

**CONSORTIUM AGREEMENT**

**relative to the Constitution of**

**FATMAN**

## CONSORTIUM AGREEMENT

between those bodies, from time to time, wishing to be members of FaTMAN.

### Interpretation and definitions

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

<b>“Academic Year”</b>	1 <sup>st</sup> August to 31 <sup>st</sup> July;
<b>“Additional Services”</b>	shall have the meaning ascribed to it in Article 58;
<b>“clear days”</b>	in relation to the period of a notice means that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect;
<b>“Committee members”</b>	members of the committee referred to in Article 34;
<b>“Customers”</b>	those educational, governmental, public or other institutions or bodies receiving network services from FaTMAN which are not Members;
<b>“Director”</b>	shall have the meaning ascribed to it in Article 33.5;
<b>“FEC”</b>	shall mean a Further Education College;
<b>“Hardware Agreement”</b>	an agreement between the Operating Member, on its own behalf and as agent for each other Member of FaTMAN, and a supplier relative to

the provision of networking equipment, servers and other hardware;

**“HEI”**

shall mean a Higher Education Institute;

**“JANET SLA”**

the service level agreement covering the full JANET Network and negotiated annually between the JISC and UKERNA;

**“JISC”**

the Joint Information Systems Committee;

**“Management Committee”**

the committee referred to in Article 34;

**“Members”**

the members from time to time of FaTMAN (including, where appropriate, their successor bodies), individually being either a FEC or HEI;

**“Network Services Agreement”**

an agreement between the Operating Member, on its own behalf and as agent for each other Member of FaTMAN, and either a Member or a Customer relative to the provision of network services delivered to meet the JANET SLA, and where appropriate, Additional Services;

**“Operating Member”**

the Member (referred to in Article 32) which shall have the responsibility for the operation of FaTMAN and the fulfilment of its purpose as more fully specified herein;

**“RPAN Agreement”**

the agreement to be entered into between UKERNA and the Operating Member, on its own behalf and as agent for each other Member of FaTMAN, relative to the provision of network services to Members and Customers;

**“Schedule”**

the Schedule annexed to this Agreement;

**“Services”** all services provided by FaTMAN (including all Additional Services) to meet, inter alia, its obligations under the RPAN Agreement;

**“Telecomms Agreement”** an agreement between the Operating Member, on its own behalf and as agent for each other Member of FaTMAN, and a telecommunication company relative to the provision of telecomms circuits;

**“UKERNA”** The JNT Association (Company Number 2881024) whose registered office is at Atlas Centre, Chilton, Didcot, Oxfordshire OX11 OQS.

1.2 Headings are used in this Agreement for convenience only and shall not affect its construction or interpretation.

1.3 In this Agreement, references to the Schedule and to Parts of the Schedule are to the schedule and to parts of the schedule to this Agreement and references to Articles are to articles in this Agreement.

1.4 In this Agreement, references to a person include any legal or natural person, partnership, trust, company, government or local authority department or other body (whether corporate or unincorporate).

1.5 In this Agreement, unless the context does not so admit, reference to the singular includes a reference to the plural and vice versa and reference to the masculine includes a reference to the feminine and neuter.

1.6 References in this Agreement to any statute or statutory provision shall be deemed to include reference to any statute, regulation or statutory instrument which amends, extends, consolidates or replaces the same (or shall have done so) and to any other regulation, statutory instrument or other subordinate legislation made thereunder or pursuant thereto, provided that no such reference shall include any amendment, extension or replacement of the same with retrospective effect.

- 1.7 This Agreement includes the Schedule which will be deemed to have effect as if its provisions were fully set out herein.

### **Name**

2. The unincorporated association formed by the Members pursuant to this Agreement shall be known as “FaTMAN”.

### **Purpose**

3. The primary purpose of FaTMAN shall be to provide network services, and in particular services to meet the JANET SLA, to Higher Education Institutions, Further Education Colleges and to such other educational, governmental, public or other institutions or bodies as the Management Committee shall from time to time agree, including without prejudice to this generality to the Members. These services shall be for education, learning, teaching, research and associated business purposes.

### **Members**

4. Only HEIs and FECs shall be eligible to become Members. The initial Members shall be the original signatories of this Agreement.
5. The membership of FaTMAN may be expanded by the addition of one or more further institutions (each being either a HEI or a FEC) as the Members shall from time to time elect as a new Member by resolution passed at a meeting of the Management Committee by not less than 80% of the committee members voting at that meeting. There shall be no maximum number of Members.
6. Each institution elected as a new Member shall become a Member with effect from the date specified in the resolution passed electing it as a Member, subject to such new Member entering into (i) a deed of adherence obliging it to be bound by the terms and conditions of this Agreement in such form as the Management Committee shall determine from time to time and (ii) a Network Services Agreement.
7. Members may resign their membership of FaTMAN with effect from any date in any Academic Year, subject to such Member having given to the Management Committee not less than twelve (12) months’ notice of its intention to resign.

8. The membership of any Member may be terminated by a resolution passed at a meeting of the Management Committee by not less than 80% of the committee members voting at that meeting if the Member being removed has materially breached this Agreement. The Member which is the subject of the resolution to remove it from membership shall be entitled to make representations to the other Members at the meeting at which the said resolution is being proposed prior to the vote being taken on such resolution.

9. A Member shall automatically cease to be a Member (without the need of a resolution being passed at a meeting of the Management Committee) if a resolution is passed or an order is made for the winding up of that Member or if that Member becomes subject to an administration order, or a receiver or administrative receiver is appointed over any of its property or assets, or if it is insolvent or would be taken to be insolvent under Section 123 of the Insolvency Act 1986 (save that the reference in that section to “£750” shall be replaced by “£10,000”), or the Member is dissolved.

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### **Operating Member**

32. Throughout the duration of this Agreement, the Members shall appoint an Operating Member. The Operating Member shall be Dundee University, and it shall remain in that capacity unless and until removed by a resolution passed at a meeting of the Management Committee by not less than 80% of the committee members voting at a meeting, or it intimates its wish to resign from that position upon giving to the Management Committee not less than twelve (12) months' notice to resign. If Dundee University ceases for whatever reason to be the Operating Member, FaTMAN shall be dissolved and the provisions of Articles 73 - 74 shall apply.
33. Unless the Management Committee determines otherwise and subject to Article 34.2, the Operating Member shall:
- 33.1 provide all secretarial and administration services required from time to time for the proper operation of FaTMAN and the fulfilment of its purpose as set out in this Agreement;
- 33.2 in any matter requiring a legal personality, act on behalf of FaTMAN and as agent for each of its Members, including without prejudice to this generality, the entering into of all contracts, agreements and arrangements necessary for the functioning and operation of FaTMAN including, in particular, the RPAN Agreement, each Network Services Agreement, the Telecomms Agreement(s) and the Hardware Agreement(s);
- 33.3 be the legal holder of all property (including heritable property) belonging to FaTMAN for and on behalf of FaTMAN and each of its Members;

33.4 without prejudice to Article 33.1, open and operate all financial accounts, keep all books and records and employ such staff relative to and necessary for FaTMAN's activities as it sees fit. Staff may be provided by the Operating Member from its existing staff for these purposes;

33.5 appoint one of its staff as Director of Operations ("Director"), who will have primary day to day management responsibility of the operation of FaTMAN and the delivery of the Services.

Nothing in this Agreement shall oblige the Operating Member to carry out or perform any act (or omission) which shall cause it to be in breach of its own constitutional documentation or which would be an illegal act or omission.

### **Management Committee**

34.

34.1 Throughout the duration of this Agreement the Members shall appoint a Management Committee. The Management Committee's primary responsibility shall be to ensure that the Operating Member is properly discharging its responsibilities under this Agreement. In addition and without prejudice to the foregoing, the Management Committee shall be responsible for the determination of policy and for receiving applications for membership.

34.2 The Management Committee may stipulate from time to time what actions and/or decisions require the prior consent of the Management Committee before the Operating Member may implement or take.

35. Membership of the Management Committee shall consist of:

35.1 one representative appointed by each Member which is an FEC in accordance with the provisions of Article 37;

35.2 two representatives appointed by each Member which is an HEI in accordance with the provisions of Article 37;

35.3 the Director.

36. The chairman of the Management Committee shall be appointed by the Management Committee. Unless he is unwilling to do so, the person so appointed shall preside at every meeting of the Management Committee at which he is present. If there is no person holding that office, or if the person holding it is unwilling to preside or is not present within five minutes after the time appointed for the meeting, the members of the Management Committee present may appoint one of their number to be chairman of the meeting.

37.

37.1 Subject to Article 40, the first members of the Management Committee duly elected in accordance with the provisions of this Agreement shall hold office until the date of the third annual general meeting of the Management Committee. Thereafter new members of the Management Committee (including any reappointed members pursuant to Article 39) shall hold office for a period of three (3) years save that such appointment may either be extended or shortened by a period of three (3) months at the relevant Members' discretion (having regard to their respective appointers as set out in Article 35).

37.2 Subject to the provisions in Articles 5, 8, 32, 45, 72 and 78, each member of the Management Committee shall have one vote and the relevant resolutions shall be passed by simple majority. -

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39. Subject as aforesaid, a member of the Management Committee whose appointment terminates may, if willing to act, be re-appointed.

#### **Disqualification and Removal of Management Committee Members**

40. A person shall cease to be a member of the Management Committee if:-

40.1 he becomes bankrupt or makes any arrangement or composition with his creditors generally; or

40.2 he is, or may be, suffering from mental disorder and either:

- (i) he is admitted to hospital in pursuance of an application for admission under the Mental Health (Scotland) Act 1984, or
- (ii) an order is made by a court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder for his detention or for the appointment of a receiver, curator bonis or other person to exercise powers with respect to his property or affairs; or

40.3 he resigns his office by notice to the Management Committee; or

40.4 notice has been received by the Management Committee of his removal or replacement pursuant to Article 41.

41.

41.1 Notwithstanding anything else in this Agreement, each Member shall have the sole right to appoint, remove or replace its representative or representatives on the Management Committee, and in the case of the Operating Member, the Director also.

42. Members of the Management Committee shall not be entitled to any remuneration in respect of their duties as a member of such committee.

43. Members of the Management Committee may be paid travelling, hotel, and other expenses properly incurred by them in connection with their attendance at meetings of the Management Committee or general meetings or otherwise in connection with the discharge of their duties as determined from time to time by the Management Committee. The expense claims procedures of the Operating Member would govern any such claim.

### **Delegation of Management Committee's Powers**

44. The Management Committee may delegate any of its powers to any committee consisting of one or more of its members. It may also delegate to the Director such of its powers as it considers desirable to be exercised by him. Any such delegation may be made subject to any conditions the Management Committee may impose, and either collaterally with or to the exclusion of its own powers and may be revoked or altered. Subject to any such conditions, the proceedings of a committee with two or more members shall be governed by this Agreement's provisions regulating the proceedings of the Management Committee so far as they are capable of applying.

### **Proceedings of Management Committee**

- 45.
- 45.1 There shall be an annual general meeting of the Management Committee held not later than six (6) months following the end of each Academic Year at which an annual report and accounts produced by the Operating Member will be presented.
- 45.2 Each annual general meeting and any meeting of the Management Committee called for the passing of a resolution to remove a Member from membership of FaTMAN shall be called by at least twenty-one (21) clear days notice. All other meetings of the Management Committee shall be called by at least fourteen (14) clear days notice but a meeting may be called by shorter notice if it is so agreed by all the Members.
- 45.3 The notice shall specify the time and place of the meeting and the general nature of the business to be transacted and, in the case of an annual general meeting, shall specify the meeting as such. The notice shall be given to each member of the Management Committee.
- 45.4 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.
- 45.5 Subject to the provisions of this Agreement, the Management Committee may regulate its proceedings as it thinks fit. A member of the Management Committee may call a meeting of the Management Committee. It shall not be necessary to give notice of a meeting to a member of the Management Committee who is absent from the United Kingdom. Questions arising at a meeting shall be decided by a majority of votes. In the case of an equality of votes, the chairman shall have a casting vote. A member of the Management Committee who is also an alternate for another member shall be entitled in the absence of his appointor to a separate vote on behalf of his appointor in addition to his own vote.

## Alternates

46. Any member of the Management Committee (other than an alternate member) may appoint any other member of the Management Committee or any other person approved by resolution of the Management Committee and willing to act, to be an alternate member and may remove from office an alternate member so appointed by him.
47. An alternate member shall be entitled to receive notice of all meetings of the Management Committee (including sub-committees), to attend and vote at any such meeting at which the member appointing him is not personally present, and generally to perform all the functions of his appointor as a member in his absence but shall not be entitled to receive any remuneration from FaTMAN for his services as an alternate member. But it shall not be necessary to give notice of such a meeting to an alternate member who is absent from the United Kingdom.
48. An alternate member shall cease to be an alternate member if his appointor ceases to be a member of the Management Committee, but, if a member retires but is reappointed or deemed to have been reappointed at the meeting at which he retires, any appointment of an alternate member of the Management Committee made by him which was in force immediately prior to his retirement shall continue after his reappointment.
49. Any appointment or removal of an alternate member shall be by notice to the Management Committee signed by the member making or revoking the appointment or in any other manner approved by the Management Committee.
50. The Management Committee shall meet not less than three (3) times in each Academic Year but shall meet more often if it so decides.
51.
  - 51.1 The quorum for the transaction of the business of the Management Committee may be fixed by the Members from time to time and unless so fixed at any other number shall be four (4) PROVIDED THAT those present include an appointed representative of the Operating Member, at least one representative appointed by an FEC Member and at least one representative appointed by an HEI Member other than the Operating Member. A person who is present only as an alternate for a member of the Management Committee shall, if his appointor is not present, be counted in the quorum.

- 51.2 The continuing members or a sole continuing member of the Management Committee may act notwithstanding any vacancies in its number, but, if the number of members of the Management Committee is less than the number fixed as the quorum, the continuing members or member of the Management Committee may act only for the purpose of filling vacancies..
52. All acts done by a meeting of the Management Committee, or of a committee of the Management Committee, or by a person acting as a member of the Management Committee shall, notwithstanding that it be afterwards discovered that there was a defect in the appointment of any member or that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a member of the Management Committee and had been entitled to vote.
53. A member of the Management Committee shall not be counted in the quorum present at a meeting in relation to a resolution on which he is not entitled to vote. A member of the Management Committee shall declare his interest in any business being discussed at a meeting of the Management Committee at which he (or his alternate) is present and shall, if so requested by the chairman of such meeting, abstain from voting on the matter. Where the chairman declares such an interest, he shall not be entitled to a casting vote notwithstanding the provisions of Article 45.
54. The Members may by resolution passed by simple majority suspend or relax to any extent, either generally or in respect of any particular matter, any provision of this Agreement prohibiting a member of the Management Committee from voting at a meeting of the Management Committee or of a committee of the Management Committee.
55. If a question arises at a meeting of the Management Committee as to the right of a member to vote, the question may, before the conclusion of the meeting, be referred to the chairman of the meeting and his ruling in relation to any member other than himself shall be final and conclusive. In relation to a question concerning the chairman's right to exercise his casting vote, the question will be determined by a vote (passed by simple majority) of the remaining members present at the meeting.
56. The Operating Member shall cause minutes to be kept of all Management Committee meetings.

## Services

57. Each Member and each Customer shall enter into a Network Services Agreement in substantially the form of that set out in the Schedule to this Agreement in terms of which each Member and each Customer will be provided with access to the network services operated by FaTMAN in accordance with the Member's or Customer's, as the case may be, individual agreement for such services between it and UKERNA. Each of the initial Members shall enter into a Network Services Agreement not later than one calendar month after becoming a Member.
58. Where a Member or Customer wishes to have access to additional bandwidth and/or other enhanced specification network characteristics ("Additional Services"), the scope of the services to be provided to such Member or Customer in the relevant Network Services Agreement shall be amended to include such Additional Services, provided that the Operating Member agrees (such consent not to be unreasonably withheld). Members acknowledge that FaTMAN will be entitled to charge each Member and/or Customer requiring Additional Services such amounts as reflect the true cost of providing such services as determined by the Operating Member and agreed by the Management Committee.

## Costs

59. All operating costs of FaTMAN in respect of each Academic Year shall be met in so far as possible from funds provided to FaTMAN and/or the Operating Member by UKERNA, the Scottish Higher Education Funding Council ("SHEFC"), the Scottish Further Education Funding Council ("SFEFC") and under the Network Services Agreements for that Academic Year. If such funds received do not meet the said costs in full, the excess costs shall be shared by the Members in such proportions as the Management Committee may from time to time determine in accordance with the provisions of Article 60. Without prejudice to the generality of the foregoing the "operating costs" of FaTMAN shall include, but shall not be limited to, establishment costs including all legal and other professional fees, staff costs (whether on a full time or part time or apportionment basis), third party outlays (including those incurred under the Telecomms Agreement and the Hardware Agreement), all running costs relative to the space occupied at any site of the Operating Member (including appropriate recharge at the Operating Member's standard rates for activities relating to educational partners for heating, lighting, rates and other utilities), any premium (or relevant

part thereof) payable in respect of appropriate insurance cover and any other costs previously approved by the Management Committee.

- 60.1 Each Member agrees that its proportionate share of the excess operating costs of FaTMAN (being those specified in Article 59) and any and all liabilities of FaTMAN (being those specified in Article 62) shall be calculated in accordance with the provisions of this Article 60. Subject to Article 60.2, a Member's share shall be such amount as is equal to the total amount of the relevant cost/liability multiplied by the percentage that that Member's funding received from its funding council (whether from SHEFC or SFEFC) bears to the total aggregate amount of funding (whether from SHEFC or SFEFC) received by all Members of FaTMAN for the relevant Academic Year. Each Member shall advise the Management Committee of the amount of funding to be received by it from its funding council for each Academic Year as soon as reasonably practicable and in any event not later than five (5) working days after receipt by it of notification of such amount.
- 60.2 Any excess operating costs of FaTMAN attributable to one or more Members only (and not all Members) shall be shared by such Member or Members on an equitable basis as determined by the Management Committee.
61. Each Member shall pay to the Operating Member its share of the excess costs of operating FaTMAN not later than forty five (45) days following receipt of each invoice for such amount(s). Such invoices shall be based on the applicable main grant letters received by each Member but, if the grant funding received by Member(s) for the relevant Academic Year thereafter varies, there shall be a reconciliation carried out by the Management Committee and balancing invoices or credits shall be subsequently issued to reflect such reconciliation.

## **Liability**

62. The Members of FaTMAN shall be responsible on a joint and several basis for all liabilities of FaTMAN, whether incurred by the Operating Member on its own behalf or as agent for each other Member of FaTMAN or otherwise, and irrespective of the subject matter (whether for breach of contract, under any indemnity in any agreement, contract or arrangement, delict, including without limitation negligence and misrepresentation, statute or otherwise) in accordance with the provisions of Article 60.1. Where a Member becomes a Member on a date other than the commencement of an Academic Year, the Management Committee shall adjust the respective liabilities of all Members (including the new Member) on a just and equitable basis in respect of that year.

63. Each Member shall, upon being requested to do so by either the Management Committee or the Operating Member, meet its share of any and all liabilities referred to in Article 62, or recompense the Operating Member if it has already met such liabilities, on demand.
64. Without prejudice to the provisions concerning limitations and exclusions of liability and force majeure contained in the Network Services Agreements, each Member agrees that save in the case of the Operating Member's fraud or wilful default, it shall have no claim (whether for breach of contract, delict or otherwise) against the Operating Member arising out of or in connection with the Operating Member performing that role as set out in this Agreement. Nothing in this Agreement will limit or exclude the liability of any party in respect of death or personal injury arising out of its negligence or its fraud.
65. Except as expressly provided in this Agreement, all representations, conditions and warranties, whether express or implied (by statute or otherwise) are excluded to the fullest extent permitted by law.
66. Notwithstanding cessation of membership of FaTMAN for any reason whatsoever, each Member shall remain liable for all costs and liabilities due and payable by it in respect of the period up to and including the end of the Academic Year in which it ceased to be a Member (irrespective of the date in that Academic Year on which membership ceased) and notwithstanding any amounts due and payable by the Member in question under its Network Services Agreement.
67. Where a Member ceases to be a Member of FaTMAN for whatever reason, if the Management Committee determines, acting reasonably, that the costs arising out of that Member ceasing to be a Member of FaTMAN (including without prejudice to this generality any costs or liabilities incurred to third parties pursuant to any contracts, arrangements or otherwise, whether such relate wholly or partly to the services provided to the ceasing Member) are in excess of the amounts due by that Member pursuant to the other provisions of this Agreement, then the Management Committee shall be entitled to render further invoices to the leaving Member for such additional amounts as it considers necessary (acting reasonably). The Management Committee and the Operating Member each undertake to use all reasonable efforts to minimise such additional costs.
68. Where two or more Members merge or otherwise amalgamate, each shall remain fully liable for all costs and liabilities incurred in respect of all periods up to the end of the Academic

Year in which they merged or amalgamated as if each Member had remained a separate Member of FaTMAN, irrespective of the impact or otherwise such merger or amalgamation has on the funding to the Members in question. Where appropriate, the Members acknowledge that such a merger or amalgamation may impact on the cost of services provided in the future to the combined entity or new Member or the former constituent institutions thereof.

69. In the event of such merger or amalgamation between two or more Members if the Management Committee determines, acting reasonably, that the costs arising out of that Member ceasing to be a member of FaTMAN (including without prejudice to this generality any costs or liabilities incurred to third parties pursuant to any contracts, arrangements or otherwise, whether such relate wholly or partly to the services provided to the ceasing Member) are in excess of the amounts due by that Member pursuant to the other provisions of this Agreement, then the Management Committee shall be entitled to render further invoices to each institution ceasing to be a Member in its own name or, alternatively, from the combined entity now being the continuing or new Member, for such additional amounts as it considers necessary (acting reasonably). The Management Committee and the Operating Member each undertake to use all reasonable efforts to minimise such additional costs.

## **Confidentiality**

70.

70.1 Each party will not use for any purpose (except to carry out its obligations in this Agreement) and will keep confidential and not divulge to any third party (other than is contemplated by this Agreement or to its professional advisers and/or its IT consultants, provided that such third party is under duties of confidentiality no less onerous than those contained in this Agreement) any and all information of the other Members which is marked as confidential or which is by its very nature confidential including without prejudice to the foregoing the terms and conditions of this Agreement.

70.2 The provisions of Article 70.1 above do not apply to information which:

70.2.1 comes into the recipient's possession directly from a third party other than a result of breach of confidence;

70.2.2 is in or comes into the public domain other than as a result of a breach of Article 70.1; or

70.2.3 the parties in question agree in writing is not confidential.

70.3 Each Member undertakes to take all those steps as may from time to time be necessary to ensure compliance with the provisions of this Article by its employees, contractors and agents, and will indemnify the other Members against each and every breach of this Article.

## **Term**

71. Notwithstanding the last date of signature of this Agreement, the Members agree that the provisions of this Agreement shall take effect in relation to the provision of the Services in respect of the period beginning 1<sup>st</sup> October 2001.
72. Unless and until terminated by a resolution of the Members passed by not less than 80% of the members of the Management Committee voting at a general meeting or upon the Operating Member retiring or being removed pursuant to Article 32, this Agreement shall remain in force until 31<sup>st</sup> July 2009. Thereafter, FaTMAN may continue on an annual basis if so agreed by a resolution of the Members passed by not less than 80% of the members of the Management Committee voting at a general meeting.
73. On termination of this Agreement, FaTMAN's affairs shall be wound up. All debts shall be settled and all income collected by the Operating Member and the balance, if any, remaining on liquidation distributed to, or in the case of a deficit collected from, the Members in the proportion in which they share any other liability of FaTMAN immediately prior to the date of the winding up.
74. If at the time of a winding up of FaTMAN there has been employed any staff specifically for its purposes, the Members shall use their reasonable endeavours to find alternative employment for such staff within their own institution. In the case of any members of staff not so re-engaged their salaries and/or any redundancy costs at the date of winding up shall be a charge on the Members in the same proportions as the other liabilities of FaTMAN on a winding up.

## **Assignment**

75. No Member shall be able to transfer any of its rights or obligations under this Agreement to any other person without the prior unanimous consent of all other Members.

## **Notice**

76.

76.1 Any notice or document to be given under this Agreement shall be in writing and shall be deemed to have been duly given if left at or sent by hand or by pre-paid recorded delivery or registered post or by facsimile or other electronic media to a party at the address or facsimile number for such party as such may from time to time be designated by the recipient.

76.2 Any such notice or other document shall be deemed to have been received by the addressee two (2) working days following the date of dispatch if the notice or other document is sent by registered post, or if delivered personally, at the time of delivery. Any notices sent by fax or by other electronic media shall be deemed to have been received by the addressee at the time of transmission if subsequently confirmed by pre-paid recorded delivery or registered post dispatched the same day.

76.3 The Operating Member shall retain a record of all Members' addresses, email addresses and facsimile numbers for these purposes. It shall be the responsibility of each Member to ensure that such information held by the Operating Member in relation to that Member is correct in all respects.

## **Entire Agreement**

77. This Agreement contains the whole agreement between the Members in respect of the subject matter of this Agreement and supersedes and replaces any prior written or oral arrangements, representations or understandings between the Members relating to the subject matter.

## **Amendment or Variation**

78. This Agreement may not be released, discharged, supplemented, amended, varied or modified in any manner except by an instrument in writing signed by duly authorised officers or

representatives of not less than 80% of the members of the Management Committee (at the relevant time), or by a resolution passed at a general meeting by not less than a 80% majority of the members of the Management Committee voting on such a resolution at a general meeting.

### **Governing Law**

79. The validity, construction and performance of this Agreement shall be governed by and construed in accordance with the laws of Scotland. Each Member irrevocably agrees to prorogate the exclusive jurisdiction of the Scottish Courts over any claim, or matter, arising out of this Agreement or any other matter arising in connection with FaTMAN.

IN WITNESS WHEREOF these presents consisting of this and the preceding nineteen pages and the Schedule annexed hereto are executed as follows:

This is the Schedule to the Consortium Agreement relative to the Constitution of FaTMAN

### Schedule

### Draft Network Services Agreement