

INITIAL DRAFT FOR DISCUSSION

CONSORTIUM AGREEMENT

between

THE INSTITUTE OF PHYSICS

and

KING'S COLLEGE LONDON

and

UNIVERSITY COLLEGE LONDON

and

THE UNIVERSITY COUNCIL OF MODERN LANGUAGES

THIS AGREEMENT is made on _____ between the following parties:

- (1) **The Institute of Physics** (a Royal Charter Company: RC000261) of 76 Portland Place, London, W1B 1NT (the “**IOP**”); and
- (2) **King’s College London** (a Royal Charter Company: RC000297) of Strand, London, WC2R 2LS (the “**KCL**”); and
- (3) **University College London** (a Royal Charter Company: RC000631) of Gower Street, London, WC1E 6BT (the “**UCL**”); and
- (4) **The University Council of Modern Languages** of [] (the “**UCML**”).

(each a ‘**Party**’ and together the ‘**Parties**’).

BACKGROUND:

- A. The Parties have agreed to work together on the ongoing development and implementation of a gender charter mark, as more particularly described in Schedule 1 (the “Project”). [**SCOPE, CONTEXT AND OBJECTIVES OF THE PROJECT TO BE INCLUDED IN SCHEDULE 1. SCHEDULE 1 TO ALSO COVER THE ROLES OF EACH PARTY IN THE PROJECT, IN HIGH LEVEL TERMS**]

IT IS AGREED as follows:

1 DURATION

- 1.1 This Agreement shall be deemed to have commenced on [] (the “Commencement Date”) and, subject to earlier termination in accordance with its terms, this Agreement shall continue until the Project is fully handed over to the new vehicle as envisaged by clause 2.2, when it shall automatically terminate, unless the Parties otherwise agree in writing. The Parties may also agree in writing to extend, amend or terminate this Agreement at any time.

2 CONSORTIUM SCOPE AND APPROACH

- 2.1 The Parties agree to work together on the terms of this Agreement to deliver the Project and to meet its objectives. The roles of each of the Parties in the delivery of the Project are as set out in Schedule 1, as such roles may be varied, amended, extended or clarified from time to time via agreement of the Steering Group (as defined in clause 4.2) or written agreement of the Parties.
- 2.2 A key objective of the Parties in the delivery of the Project during the term of this Agreement will be to work towards the Project having an independent and sustainable long-term plan and vehicle for delivery, so that the Project can be expanded to a UK-wide rollout under this new independent plan and vehicle. The Parties agree to work towards establishing and handing over the Project to such vehicle, and it is hoped that this shall occur around the end of the period covered by the funding from the GLA referred to in clause 3.1.
- 2.3 The Parties agree to perform both their respective roles in the delivery of the Project and their obligations under this Agreement:
 - (a) with reasonable skill and care;
 - (b) in accordance with all applicable laws and regulations;
 - (c) in accordance with the decisions of the Steering Group from time to time; and

- (d) in compliance with the terms of any third-party funding agreements directly related to the Project including, but not limited to, the GLA funding agreement.

2.4 In the event the Steering Group approves a new member joining the Parties in the delivery of the Project, the new member shall enter into a deed of adherence, in a form agreed by all the existing Parties, agreeing to comply with the terms of this Agreement. With effect from the completion of the deed of adherence, the new member shall be a Party for the purposes of this Agreement.

3 FUNDING

3.1 IOP has secured funding from the Greater London Authority (“GLA”) for the Project in the sum of £50,000. The GLA funding covers a period until 31 December 2019, and is a contribution towards the launch of the first phase of the Project. The Parties agree that any such funding received from the GLA shall be paid to IOP to be held by it in a restricted fund and used exclusively for the delivery of the Project.

3.2 Any further funding or in-kind support for delivery of the Project may be requested from other third parties and/or the Parties from time to time by the Steering Group. Where it is agreed that any third party or a Party shall make a monetary contribution to the Project, such contribution shall be paid to the restricted fund established by IOP for the Project.

3.3 In the event that any of the Parties provide support, facilities, resources or equipment to the Project, and the Steering Group has agreed that such Party shall be entitled to be paid for such provision, invoices shall be submitted to IOP who shall be responsible for making payment out of the restricted fund established by IOP for the Project within 30 days of receipt of invoice. For the avoidance of doubt, IOP shall have no obligation to pay any invoice if it does not hold sufficient funds to pay the invoice in the restricted fund established by IOP for the Project.

3.4 Except as provided for in clause 3.3, each Party shall:

- (a) not be entitled to charge for the provision of any support, facilities, resources or equipment it provides in connection with the Project; and
- (b) be otherwise responsible for its own costs incurred in connection with the Project and this Agreement.

4 GOVERNANCE

4.1 Each Party shall nominate a representative, who shall be that Party’s representative in all day-to-day communications with the other Parties in relation to the Project. Those representatives shall not have any power to decide any matters reserved to the Steering Group below. A Party may change its representative at any time by written notice to the other Parties.

4.2 The Parties shall also establish a steering group (the “Steering Group”) which shall have the authority to make decisions on the following matters:

(a) *[Scope of authority of Steering Group to be discussed and then listed here. Could include decisions on:*

(i) funding from third parties or the consortium parties

(ii) arrangements around contributions of equipment, resources etc. by the consortium parties and whether any payment will be made for them

(iii) branding and branding guidelines

(iv) structure and development of the charter mark

- (v) *approval of new members*
- (vi) *vehicle, strategic direction and model for national roll out*
- (vii) *use of funding*
- (viii) *marketing approach*
- (ix) *data usage and access requests*
- (x) *use of project name/logo/IP etc. by consortium parties*
- (xi) *future structure*

Also need to clarify anything which is to be escalated to a more senior level in the consortium parties to agree rather than being agreed at steering group]

4.3 The Steering Group shall operate as follows:

- (a) *[Practicalities for the Steering Group to be discussed and listed here, including:*
 - (i) *Numbers and membership*
 - (ii) *Chairperson*
 - (iii) *Secretary/minutes*
 - (iv) *Quorum*
 - (v) *Number of votes needed to pass a decision*
 - (vi) *Reporting to the steering group by the parties*
 - (vii) *Frequency of meetings and forum/location]*

5 INTELLECTUAL PROPERTY

5.1 For the purposes of this Agreement, “**Intellectual Property Rights**” means any patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

5.2 The Parties agree that all Intellectual Property Rights in any materials or documentation which were created or developed by any of them in connection with the Project prior to the Commencement Date, or which are created or developed after the Commencement Date otherwise than solely for the delivery of the Project, shall be owned by the Party who created or developed them. All such Intellectual Property Rights shall be referred to in this Agreement as “**Background IP**”.

5.3 Each Party grants to the others for the duration of the term of this Agreement a non-exclusive, non-transferable, non-sub-licensable, royalty-free licence to use their Background IP solely in connection with the delivery of the Project.

5.4 All right, title and interest in any Intellectual Property Rights created or developed by a Party after the Commencement Date solely for the delivery of the Project (“**Arising IP**”) shall be jointly owned by the Parties in equal shares. Any Project-specific mark, logo, name or similar which is to be used for the Project shall be Arising IP.

5.5 The Parties agree that IOP shall be registrant of the domain name for any website established for the Project, but the website domain name and registration shall be Arising IP for the purposes of this Agreement. The Parties agree that their contributions to the Project on the website shall be acknowledged as follows:

“[AGREED STATEMENT TO BE ADDED]”

5.6 If and when a new independent vehicle has been agreed and established by the Parties to carry on the delivery of the Project, the Parties shall jointly either assign or exclusively licence all Arising IP to that new vehicle. In addition, each Party shall grant that new vehicle a licence, on terms similar to clause 5.3, of any Background IP which that new vehicle may reasonably require to deliver the Project in the future. The Parties shall execute such documents and take such acts as may be necessary to give effect to this clause.

5.7 The Steering Group shall approve the branding and marketing approach for the Project, and the Parties shall then comply with such approved approach.

5.8 Each Party warrants to the others that no Background IP which it licences under clause 5.3 shall infringe the Intellectual Property Rights of any third party.

6 DATA

6.1 Each Party shall comply with all applicable Data Protection Legislation in the performance of this Agreement. “**Data Protection Legislation**” shall mean the Data Protection Act 2018 and any successor UK legislation, as well as the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK).

6.2 The Parties agree that personal data (as defined in the Data Protection Legislation) which relates to potential or actual participants in the Project (“**Participant Data**”) shall be primarily collected via the Project website and held by IOP. If any Participant Data is collected by the Parties via any other method, it shall promptly be transferred to IOP.

6.3 The Parties agree that, for the purposes of the Data Protection Legislation, they are joint controllers of the Participant Data, as they are jointly determining the purposes and means of processing of that data. The Parties shall be referred to as such in all privacy and transparency information provided to the relevant data subjects.

6.4 In the event that any Party receives a data subject access request relating to the Participant Data, it shall promptly inform the Steering Group. Each Party shall provide the other Parties and the Steering Group with reasonable assistance in complying with any such data subject access request.

6.5 The Parties may only use the Participant Data for the proper performance of the Project and in accordance with the Data Protection Legislation (including, but not limited to, the privacy and transparency information provided to the data subjects).

6.6 IOP shall only be required to share anonymized, aggregated Participant Data with the other Parties. No Party shall be entitled to use any Participant Data to market or promote its own goods, services or ideals.

6.7 All communications to the potential and actual participants in the Project will be sent by IOP, who will be responsible for ensuring that any opt out requests it is notified of are complied with.

6.8 The provisions of this Clause shall survive termination.

7 PUBLICITY [TO BE DISCUSSED IF ANY PARTY IS SUBJECT TO FOI AND ALSO WHICH PARTY HANDLES PR FOR THE PROJECT]

7.1 The Parties agree that [] shall be the Party primarily responsible for handling all press and public relations queries connected to the Project. The Parties shall direct queries to, and promptly forward any queries, to [] at [].

7.2 No Party shall make, or permit any person to make, any public announcement, communication or circular concerning the existence, subject matter or terms of this Agreement or the Project, or the relationship between the Parties, without the prior written consent of the other Parties or the Steering Group.

8 LIABILITY

8.1 Nothing in this Agreement shall limit or exclude a Party's liability for:

- (a) death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors;
- (b) for fraud or fraudulent misrepresentation; or
- (c) for any other act, omission, or liability which may not be limited or excluded by law.

8.2 Subject to clause 8.1, no Party shall have any liability to any of the other Parties, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with the Agreement.

8.3 Where any Party suffers or incurs any liability to a third party in connection with or arising from the performance of this Agreement or the delivery of the Project, such liability (including any legal or other professional costs reasonably incurred in defending any claim) shall be shared equally amongst the Parties. Provided that, this shall obligation to share liability not apply to the extent that the liability arises due to the Party suffering or incurring the liability:

- (a) having breached the terms of this Agreement; or
- (b) having been negligent or guilty of willful misconduct.

8.4 Where any Party becomes aware of any third party claim potentially within the scope of clause 8.3, it shall:

- (a) promptly inform the other Parties in writing, and provide as such much information regarding the nature of the claim as reasonably practicable;
- (b) retain control of the claim, but shall regularly liaise with the Steering Group and, whenever reasonably practicable, take account of any recommendations issued by the Steering Group in connection with that claim; and
- (c) inform the Steering Group prior to settling any such claim but, for the avoidance of doubt, consent of the Steering Group shall not be needed to settle any such claim.

8.5 The provisions of this Clause shall survive termination.

9 CONFIDENTIALITY

9.1 Each Party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of any other Party or relating to the Project, except as permitted by clause 9.2.

9.2 Each Party may disclose such confidential information:

- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising that Party's rights or carrying out its obligations under or in connection with this Agreement. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses confidential information comply with this clause 9; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

9.3 No Party shall use any such confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

9.4 The provisions of this Clause shall survive termination.

10 TERMINATION [**TO BE DISCUSSED:**

(A) WHETHER A PARTY CAN WITHDRAW FROM THE PROJECT AND THE OTHERS CONTINUE. IF SO, WHAT HAPPENS TO ANY IP THE WITHDRAWING PARTY MIGHT OWN RELATING TO THE PROJECT

(B) WHAT HAPPENS TO ANY REMAINING FUNDING AND ANY IP IF THE ENTIRE PROJECT IS BROUGHT TO AN END]

10.1 If any Party pursues any act or omission which:

- (a) materially breaches this Agreement;
- (b) brings any other Party into disrepute; or
- (c) causes significant harm to any other Party,

any other Party shall be entitled to terminate this Agreement immediately as long as the breach has remained outstanding for at least 14 days after a written notice of breach being served on the defaulting Party.

10.2 On termination or expiry of this Agreement, howsoever occurring, any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

10.3 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

11 DISPUTES

11.1 In the event of any dispute arising between the Parties in connection with the performance of this Agreement, it shall be promptly referred to the Steering Group for resolution. In the event that the Steering Group is unable to resolve the dispute within 14 days of it being referred to them, the

Chief Executive Officers/Principals (or equivalent) of the Parties in dispute shall promptly meet to attempt to resolve the dispute in good faith.

12 VARIATION

Any variation, amendment or deletion of or from this Agreement must be in writing and signed by or on behalf of all of the Parties.

13 COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which, when executed, shall be an original, and all the counterparts together shall constitute one and the same instrument.

14 NO PARTNERSHIP

14.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party

15 ASSIGNMENT

15.1 No Party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the other Parties.

16 THIRD PARTY RIGHTS

No party other than the Parties from time to time shall have any rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of this Agreement.

17 GOVERNING LAW AND JURISDICTION

17.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

17.2 The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

THIS AGREEMENT IS EXECUTED ON THE DATE SHOWN ON THE FRONT OF THIS AGREEMENT

AGREED AND EXECUTED by THE INSTITUTE OF PHYSICS

Signature _____

Date _____

Name _____

Title _____

AGREED AND EXECUTED by KING'S COLLEGE LONDON

Signature _____

Date _____

Name _____

Title _____

AGREED AND EXECUTED by UNIVERSITY COLLEGE LONDON

Signature _____

Date _____

Name _____

Title _____

AGREED AND EXECUTED by THE UNIVERSITY COUNCIL OF MODERN LANGUAGES

Signature _____

Date _____

Name _____

Title _____

SCHEDULE 1
THE PROJECT