

Sample consortium agreement for multi-partner collaborative R&D projects

THIS AGREEMENT is made the _____ day of _____ 200X BETWEEN

THE UNIVERSITY OF ENGLAND of _____ and

THE UNIVERSITY OF NORTHERN IRELAND of _____ and

THE UNIVERSITY OF SCOTLAND of _____ and

THE UNIVERSITY OF WALES of _____

(hereinafter referred to individually as a 'Party', collectively or in groups as 'Parties')

Introduction:-

- A. The Parties to this Agreement wish to undertake a project entitled 'e-learning materials'.
- B. The Parties intend to carry out a programme of work which is described in Annex 1 [not attached] (hereinafter referred to as the 'Project').
- C. The [] year Project will involve the development of [] and the production of [] (hereinafter referred to as 'Deliverables'). It is envisaged that the Deliverables may be further developed after the end of the Project and that such further development may lead to the production of additional materials (hereinafter referred to as 'Products').

This Agreement sets out the details of the relationship between the Parties.

It is hereby agreed as follows:-

1. Purpose of the Consortium

The purpose of the Consortium is to carry out the Project and to produce Deliverables as described.

2. Commencement and duration

The Consortium was formed and the Project commenced with an effective date of and the Project has a duration of [] years, unless otherwise agreed in writing by the Parties.

3. Project resources

The total funding for the Project is as follows:

Year 1 - £[] Year 2 - £[] Year 3 - £[] Total - £[]

and the budget shall be apportioned between the Parties in accordance with the schedule detailed in Annex 2 [not attached].

4. Project management

4.1 Identification

The Parties agree that the Project lead site is The University of England. The Parties agree that the Project will be managed by Professor [] of the University of England (**'Project Manager'**). The Project Manager will report to a group established by the Consortium and made up of [] (**'the Steering Group'**). The Chairman of the Steering Group is the Deputy Vice-Chancellor of the University of England (**'Chairman'**). The nominated individuals are listed in **Annex 3** [not attached].

4.2 Responsibilities of the Project Manager

The Project Manager will have responsibility for the day-to-day management of the Project, with the Steering Group being concerned with overall policy and direction. The Parties agree that the Project Manager will have the following responsibilities:

[]

4.3 Responsibilities and activities of the Steering Group

The Steering Group will determine the overall nature of the Product and will maintain responsibility for determining the technical standards to be adopted in the Project. The Steering Group will determine the academic content of the Product. The Steering Group will meet at least [] times a year. Additional meetings may be called by two or more Parties or on the advice of the Project Manager. The Steering Group may choose to take advice from third parties, as is required. Meetings of the Steering Group will operate under the following rules:

- the Project Manager will notify Steering Group members of the dates of meetings and outline agenda with at least fourteen days notice
- each Steering Group member will have one vote, except the Chairman who has a casting vote. However, a member may not vote on matters concerning a dispute with the Consortium where the member is the subject of the dispute
- Steering Group members may nominate a representative to attend meetings and vote on their behalf
- decisions will be taken on the basis of a majority vote of those attending and eligible to vote
- the minimum number of voting members required for meetings is [].

4.4 The responsibilities of the Chairman

To act as chairman of the Steering Group.

4.5 Responsibilities of the Parties

Each Party undertakes to use all reasonable endeavours to:

- perform on time the tasks and work packages assigned to it under the schedules shown in **Annex 4** [not attached]
- participate actively with other Parties where necessary
- promptly notify the Project Manager of any delay in performance
- prepare and present reports as required.

4.6 Changes in membership of the Consortium

Institutions may be invited to join the Consortium only by the unanimous decision of the Steering Group and on the condition that the new institution becomes a Party to this Agreement. A Party may withdraw from the Consortium only in the event of irremediable breach of any Clause in this Agreement and with the unanimous agreement of the remaining Parties. In the event of withdrawal or expulsion, the remaining members of the Consortium will only be liable to meet the cost of any work undertaken up to the point at which an institution ceases to be a member of the Consortium. The balance of any payments made to the Party will be returned to the Project Manager within 30 days of withdrawal or expulsion. In all cases, the Consortium reserves the right to acquire (both in physical form and in the form of assignment to it of any relevant Intellectual Property Rights) any work produced as a result of the Project.

5. Data management

5.1 Data collection

In the course of the Project, each party is involved in the collection of data in the form of []. The data are to be sent to the Project Manager and stored in an archive at [] (**'the Project Archive'**). Each Party agrees to ensure that all data submitted to the Project Manager are accompanied by documentation detailing the origin of the data, together with any necessary ethical consent. (Each data collection must be accompanied by a signed copy of the copyright form as shown in Annex 5 [not attached]). The Project Manager undertakes to ensure that all data stored in the Project Archive are referenced to the associated copyright documentation stored as part of the Project Archive.

5.2 Data maintenance

The University of Wales hereby undertakes to maintain the Project Archive for the duration of the Project and for a period of at least [] years after the end of the Project. This period is subject to extension if the Steering Group so decides.

6. Confidentiality

Each Party hereby undertakes to the other Party that it shall procure that its employees, agents and students shall:

- a. keep confidential all information of a confidential nature (whether written or oral) concerning this agreement and the business affairs of any other Party that it shall have obtained or received as a result of the discussions leading up to or entering into or performance of this agreement (the 'Information');
- b. not without the prior written consent of the relevant other Party disclose the Information, either in whole or in part, to any other person save those of its employees, agents and students involved in the implementation or evaluation of the Research who have a need to know the same for the performance of their duties; and
- c. to use the Information solely in connection with the implementation of the Research and not otherwise for its own benefit or the benefit of any third party.

The provisions a, b and c above shall not apply to the whole or any part of the Information to the extent that it can be shown by the receiving Party to be:

- iv. Known to the receiving Party prior to the date of this agreement and not obtained directly or indirectly from any other Party; or
- v. Obtained from a third party who lawfully possesses such Information which has not been obtained in breach of a duty of confidence owed to any Party by any person; or
- vi. In the public domain in the form in which it is possessed by any other Party other than as a result of a breach of a duty of confidence owed to such other Party by any person; or
- vii. Required to be disclosed by legal process, law or regulatory authority.

Each Party hereby undertakes to the other Party to make all relevant employees, agents and students aware of the confidentiality of the Information and provisions of this Clause 6 and without prejudice to the generality of the foregoing to ensure compliance by such employees, agents and students with the provisions of this Clause 6.

7. Intellectual property

7.1 Ownership

With regard to the ownership of intellectual property, the Parties agree as follows:

- the Party generating the Material shall own all Materials not incorporated into a Deliverable
- all Deliverables, and the Materials contained therein, not incorporated into a Product shall be owned jointly by all the Parties
- any Product shall be owned by one Party and the Steering Group will decide which Party shall own a Product on a case-by-case basis.

Each Party shall obtain the necessary assignments of intellectual property rights (this term includes, but is not limited to, copyright, database right, patents and trademarks) from all staff, students or agents involved in the development and

production of the Deliverables on its behalf. Each Party warrants to the other Parties that it is the owner of the copyright and/or database rights in the Deliverables or that it is duly licensed to use the Deliverables and that the content of the Deliverables used as contemplated in this Agreement does not infringe any copyright or other proprietary or intellectual property rights of any natural or legal person.

Each Party shall indemnify and hold the other Parties harmless from and against any loss, damage, cost, liability or expense (including reasonable legal and professional fees) arising out of any actual or alleged infringement of such rights.

This indemnity shall survive the termination of this Agreement for any reason.

7.2 Marking

The Parties agree that all Deliverables and Products shall be clearly marked identifying that the copyright is owned by []. The Parties agree that the Steering Group will produce a suitable form of words acknowledging the involvement of the Parties and the ownership of the copyright, which shall appear on all copies of the Deliverables and Products.

7.3 User rights

Each Party hereby grants to the other Parties a non-exclusive indefinite free licence to use the Deliverables and Products for the purposes of carrying out the Project and for teaching and research purposes during the Project and after the end of the Project. The Parties hereby agree to grant to each other and to third parties such non-exclusive licences as are necessary to enable the exploitation of the Deliverables and the development and creation of Products in accordance with the provisions of this Agreement.

8. Commercial exploitation

8.1 Procedures

In addition to the free licences granted in Clause 7.3 above, the Parties agree that they shall endeavour to exploit commercially the Deliverables and Products world-wide. The parties agree that a special meeting of the Steering Group will be held at the end of the Project and also one year before the end of the Project in order to discuss the potential for the commercial exploitation of the Deliverables and Products. At these meetings, the Steering Group shall review the Deliverables and shall discuss the potential for exploitation and the potential for development of Products from the Deliverables. The Steering Group will agree upon a strategy for exploitation.

8.2 Exploitation income sharing

Income derived from exploitation of Deliverables shall be received by and allocated to an account within the finance office of the Party responsible for the generation

of the income. Where more than one party is involved, the Parties shall agree among themselves on procedures for receipt of income.

After the deduction of all relevant expenditure and costs associated with exploitation, the remaining income derived from commercial exploitation shall be divided as follows:

x%, y%, z%

The Parties agree that the sharing of revenue applies to those Parties remaining at the end of the Project. If a Party resigns or is expelled prior to the completion of the Project their entitlement to a share in the income derived from commercial exploitation will be determined by the Steering Group and will take account of the proportion of the total Project undertaken by that Party.

9. Publication and press releases

Procedures for publications and press releases relating to the Project shall be agreed between the Parties through the Steering Group.

10. Liability

The work associated with the Project will be carried out by each Party in accordance with the highest academic standards, and reasonable endeavours will be made to achieve the degree of reliability and accuracy appropriate to work of this kind. However, no Party has control over the use to which other Parties may put the results of the work, and each Party will therefore be deemed to have satisfied itself in every respect as to the suitability and fitness of the work for any particular purpose or application. To the extent permitted by law, no Party, its servants or agents accept any liability, however caused, arising from any error or inaccuracy in any opinion, advice, report or deliverable arising from this work nor for any resulting damage, loss expenses or claim, except to the extent that such can be shown to be caused by the wilful negligence of the Party.

11. Miscellaneous

Assignment: No party will be entitled to assign this Agreement nor all or any of their rights and obligations hereunder without the prior written consent of the others.

Disputes/arbitration: All disputes or differences which will at any time hereafter arise between the Parties in respect of the construction or effect of this Agreement or the rights, duties and liabilities of the parties hereunder, or any matter or event connected with or arising out of the Project, will be referred in the first instance to the Steering Group. If the Steering Group is unable to resolve the dispute, the Chairman shall select an independent third party to act as arbitrator.

Relationship: Nothing in this Agreement will create or be deemed to create a partnership or the relationship of employer and employee between the Parties.

Law and jurisdiction: This Agreement will be governed by the laws of England. This Agreement is subject to the exclusive jurisdiction of the English courts to which the parties hereto submit. This clause does not prevent a party from seeking interim relief in any court of competent jurisdiction.

Indemnity: Each Party represents and warrants to the other Parties that publication or distribution of those parts of the Deliverables that it has contributed will not contravene any laws, including but not limited to the laws of defamation and contempt of court (or concepts approximating thereto). Each Party shall indemnify and hold the other Parties harmless from and against any loss, damage, cost, liability or expense (including reasonable legal and professional fees) arising out of any illegality. Any Party shall promptly inform the others of any illegality or alleged illegality upon the party becoming aware of the same. This indemnity shall survive the termination of this Agreement for any reason.

AGREED BY THE PARTIES through their authorised signatories

For and on behalf of THE UNIVERSITY OF ENGLAND:

..... Date

Name:

For and on behalf of THE UNIVERSITY OF NORTHERN IRELAND:

..... Date

Name:

For and on behalf of THE UNIVERSITY OF SCOTLAND:

..... Date

Name:

For and on behalf of THE UNIVERSITY OF WALES:

..... Date

Name: