

- 4.1 The Institution will pay the RSMF Funds to the Recipient quarterly in arrears in accordance with Part 3 of the Schedule 1.
- 4.2 All amounts payable to the Recipient under this Agreement are inclusive of VAT.

5 USE AND EXPLOITATION OF INTELLECTUAL PROPERTY RIGHTS

- 5.1 This Agreement does not affect the ownership of any Intellectual Property Rights in any Background or in any other technology, design, work, invention, software, data, technique, Know-how, or materials which are not Results. The Intellectual Property Rights in them will remain the property of the Party which contributed them to the Project (or its licensors). No licence to use any Intellectual Property Rights is granted or implied by this Agreement except the rights expressly set out in this Agreement.
- 5.2 To the extent required to comply with clause 6.5 and 7.7 of this Agreement (use of Institution logo), Institution grants Recipient a royalty-free non-exclusive licence to use its Background. To the extent required by Institution to comply with the Head Terms (including compliance with reporting obligations to the Funder) and to carry out the activities and exercise the rights described at clause 6 of this Agreement, Recipient

grants Institution a royalty-free, fully paid-up, non-exclusive licence to use its Background.

- 5.3 The Recipient will own the Intellectual Property Rights in the Results, and may take such steps as it may decide from time to time, at its expense, to register and maintain any protection for the Intellectual Property Rights in the Results, including filing and prosecuting patent applications for any of the Results and taking any action in respect of any alleged or actual infringement of any Intellectual Property Rights in the Results.
- 5.4 [The Recipient will provide the Institution with such information as the Institution may reasonably request from time to time to demonstrate that the Recipient is using the Results for the Fund Purpose. If the Recipient does not demonstrate that it is exploiting any of the Results or is taking reasonable steps towards exploiting them, the Recipient will, if requested to do so by the Institution, reassign the Intellectual Property Rights in those Results to the Institution. The Recipient will notify the Institution if the Recipient decides not to proceed with the exploitation of any of the Results and will, if requested to do so by the Institution, reassign the Intellectual Property Rights in those Results to the Institution].
- 5.5 The Recipient grants the Institution a royalty-free, non-exclusive licence to use the Results for Academic and Research Purposes.

6 ACADEMIC PUBLICATION AND IMPACT

- 6.1 The Recipient shall not publish Results without the prior written consent of the Institution and subject and subject to the terms of clauses, 6.2, 6.3 and 6.4.
- 6.2 Subject to the remainder of this clause 6, publications resulting from the RSMF Project should be made openly accessible in line with the Funder's open access policy.
- 6.3 Recipient will submit to the Institution, in writing, details of any of publication which any employee or student of the Recipient intends to Publish, at least 60 days before the date of the proposed submission for Publication. The Institution may, by giving written notice to the Recipient (a Confidentiality Notice) prevent the Publication of any of the Institution's Background which is Confidential Information.

The Institution must give that Confidentiality Notice within 30 days after the Recipient receives details of the proposed Publication. If the Recipient does not receive a Confidentiality Notice within that period, the proposed Publication may proceed, except in relation to the Institution's Background which is the Institution's Confidential Information and which may not be Published unless the Institution has given its written consent to that Publication.

Recipient must not include the Institute as co-authors on publications without explicit prior permission.

- 6.4 The Recipient acknowledges that the Institution is required by the Funder (and its funders generally) to demonstrate the Institution's impact on society and agrees to provide to the Institution any information which the Institution reasonably requests in order to allow it to demonstrate that impact provided that, under or pursuant to this clause: the Institution will not be entitled to receive or disclose any of the Recipient's Confidential Information or any information which identifies or allows any living individual to be identified and the information requested and disclosed under or pursuant to this clause will be general in nature.

6.5 Recipient confirms that the Institution and the Funder shall be permitted to use Recipient's name or logo (and the name and logo of any Approved Project Partner) for any purposes relating to promotion of the Award and the RSMF Project. Institution is permitted to make any press release regarding the RSMF Project.

6.6 All outputs from the RSMF Project must acknowledge the Institution and the Funder using the following text:

"This work was supported by the Research Software Maintenance Fund, managed by the Software Sustainability Institute and funded by UKRI grant reference AH/Z000114/1."

7 CONFIDENTIALITY

7.1 Subject to clause 6, neither Party will either during the Project Period or for 5 years after the end of the Project Period, disclose to any Third Party, nor use for any purpose except as expressly permitted by this Agreement, any of the other Party's Confidential Information.

7.2 Neither Party will be in breach of any obligation to keep any of the other Party's Confidential Information confidential or not to disclose it to any other party to the extent that:

7.2.1 if it is received from the other Party, it is known to the Recipient or any Group Company (demonstrable by written records) before its receipt from the other Party, and not already subject to any obligation of confidentiality to the other Party;

7.2.2 it is or becomes publicly known without any breach of this Agreement or any other undertaking to keep it confidential;

7.2.3 it has been obtained by the Recipient or any Group Company from a Third Party in circumstances where the Recipient has no reason to believe that there has been a breach of an obligation of confidentiality owed to the other Party;

7.2.4 it has been independently developed by the Recipient or any Group Company without reference to the other Party's Confidential Information;

7.2.5 it is disclosed pursuant to the requirement of any law or regulation (including disclosures under the Freedom of Information Act 2000 the Freedom of Information (Scotland) Act 2002, Environmental Information Regulations 2004 or Environmental Information (Scotland) Regulations 2004) or pursuant to the order of any Court of competent jurisdiction or the requirement of any competent regulatory authority, and that, in each case where the law permits, the Party required to make that disclosure has informed the other, within a reasonable time after being required to make the disclosure, of the requirement to disclose and the information required to be disclosed; or

7.2.6 it is approved for release in writing by an authorised representative of the other Party.

- 7.3 The Institution will not be in breach of any obligation to keep any of the Recipient's Background or information, confidential or not to disclose it to any Third Party, by making them available to any employee or student of the Institution who needs to know them in order to exercise the rights granted in this Agreement, provided they are not used except as expressly permitted by this Agreement and the student undertakes to keep that Background and information confidential.
- 7.4 The Recipient will not be in breach of any obligation to keep any of the Institution's Background or other information confidential or not to disclose them to any Third Party, by making them available to any Group Company, or any person working for or on behalf of the Recipient or a Group Company, who needs to know the same in order to exercise the rights granted in this Agreement, provided they are not used except as expressly permitted by this Agreement and the recipient undertakes to keep them confidential.
- 7.5 Neither Party will be in breach of any obligation to keep any of the other Party's Confidential Information, confidential or not to disclose it to any Third Party by disclosing it to the Funder in accordance with the Head Terms.
- 7.6 If the Institution receives a request under the Freedom of Information Act 2000 or the Freedom of Information (Scotland) Act 2002 to disclose any information which, under this Agreement, is the Recipient's Confidential Information, it will notify the Recipient and will consult with the Recipient promptly and before making any disclosure under that Act or those Regulations, the Institution will, where appropriate, take legal advice regarding the availability and applicability of any exemptions and any other options available, and will notify the Recipient of the intended response to that request. The Recipient will respond to the Institution within 10 days after receiving the Institution's notice if that notice requests the Recipient to provide information to assist the Institution to determine whether or not an exemption to the Freedom of Information Act 2000 or the Freedom of Information (Scotland) Act 2002 (or the Environmental Information Regulations 2004 or the Environmental Information (Scotland) Regulations 2004, as applicable) applies to the information requested under that Act or those Regulations. The Recipient may make representations in relation to that request and the proposed response and may request amendments to the proposed response.
- 7.7 Subject to clause 6.5 of this Agreement, neither Party will use the other's name or the name of any of the personnel provided by the other Party or the other Party's logo in any press release or product advertising, or for any other promotional purpose, without first obtaining the other Party's written consent.

8 LIMITATION OF LIABILITY

- 8.1 The Recipient warrants to the Institution other than, to the best of its knowledge and belief (having made reasonable enquiry of those of its employees involved in the Project or likely to have relevant knowledge any advice or information given by it or any of its employees or students who work on the Project), that the content or use of any Results, Background or materials, works or information provided in connection with the RSMF Project, will not constitute or result in any infringement of Third Party rights.
- 8.2 The Recipient will indemnify Institution and keep it fully and effectively indemnified on demand against all costs, claims, demands, expenses and liabilities of any nature arising out of or in connection with any breach by it of (i) the Head Terms and the Funding Conditions; and (ii) Part 4 of the Schedule; and (iii) Part 5 of the Schedule .

8.3 The liability of either Party to the other for any breach of this Agreement, any negligence or arising in any other way out of the subject matter of this Agreement, the RSMF Project and the Results, will not extend to:

8.3.1 any indirect damages or losses; or

8.3.2 to any loss of profits, loss of revenue, loss of data, loss of contracts or opportunity, whether direct or indirect,

even if the Party bringing the claim has advised the other of the possibility of those losses, or if they were within the other Party's contemplation.

8.4 Without prejudice to clauses 2.8 and 8.2 and subject to clause 8.6, the aggregate liability of the Recipient to the Institution for all and any breaches of this Agreement, any negligence or arising in any other way out of the subject matter of this Agreement, the RSMF Project and the Results, will not exceed the RSMF Funds.

8.5 Subject in each case clause 8.6, the aggregate liability of the Institution to the Recipient shall not exceed £50,000.00.

8.6 Nothing in this Agreement limits or excludes either Party's liability for:

8.6.1 death or personal injury caused by negligence;

8.6.2 any fraud or for any sort of liability that, by law, cannot be limited or excluded; or

8.6.3 a Party's failure to make a Mandatory Notification where required to do so.

9 FORCE MAJEURE

If the performance by a Party of any of its obligations under this Agreement is delayed or prevented by circumstances beyond its reasonable control, that Party will not be in breach of this Agreement because of that delay in performance. However, if the delay in performance lasts more than 3 months, the other Party may terminate this Agreement with immediate effect by giving written notice to the Party whose performance is delayed or prevented.

10 TERMINATION

10.1 Either Party may terminate this Agreement upon written notice on the occurrence of any of the following events:

10.1.1 the other Party enters into bankruptcy or liquidation or any other arrangement for the benefit of its creditors; or

10.1.2 the other Party is in material breach of any of its obligations hereunder and such breach is not capable of remedy; or

10.1.3 the other Party is in material breach of any of its obligations hereunder and such breach is capable of remedy but the other Party remains in breach on the expiry of 28 calendar days after receipt by it of written notice specifying the breach and the action reasonably required to remedy the same.

10.2 The Institution may terminate this Agreement upon written notice in the event that the Head Terms are terminated.

- 10.3 Clauses 1, 2 (including the Funding Conditions), 3, 4, 5, 6, 7, 8, 9 ,10 and 11 will survive the completion of the RSMF Project or the termination of this Agreement for any reason and will continue in full force and effect indefinitely or, in the case of clause 7, in accordance with clause 7.1.

11 GENERAL

- 11.1 **Notices:** Any notice to be given under this Agreement must be in writing must be delivered to the other Party by any of the methods set out in the left-hand column below (with a copy by email), 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 pre-paid first-class post	the second Business Day after posting
By recorded delivery post	the next Business Day after posting

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

For the Institution:

Name:

Address:

Email address:

For the Recipient:

Name:

Address:

EROContracts@ed.ac.uk

- 11.2 **Assignment:** Neither Party may assign or transfer this Agreement as a whole, or any of its rights or obligations under it, without first obtaining the written consent of the other Party. Neither Party will unreasonably withhold or delay its consent.
- 11.3 **Illegal/unenforceable provisions:** If the whole or any part of any provision of this Agreement is void or unenforceable in any jurisdiction, the other provisions of this Agreement, and the rest of the void or unenforceable provision, will continue in force in that jurisdiction, and the validity and enforceability of that provision in any other jurisdiction will not be affected.
- 11.4 **Waiver of rights:** If a Party fails to enforce, or delays in enforcing, an obligation of the other party, or fails to exercise, or delays in exercising, a right under this Agreement, that failure or delay will not affect its right to enforce that obligation or constitute a waiver of that right. Any waiver of any provision of this Agreement will not, unless expressly stated to the contrary, constitute a waiver of that provision on a future occasion.
- 11.5 **No agency:** Nothing in this Agreement creates, implies or evidences any partnership or joint venture between the Parties, or the relationship between them of principal and agent. Neither Party has any authority to make any representation or commitment, or to incur any liability, on behalf of the other.

- 11.6 **Entire agreement:** This Agreement constitutes the entire agreement between the Parties relating to its subject matter. Each Party acknowledges that it has not entered into this Agreement on the basis of any warranty, representation, statement, agreement or undertaking except those expressly set out in this Agreement. Each Party waives any claim for breach of this Agreement, or any right to rescind this Agreement in respect of any representation which is not an express provision of this Agreement. However, this clause does not exclude any liability which either Party may have to the other (or any right which either Party may have to rescind this Agreement) in respect of any fraudulent misrepresentation or fraudulent concealment before the signing of this Agreement.
- 11.7 **Formalities:** Each Party will take any action and execute any document reasonably required by the other Party to give effect to any of its rights under this Agreement, or to enable their registration in any relevant territory provided the party making the request pays the other Party's reasonable expenses.
- 11.8 **Amendments:** No variation or amendment of this Agreement will be effective unless it is made in writing and signed by each Party's representative.
- 11.9 **Third parties:** Except as otherwise expressly provided for herein, the Parties confirm that nothing in this Agreement shall confer or purport to confer on any Third Party any benefit or any right to enforce any term of this Agreement for the purposes of the Contracts (Rights of Third Parties) (Scotland) Act 2017.
- 11.10 **Governing law:** This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation are governed by, and this Agreement is to be construed in accordance with, Scots law. The Scottish Courts will have exclusive jurisdiction to deal with any dispute (including any non-contractual claim or dispute) which has arisen or may arise out of, or in connection with, this Agreement, except that a Party may bring proceedings to protect its Intellectual Property Rights or Confidential Information in any jurisdiction.
- 11.11 **Anti-Bribery:** Each party will comply with the provisions set out in the Head Terms and Part 4 of the Schedule. and the Anti-Bribery terms at Part 4 of the Schedule. The Parties acknowledge and agree that any breach of Part 4 of the Schedule shall be deemed to be an irremediable material breach of this Agreement for the purposes of clause 10.1.2.
- 11.12 **Data Protection:** Each Party will comply with the provisions set out in Part 5 of the Schedule.
- 11.13 **Export Control:** each Party will comply with applicable UK export control legislation and regulations. Each Party will comply with the specific conditions of any US export control legislation of which the other Party has informed it in writing and which are applicable to it.
- 11.14 **Subsidy Control**

- 11.14.1 The Recipient warrants it shall ensure that the delivery of their contribution to the Project and their rights arising under it does not put the Institution and the Funder in breach of the UK's international obligations in respect of subsidies, including without limitation the Subsidy Control Act 2022 or the EU State Aid regulations. Each Party acknowledges and accepts that the RSMF Funds are awarded on the basis that the activities being undertaken using the RSMF Funds are, and will remain, non-economic activities. Recipient shall ensure that measures are taken (where necessary), and maintained, to ensure that the RSMF Funds is not used to cross-subsidise any economic activity. Each Party will maintain appropriate records of compliance with the relevant subsidy control regime and will take all reasonable steps to assist the Institution and the Funder to comply with the same and respond to any proceedings or investigation(s) into the activities funded by the RSMF Funds by any relevant court or tribunal of relevant jurisdiction or regulatory body.
- 11.14.2 The Recipient shall ensure that its use of the Results shall, not constitute a breach of the Subsidy Control Act 2022 or the EU State Aid regulations.
- 11.14.3 No subcontract or other agreement with any Third Party can be made which would constitute a breach of the Subsidy Control Act 2022 or the EU State Aid regulations.

11.15 UK National Security and Investment Act 2021

- 11.15.1 Each Party agrees to fully comply with the UK National Security and Investment Act 2021 (the "NSI Act"). Where the Parties consider this Agreement meets the criteria for a notifiable acquisition under the NSI Act, both Parties shall assist each other to ensure compliance and completion of the notification. Each Party shall bear its own costs and expenses incurred, except those incurred because a Party has failed to make a mandatory notification ("Mandatory Notification") where required. Any failure by a Party to comply with this clause shall entitle the other Party to give the non-compliant party 30 days' written notice to terminate the Agreement
- 11.15.2 Notwithstanding any other provision of this Agreement, a Party that fails to make a Mandatory Notification as required by the NSI Act shall reimburse all costs incurred by the other Party as a result of such failure including all costs associated with related NSI Notices and Orders (being a notice or order from the Secretary of State under the NSI Act in relation to an entity or asset connected with this Agreement) and the amendment and termination of this Agreement.
- 11.15.3 In the event that any Party wishes to make a voluntary notification, pursuant to the NSI Act, in relation to an entity or asset connected with this Agreement, it shall notify the other Party and the other Party shall provide all reasonable assistance in connection with the submission of such voluntary notification (each Party bearing its own costs in relation thereto).

11.16 **Counterparts:** This Agreement may be executed in any number of counterparts. Once it has been executed and each Party has executed at least one counterpart, each counterpart will constitute a duplicate original copy of this Agreement. All the counterparts together will constitute a single agreement. The transmission of an executed counterpart of this Agreement (but not just a signature page) by e-mail (such as in PDF or JPEG) will take effect as the delivery of an executed original counterpart of this Agreement. If that method of delivery is used, each Party will provide the other Party with the original of the executed counterpart as soon as possible.

Signed for and on behalf of the Institution:

Signed for and on behalf of the Recipient:

Name: _____

Name: _____

Name: _____

Name: _____

Position: _____

Position: _____

Signature: _____

Signature: _____

Date: _____

Date: _____

SCHEDULE

Part 1A

Proposal (SSI-4)

Part 1B

UKRI TERMS (Head Terms)

Part 2

RSMF Project Plan

RSMF Project Title

Project Objectives

Project Activities

Location

Activities to be carried out

Timetable

Human resources, facilities and equipment

Results Anticipated

Key Personnel of each Party

Other Terms

Part 3

RSMF Funds

Budget/payment table and arrangements (timetable for payments) to be added.

[address for invoices etc]

Part 4

Anti-Bribery

1. The Recipient will, in connection with the RMSF Project:
 - 1.1 comply with all laws, statutes and regulations which apply to it or its activities and which relate to anti-bribery or anti-corruption (or both), including the Bribery Act 2010;
 - 1.2 not do anything which would constitute an offence under section 1, 2 or 6 of the Bribery Act 2010 if it had been carried out in the United Kingdom;
 - 1.3 have policies and procedures (including adequate procedures as determined in accordance with section 7(2) of the Bribery Act 2010 and any guidance issued under section 9 of that Act) to ensure compliance with paragraphs 1.1 and 1.2 above;
 - 1.4 follow and enforce the policies and procedures referred to in paragraph 1.3 above;
 - 1.5 promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by it;
 - 1.6 provide such evidence of compliance with this part of the Schedule as Institution may reasonably request from time to time;
 - 1.7 keep accurate and up to date records and books of account showing all payments made by it in connection with this Agreement and the RMSF Project and the steps taken by it to comply with this part of the Schedule. (Those records and books of account must be sufficient to allow Institution to verify compliance with this part of the Schedule); and
 - 1.8 on request during normal working hours, allow Institution access to and to copy those records and accounts and to meet with the Recipient's personnel to verify compliance with this part of this Schedule.
2. The Recipient will ensure that any person associated with it (as determined in accordance with section 8 of the Bribery Act 2010 and paragraph 4 below) who is involved in the RMSF Project, is involved in the RMSF Project only on the basis of a written contract which imposes on that person terms equivalent to those imposed on the Recipient in this part of the Schedule.
3. The Recipient will ensure that each person referred to in sub paragraph 2 above complies with terms equivalent to the terms imposed by this part of the Schedule, and will be liable to the Institution for any breach by that person of any of those terms.
4. A person associated with the Recipient includes its employees, its students, its group companies and subcontractors and their respective employees.

Part 5

Data Protection

[This part of the schedule needs to be populated /adjusted on a case-by-case basis].

Approved Countries	means the UK and countries in the European Economic Area;
controller, data subject, data subject request, personal data, processor, process, processed and processing	shall have the meaning given to those terms in the applicable Data Protection Laws;
Data Protection Laws	<p>means:</p> <ul style="list-style-type: none">(a) the UK GDPR, the Data Protection Act 2018, and the Privacy and Electronic Communications (EC Directive) Regulations 2003, all as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) EU Exit Regulations 2019;(b) to the extent applicable, the GDPR;(c) any other directly applicable laws or regulations relating to data protection and privacy; and(d) applicable guidance and codes of practice issued by a data protection or privacy regulator; <p>as amended from time to time or replaced by successor legislation, regulation, guidance or codes of practice;</p>
Data Provider	means the Party sharing data with another Party under this Agreement;
Data Recipient	means the Party receiving data from another Party under this Agreement;
GDPR	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation);

Regulator Correspondence means any correspondence or communication (whether written or verbal) from a data protection or privacy regulator (in the UK, the Information Commissioner's Office) in relation to the processing of personal data;

UK GDPR means the GDPR as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018.

Administration of the Project

1. *Legal Basis*

The Parties acknowledge and agree that:

- (a) in the application process, compliance with applicable funding terms, administration of the Project, and participation in the research excellence framework, the Parties are required to request and share personal data pertaining to individual employees and/or students of each the Parties with one another, funders, partners and governing bodies;
- (b) the legal basis for the processing of such personal data is:
 - (i) Article 6(1)(b) UK GDPR (performance of an employment contract) in respect of a Party's own employees;
 - (ii) Article 6(1)(f) UK GDPR (legitimate business interests) in respect of a Party's students and another Party's employees;

2. *Status of Parties*

The Parties agree that each Party is a separate controller and shall comply with the obligations of a controller under the Data Protection Laws in respect of its use of employee and student personal data for the purposes of administration of the Project.

3. *Fair processing*

Each Party is responsible for ensuring that its employees and/or students have been appropriately advised of the need to process such personal data in compliance with the Data Protection Laws.

RSMF Project Activities

4. *Legal Basis*

The Parties acknowledge and agree that:

- (a) the Parties will collect and process personal data for the purpose of carrying out the RSMF Project as set out in this Agreement;
- (b) the RSMF Project is a research project for public benefit;
- (c) the legal basis for processing of such personal data is Article 6(1)(e) UK GDPR (performance of a task in the public interest);
- (d) the additional legal basis for processing sensitive personal data in the course of the Project is Article 9(2)(j) UK GDPR (processing in the public interest, scientific or historical research purposes or statistical purposes).

5. *Responsibilities (separate data collection, sharing personal data, separate controllers)*

The Parties acknowledge and agree that:

- (a) each Party shall collect, process, and share personal data with the other Parties for the purpose of carrying out the Project as described the RSMF Project Plan
- (b) each Party shall be a separate controller and shall comply with the obligations of a controller under the Data Protection Laws in respect of its use of such personal data;
- (c) the Data Provider shall ensure that it is not subject to any prohibition or restriction which would:
 - (i) prevent or restrict it from disclosing or transferring the Personal Data to the other Parties;
 - (ii) prevent or restrict it from granting the other Parties access to the Personal Data; or
 - (iii) prevent or restrict any Party from using the Personal Data;
 for the purpose of carrying out the Project;
- (d) the Data Provider shall ensure that all fair processing notices have been given (and/or, as applicable, consents obtained) and are sufficient in scope to enable the Data Recipient to process shared personal data for the purpose of carrying out the Project in accordance with the Data Protection Laws;
- (e) the Data Recipient undertakes that it shall:
 - (i) use shared personal data solely for the purpose of carrying out the Project;
 - (ii) not make any copies of shared personal data except as may be necessary for carrying out the Project;
 - (iii) implement appropriate technical and organisational measures including the security measures set out in RSMF Project Plan so as to ensure an appropriate level of security is adopted to mitigate the risks associated with the processing of shared personal data, including against unauthorised or unlawful processing, accidental or unlawful destruction,

loss, alteration, unauthorised disclosure of or damage or access to the shared personal data;

- (iv) keep the shared personal data confidential and not sub-license, transfer, disclose or otherwise make available shared personal data in whole or part to any Third Party except with specific prior written consent from the Data Provider;
 - (v) ensure the reliability of any of its employees and students who have access to the personal data and ensure that such employees and students have committed themselves to confidentiality obligations or are under an appropriate statutory obligation of confidentiality;
 - (vi) use reasonable endeavours to notify the Data Provider if it is obliged to make a disclosure of any of the Data under any statutory requirement, such notification to be made in advance of such disclosure or immediately thereafter, unless prohibited by applicable law;
 - (vii) not transfer any of the personal data outside the Approved Countries without the prior written consent of the Data Provider;
 - (viii) unless otherwise agreed by the Data Provider, permanently delete all copies of shared personal data from its hard drives and movable media and destroy all physical copies of shared personal data as soon as reasonably practicable on completion of the Project or on termination of this Agreement (if earlier);
- (f) each Party undertakes that it shall:
 - (i) notify the other Parties processing shared personal data in writing within 2 working days of any data subject request or Regulator Correspondence received by it in respect of shared personal data;
 - (ii) provide a Party receiving a data subject request or Regulator Correspondence with all information and assistance reasonably required to enable the receiving Party to consider and respond to such data subject request or Regulator Correspondence in accordance with any deadline and any requirement to provide information.
- (g) each Party shall promptly (and, in any event, no later than 2 working days after becoming aware of the breach or suspected breach) inform the other Parties processing shared personal data in writing of any breach or suspected breach of any of its obligations in respect of shared personal data under this Agreement and of any other unauthorised or unlawful processing, accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or damage or access to such shared personal data. Such notification shall specify (at a minimum):
 - (i) the nature of the data breach or suspected breach,
 - (ii) the date and time of occurrence,
 - (iii) the extent of the data and any data subjects affected or potentially affected,

- (iv) the likely consequences of any breach or suspected breach (should it have occurred) for data subjects affected by it; and
 - (v) any measures taken or proposed to be taken by the Party who has suffered the breach or suspected breach to address and remedy the breach and / or mitigate its possible adverse effects.
- (h) a Party who has suffered a breach or suspected breach in respect of shared personal data shall thereafter promptly, where requested and at the requesting Party's expense:
- (i) provide the requesting Party with all such information as the requesting Party requests in connection with such breach or suspected breach;
 - (ii) take such steps as the requesting Party reasonably requires it to take to mitigate the detrimental effects of any such breach or suspected breach on the requesting Party; and
 - (iii) otherwise cooperate with the requesting Party in investigating and dealing with such breach or suspected breach and its consequences.
- (i) each Party shall provide the other Party with all information and assistance reasonably required to ensure and demonstrate the Parties' compliance with the Data Protection Laws and the terms of this Agreement in relation to the processing of the Data.

6. *International Data Transfers*

In respect of any transfers of personal data from a Party within the Approved Countries to a Party outside the Approved Countries, the Parties will;

- (a) carry out an appropriate risk assessment; and
- (b) if satisfied with the results of that assessment, enter into an appropriate data transfer mechanism which complies with the applicable Data Protection Laws.

7. *Data Processing Particulars*

The Parties acknowledge and agree that the data processing particulars of the personal data to be processed by the Parties under this Agreement are as set out below:

The subject matter of the processing	
Duration of the processing and retention period(s)	
The nature of the processing	
The purpose(s) of the processing	

The types of personal data processed	
The categories of data subjects to whom the personal data relate	

Part 6

Funding Conditions

Paragraph 1 - Human Rights

1. Unless otherwise required or prohibited by law, the Recipient will, in relation to the performance of this Agreement:
 - 1.1 not employ, engage or use any child labour in circumstances such that the tasks performed by any child could reasonably be foreseen to cause either physical or emotional impairment to the development of the child;
 - 1.2 not use forced labour in any form (prison, indentured, bonded or otherwise);
 - 1.3 not require its employees to lodge papers or deposits on starting work;
 - 1.4 provide a safe and healthy workplace, presenting no immediate hazards to its employees, and if any accommodation is provided by that Party to its employees, that accommodation will be safe for habitation;
 - 1.5 provide access to clean water, food, and emergency healthcare to its employees in the event of accidents or incidents in the workplace;
 - 1.6 not discriminate against any employee on any ground (including race, religion, disability or gender);
 - 1.7 not engage in or support the use of corporal punishment, mental, physical, sexual or verbal abuse;
 - 1.8 not use cruel or abusive disciplinary practices in the workplace;
 - 1.9 pay each employee at least the minimum wage, or a fair representation of the prevailing industry wage, (whichever is the higher) and provide each employee with all legally mandated benefits;
 - 1.10 comply with the laws on working hours and employment rights in the countries in which it operates; and
 - 1.11 respect its employees' right to join and form independent trade unions and freedom of association.
2. The Recipient is responsible for controlling its own supply chain and that it will encourage compliance with ethical standards and human rights by any subsequent supplier of goods and services that are used by it when performing its obligations under this Agreement.
3. The Recipient will ensure that it has, and will comply with, ethical and human rights policies and an appropriate complaints procedure to deal with any breaches of those policies.

Paragraph 2– Anti-Slavery

The Recipient will:

1. comply with all laws, statutes and regulations which apply to it or its activities and which relate to anti-slavery and human trafficking, including the Modern Slavery Act 2015;
2. not do anything which would constitute an offence under section 1, 2 or 4 Modern Slavery Act 2015 if it had been carried out in the United Kingdom;
3. have and maintain its own policies and procedures to ensure compliance with paragraphs 1 and 2 above;
4. follow and enforce the policies and procedures referred to in paragraph 3 above;
5. include in its contracts with any Approved Project Partners anti-slavery and human trafficking provisions which are at least as onerous as those set out in this section of this Schedule;
6. promptly report to Institution any breach of this section of this part of the Schedule of which it becomes aware;
7. provide such evidence of compliance with this section of this part of the Schedule as the Institution may reasonably request from time to time;
8. keep accurate and up to date records to trace the supply chain of all goods and materials supplied by it in connection with this Agreement and the Project and the steps taken by it to comply with this section of this part of the Schedule. (Those records must be sufficient to allow Institution to verify compliance with this section of this part of the Schedule.); and
9. on request during normal working hours, allow the Institution access to and to copy the records referred to in sub paragraph 8 above and to meet with its personnel to verify compliance with this section of this part of the Schedule.

Paragraph 3 –Additional Conditions

1. RSMF Funds shall not be used for developing new software
2. The RSMF Funds shall be used solely for the Fund Purpose.

Paragraph 4 - Good Data Management Practices

1. Research Data /Results must be generated using sound scientific techniques and processes;
2. Results must be accurately recorded in accordance with good scientific practices by the people conducting the research;
3. Research Data/ Results must be analysed appropriately, without bias and in accordance with good scientific practices;
4. Results must be stored securely and be easily retrievable;

5. Data trails must be kept to allow people to demonstrate easily and to reconstruct key decisions made during the conduct of the research, presentations made about the research and conclusions reached in respect of the research; and

Paragraph 5.

1. AUDITING AND ASSURANCE

- 1.1 On each anniversary of the Commencement Date and at the end of the Project Period, the Recipient must provide independent assurance that the RSMF Funds have been used for carrying out the RSMF Project Plan. To satisfy this requirement the Recipient shall provide a statement showing that the use of the RSMF Funds has been certified appropriately qualified auditor or accountant (the Institution being entitled to request that accounts certified by an independent auditor be produced).
- 1.2 Subject to clause 1.1, the Institution or its authorised representative may, at any time during the Project Period and, for up to 10 years after the end of the Project Period, conduct audits in relation to the Recipient's use of the RSMF Funds and its compliance with the Agreement. The Recipient must act reasonably in cooperating with any such audit, including by granting access to relevant documentation, premises and personnel.
- 1.3 The Recipient must:
 - (a) maintain an appropriate system of financial management and controls, maintain detailed records in relation to those controls, and provide copies of those records to the Institution on request; and
 - (b) retain all relevant documentation relating to the expenditure and use of the RSMF Funds (including invoices, receipts and accounting records) during the Project Period and for a period of 10 years thereafter.

2. FINANCIAL MANAGEMENT

- 2.1 The Recipient must:
 - (a) maintain a sound administration and audit process, including internal financial controls, to safeguard against fraud and theft, money laundering, terrorist financing or any other impropriety, or mismanagement in connection with the administration of the RSMF Funds; and
 - (b) notify the Institution of any actual or suspected cases of fraud, theft or financial irregularity relating to the activities carried out (or purporting to be carried out) under the RSMF Project Plan as soon as they are identified, and keep Institution informed of remedial actions.
- 2.2 In the event of any actual or suspected fraud, theft or other financial irregularity (which includes use of the **RSMF Funds** for any purpose other than that envisaged by the Agreement), the Institution may (without prejudice to any other remedies available to it), at its absolute discretion:

- (a) require the Recipient to take any remedial steps that Institution may reasonably specify (including repayment of a sum equal to all or part of the RSMF Funds); and/or
- (b) suspend the activities being carried out under the RSMF Project Plan and future payment of funds of the **RSMF Funds**

and in all cases Recipient must confirm to Institution the steps being taken to investigate the fraud, theft or irregularity (as applicable) and must keep Institution informed about the progress of any such investigation. Recipient must, if required by Institution, refer the matter to an external auditor or any other relevant Third Party.

Part 7

Fund Purpose

The RSMF Funds are intended to funding work (particularly around reducing technical debt, improving user experience, and building community) that will improve the sustainability of existing research software in use by UK research.

It is intended to fund the following types of activities:

- Technical - updates to code/software
- Community - development of materials or events used to engage users or developers
- Documentation - revisions and extensions to written material used as reference for users and/or developers
- Training - events or schemes to improve users and/or developers' ability
- Governance - activities to improve management and/or sustainability

Part 8: Approved Third Parties

Collaborator:

Subcontractor: