**MEMORANDUM OF AGREEMENT**

**between**

**TECHNOLOGICAL UNIVERSITY DUBLIN**

**And**

**XXX**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**THE PARTIES**

**Technological University Dublin**

**Address:** President’s Office

Technological University Dublin

Grangegorman Lower

Dublin 7, D07 H6K8

Ireland

**XXX**

**Address:**

Both Organisations agree to pursue co-operation under the terms and conditions identified in this Agreement. It is based on the principles of equality and reciprocal benefit. This Memorandum of Agreement sets out broad co-operative arrangements and specific areas of academic co-operation. [Where appropriate, specific arrangements may be contained in an Addendum/Schedule].

**1. CONTENT OF THE AGREEMENT**

**1.1** This Agreement sets out the relationship between the Technological University Dublin (hereinafter referred to as TU Dublin) and XXX (hereinafter referred to as XXXX) shall pursue co-operation under the terms and conditions identified in this Agreement to deliver academic programmes leading to awards of TU Dublin or under which TU Dublin will validate programmes delivered by XXXX, as provided for in programme documentation approved by the Academic Council of TU Dublin, as outlined in the attached Addenda.

**2. RESPONSIBILITIES**

**2.1** TU Dublin and XXXX shall each be responsible for the maintenance of academic standards, in accordance with policy laid down by TU Dublin Academic Council.

**2.2** Where appropriate, TU Dublin shall approve and appoint External Examiner(s) to the programmes/courses provided for under this Agreement following nomination through the relevant College in accordance with policy laid down by TU Dublin Academic Council. The Examiner(s) shall carry out the duties set out in TU Dublin's General Assessment Regulations (City Campus), attending the Assessment Board meeting and reporting to XXXX and to TU Dublin through the relevant College.

**2.3** A representative of the relevant School of TU Dublin as specified in the Addendum shall liaise with XXXX and shall provide advice with respect to quality assurance and to the integration and implementation of TU Dublin quality assurance procedures, and for the oversight and monitoring of academic standards. XXXX shall, through the representative of the relevant College, keep TU Dublin informed on matters relevant to the specific area of co-operation. [As detailed in the relevant Addenda, where necessary].

**2.4** A representative of the relevant TU Dublin School shall liaise with XXXX and keep TU Dublin informed on and agree the arrangements in relation to the following matters:

(a) the staff from XXXX and TU Dublin teaching on the programme;

 (b) the students admitted to the programme;

 (c) the monitoring of student progress;

 (d) the provision of appropriate resources for the maintenance of agreed standards in relation to the teaching and delivery of the programme;

 (e) access to TU Dublin facilities for students on the programme.

**2.5** The head of the relevant section/department within XXXX where the programme is to be conducted and co-ordinated, shall have responsibility for delivery and management, subject to general oversight by the Head of the relevant TU Dublin School.

**2.6** A Programme Team/Committee shall be established by the XXXX and TU Dublin in accordance with the requirements of the TU Dublin Academic Council.

**2.7** Graduates of the programme will be conferred with their awards at a conferring ceremony for the TU Dublin, at a ceremony to be held at XXXX or in TU Dublin as agreed annually.

**3. QUALITY ASSURANCE**

**3.1** All procedures in relation to programme validation, review, monitoring, evaluation and modification shall comply with the Quality Assurance procedures of TU Dublin.

**3.2** The Assessment Regulations to be applied on the programme shall be those specified in the approved programme documentation and as approved by the TU Dublin Academic Council.

**4. PROTECTION OF ENROLLED LEARNERS**

**4.1** XXXX shall put in place and maintain appropriate arrangements for the Protection of Enrolled Learners, which satisfy the requirements of TU Dublin’s Policy and the requirements of Part 6 of the Qualifications and Quality Assurance (Education and Training) Act 2012.

**5. FINANCIAL AND ADMINISTRATIVE ARRANGEMENTS**

**5.1** XXXX shall pay the fees outlined in the addendum 3

**5.2** Each Party is responsible for the payment of all tax on income arising out of its performance of this Agreement, and for paying and accounting for all applicable VAT and other such duties.

**5.3** Neither Party may incur, commit or authorise financial expenditure on behalf of the other Party without the prior written agreement of the other Party.

**6. PUBLICITY**

**6.1** All publicity material bearing the name or logo of XXXX or TU DUBLIN must first be approved by XXXX or TU DUBLIN respectively.

**7. INTELLECTUAL PROPERTY RIGHTS**

**7.1** Intellectual Property means statutory and other proprietary rights in respect of trade marks, patents, copyrights, confidential information, know-how and all other rights with respect to intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organization of July 1967 other than moral rights.

**7.2** XXXX and TU DUBLIN accept and agree that any programme(s) jointly developed in the context of this Agreement shall be jointly owned by XXXX and TU DUBLIN.

**7.3** Intellectual Property Rights in relation to modules developed exclusively by XXXX within a programme are retained by XXXX. Intellectual Property Rights in relation to modules developed exclusively by TU DUBLIN within a programme are retained by TU DUBLIN.

**7.4** Any Intellectual Property Rights in the logos or names remains the property of the respective Party.

**7.5** Any Intellectual Property owned by, or licensed to, a party or developed solely by a party prior to the date of this Agreement or outside the scope of the Programmes shall remain the property of that party.

**7.6** In the event of the termination or expiry of this Agreement, the licences granted in this Clause 6 shall terminate automatically and the Licensee shall deliver to the Proprietor all material licensed hereunder, in its possession or control.

**8. ENTIRE AGREEMENT AND VARIATION**

**8.1** This Agreement and its attached Addendum constitutes the entire agreement between the Parties.

* + 1. No agreement or understanding varying or extending this Agreement shall be legally binding upon any Party unless in writing and signed by both Parties.
		2. In the event of a dispute, the applicable law shall be that which applies in Ireland

**9. INDEMNITY**

**9.1** Subject to the provisions of this Agreement, a party (in this clause referred to as ‘the first Party’) shall at all times indemnify the other party, its officers, employees and agents (in this clause referred to as ‘those indemnified’) from and against any loss (including `legal costs and expenses on a solicitor/own client basis), or liability, reasonably incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such loss or liability was caused by any wilful, unlawful or negligent act or omission of the first Party, its employees, agents or subcontractors in connection with the first Party’s performance of its obligations under this Agreement.

**9.2** The first Party’s liability to indemnify the other party under clause 9.1 shall be reduced proportionally to the extent that any act or omission of the other Party or its employees or agents contributed to the loss or liability.

* + 1. The indemnity in clause 8.1 shall survive the expiration or termination of this Agreement.
		2. Neither Party shall be liable to the other whether in contract, tort (including negligence) or otherwise for any indirect, consequential or economic loss, loss of business or similar head of loss, howsoever arising.
		3. Nothing in this Agreement shall limit a Party’s liability in respect of death or personal injury caused by its negligence or for any fraudulent misrepresentation, or for any other liability which cannot be excluded under applicable law.

**10. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY**

**10.1** No Party shall represent itself, and shall ensure that its employees do not represent themselves, as being an employee, partner or agent of the other Party, or as otherwise able to bind or represent the other Party.

**10.2** No Party shall by virtue of this Agreement be or for any purpose be deemed to be an employee, partner or agent of the other Party, or as having any power or authority to bind or represent the other Party.

**11. ASSIGNMENT AND FORCE MAJURE**

**11.1** No Party shall franchise, sub-let, assign, transfer or create any interest in or otherwise deal with all or any of its rights under this Agreement without prior written consent, which will not be unreasonably withheld, of the other Party.

**11.2** No Party shall have any liability or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement other than in respect of payment of the Fees which result from circumstances beyond the reasonable control of that Party, including, but not limited to strikes, lock-outs, labour disputes, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, regulation or direction, fire, flood, severe weather, the impact of epidemics, pandemics or diseases or failure or shortage of power supplies (“**Force Majeure Event**”). The Party affected by such circumstances shall promptly notify the other Party in writing when such circumstances cause a delay or failure in the performance of its obligations under this Agreement. The Parties shall use all reasonable efforts to minimise the effect of any such Force Majeure Event upon the performance and fulfilment of this Agreement and shall meet (by telephone meeting or otherwise) as soon as possible to agree upon any action required to avoid delays. In the event that a delay or failure shall occur as a result of a Force Majeure Event and continues for a period of sixty (60) consecutive calendar days or more then the Party not suffering the Force Majeure Event may terminate the Agreement by serving written notice on the Performing Party.

**12. RESOLUTION OF DIFFERENCES**

**12.1** Subject to clause 11.4, before resorting to external dispute resolution mechanisms, the Parties shall attempt to settle by negotiation any dispute in relation to this Agreement including by referring the matter to the personnel who may have authority to intervene and direct some form of resolution.

**12.2** If the dispute is not settled by the Parties within 15 working days of one Party first sending to the other Party written notice that they are in dispute, the dispute may be submitted to some alternative dispute resolution mechanism as may be agreed in writing between the Parties.

**12.3** Notwithstanding the existence of a dispute, both Parties shall continue to perform its obligations under this Agreement.

**12.4** When a Party seeks interlocutory relief, it may commence arbitration proceedings relating to any dispute arising from this Agreement after written notice to the other Party.

**12.5** This clause shall survive the expiration or termination of this Agreement.

**12.6** The parties solely are liable for their own costs, associated with any arbitration or dispute resolution mechanism involving a third party.

**13. SEVERABILITY**

**13.1** Each provision of this Agreement and each part thereof shall, unless the context otherwise necessarily requires it, be read and construed as a separate and severable provision or part. If any provision or part thereof is void or otherwise unenforceable for any reason then that provision or part (as the case may be) shall be severed and the remainder shall be read and construed as if the severable provision or part had never existed. The Parties shall negotiate in good faith to replace the void or unenforceable provision or part with a valid or enforceable provision or part.

**14. VALIDITY**

**14.1** This Agreement shall come into effect when it is signed by the Parties and shall be valid for a period of five (5) years. The Agreement shall be renewable thereafter subject to the mutual agreement of both Parties.

**15. TERMINATION**

**15.1** This Agreement may be terminated by mutual consent or by any Party giving six (6) months written notice to the other Party.

**15.2** Any Party may terminate the Agreement if another Party is in serious default or in serious breach of any provision under this Agreement provided that the aggrieved Party has first given sixty (60) days notice of its intention to terminate this Agreement. If the default or breach has been remedied at the expiry of the specified the aggrieved Party may withdraw the written notice to terminate the Agreement.

**15.3** Should further arrangements be negotiated between TU Dublin and XXXX*,* formal written approval from both parties for modifications to the Agreement will be sought.

**15.4** If, at the end of the term or upon termination of the Agreement pursuant to Clause 14, there are students registered on the Programmes, the Parties shall work together in good faith to agree appropriate arrangements, including fees arrangements, to enable those existing students to complete the Programme on which they are registered.

**16. DATA PROTECTION**

**16.1** When performing its responsibilities under this Agreement, XXXX shall comply with all of its applicable obligations under the Data Protection Legislation and the General Data Protection Regulations and shall not, by act or omission, put TU Dublin in breach of this Legislation or thsee Regulations or any other Applicable Law.

**16.2****.** XXXX acknowledges and agrees that, without limiting or affecting Clause 15.3 XXXX is the data controller in respect of all Student Data which XXXX or its Personnel collect, hold, store or process.

**16.3**  TU Dublin is the data controller in respect of the copy of any personal data relating to Students which XXXX provides to TU Dublin pursuant to this Agreement or which Students provide directly to TU Dublin.

**16.4** XXXX must obtain and maintain, all necessary consents for the use or processing of any Student Data including in relation to any disclosure or transfer of such Student Data to TU Dublin or any other person as required under this Agreement and all processing of the Student Data by TU Dublin and XXXX for the purposes of the promotion, delivery and implementation of the Programme.

**16.5** Without limiting Clauses 16.1 to 16.3, XXXX agrees that it shall, and shall procure that its Personnel shall:

* adopt and maintain appropriate (including organisational and technical) security measures in dealing with Student Data in order to protect against unauthorised or accidental access, loss, alteration, disclosure or destruction of such data, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing;
* take all reasonable steps to ensure that (a) persons employed by it, and (b) other persons employed at its place of work, are aware of and comply with this Clause 15.5; and
* not transfer Student Data to third countries outside the EEA, except in compliance with Data Protection Law.
* XXXX agrees to provide TU Dublin on request with all reasonable assistance and information as it may require in connection with any data subject access request that TU Dublin may receive from time to time.
* XXXX shall immediately notify TU Dublin of any actual or suspected unauthorised or accidental access, loss, corruption, alteration, disclosure or destruction of any Student Data (“Security Breach”). XXXX will cooperate with TU Dublin and shall indemnify TU Dublin in respect of all costs, claims, demands, damages, losses, with any Security Breach, including its investigation, curtailment, management, mitigation and all correspondence, engagement and measures for data subjects and regulators.

This Clause 16 shall survive termination or expiry of this Agreement, however arising.

**17. PROGRAMME DOCUMENT**

**17.1** The programme documents are as attachments, an inseparable part of the Agreement and are equally lawful.

**18. GENERAL**

**18.1** This Agreement shall be governed by and construed in accordance with the laws of Ireland and the parties accept the non-exclusive jurisdiction of the Irish Courts to which they mutually agree to submit. For the avoidance of doubt, nothing shall prevent a party enforcing a judgement obtained in the courts of Ireland against the other party in any jurisdiction.

**18.2** Subject to the provisions of Clause 15.1, each Party irrevocably waives any objection which it might at any time have to the courts of Ireland being nominated as the forum to hear and determine any proceedings and to settle any disputes which may arise in connection with this Agreement and agrees not to claim that the courts of Ireland are not a convenient or appropriate forum.

**18.3** The Parties recognise that this agreement and actions arising may be subject to provisions of the following Irish legislation, and agree to comply with all legal requests made under said provisions;

* 1. Technological University Dublin Act (2018), and subsequent amendments
	2. Qualifications and Quality Assurance (Education and Training) Act 2012
	3. Data Protection Acts (1988 - 2018) and the GDPR
	4. Freedom of Information Act (2014) and the Freedom of Information (Amendment) Act 2003
	5. Employment Legislation, the Employment Equality Acts (1998 to 2015), and Equal Status Act (2000 - 2015) and related subsequent amendments
	6. Ethics in Public Office Act 1995 and the Standards in Public Office Act (2001) and subsequent amendments
	7. Charities Act 2009 and subsequent amendments

**19.** **Annual Review**

**19.1 ANNUAL REVIEW OF PROGRAMME**

XXXX shall organise a meeting of the Programme Committee, with respect to the Programme(s). A TU Dublin representative will participate in the Programme Committee. The Programme Committee will produce a Programme Annual Monitoring Report which will be submitted for the consideration of the relevant Academic Board at the end of each delivery cycle for the Programmes concerned.  The report will provide a general overview of the Programme and its implementation and any other details relevant to the Programme, including:

* any concerns regarding the Programme;
* proposals for improving the Programme;
* complaints received regarding the Programme, Provider or TU Dublin;

TU Dublin may issue reasonable recommendations with respect to the conduct, operation, delivery, implementation, promotion or marketing of a Programme and which shall be promptly implemented by the TU Dublin and XXXX as appropriate.

**19.2 ANNUAL REVIEW OF CONTRACT**

Annually and starting within a period not exceeding one year following the commencement date, XXXX on reasonable notice shall meet with TU Dublin for the purposes of confirming:

* + 1. that XXXX is adhering to the terms of this Agreement in full, and in particular demonstrates
		2. that the TU Dublin fee has been paid in full by XXXX
		3. that XXXX has capacity to perform this Agreement
		4. that XXXX is implementing its Protection of Enrolled Learners
		5. that XXXX is in compliance with its General Obligations
		6. that XXXX has fulfilled its Health & Safety obligations
		7. that XXXX has followed the requirements of Intellectual Property
		8. that XXXX maintains Confidentiality
		9. that XXXX is in compliance with the requirements of Data Protection
		10. that XXXX has the required insurances in place
		11. that XXXX is in compliance with Anti Bribery and Corruption requirements
		12. that XXXX is adhering with all Applicable Laws

**IN WITNESS** whereof this document has been executed as of the Effective Date:

**Signed:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signed:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Chief Executive President**

 **XXXX Technological University Dublin**

**Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**ADDENDUM I – Partnership Data and QA Responsibilities**

**Student Handbooks**

Student handbooks should be created for each delivery the programme(s). This handbook should be agreed with the Head of School of XXXX, or appointed TU Dublin contact, in advance of the commencement of the programme delivery.

**Student Recruitment and Selection**

XXXX will oversee the promotion of the programme and recruitment of students.

**Lecturer Recruitment and Selection**

XXXX will be responsible for the recruitment of staff to deliver on the programme(s). All delivery staff must meet TU Dublin requirements for teaching delivery and be approved by the College of XXXX.

**Registration**

Once candidates have been selected for the programme, students must be registered with TU Dublin. TU Dublin is required to provide statistical data to the Higher Education Authority ([www.hea.ie](http://www.hea.ie)) annually of all students in TU Dublin.

To facilitate the provision of accurate statistical data:

XXXX will nominate a member of staff as specified in the Addendum 2 to liaise with TU Dublin in relation to student registrations. A list of the students is to be provided to TU Dublin including the information below. The TU Dublin will then progress registration prior to the commencement of the programme(s).

* First Name
* Middle Name (if applicable)
* Last Name
* PPS Number
* Date of birth (dd-mm-yyyy format)
* Gender
* Email address (personal email)
* Contact phone number
* Home Address
* Nation of Birth
* Nation of Citizenship
* Domiciliary (*i.e.* country in which the student lived for the last 12 months prior to registering on the programme – this may differ from citizenship)
* Relevant Programme Code(s)

The data requirement of the HEA is subject to change, from time-to-time.

**Payment**

XXXX will specify to TU Dublin the staff member responsible for Financial Management.

**Student Feedback**

Student feedback should comply with TU Dublin Quality Assurance requirements.

**Annual Monitoring**

Annual monitoring of the programme(s) should comply with TU Dublin Quality Assurance requirements and be submitted annually in early November to the College of Business

**Programme Changes**

Programme changes to the programme(s) should comply with TU Dublin Quality Assurance requirements.

# ADDENDUM 2: Programme Contact Personnel

|  |  |  |
| --- | --- | --- |
|  | **TU DUBLIN** | **XXXX** |
| Academic Delivery and Management |  |  |
| Registrations Data | Mags NichollHead of RegistrationsTU DublinKevin StreetD08 NF82, Ireland |  |
| Financial Management | Ross Lynam LoaneFees and Incomes OfficeTU Dublin Park House Grangegorman191 North Circular RoadD07 EWV4, Ireland |  |

# ADDENDUM 3 – Programme Financial Arrangements