**HEADS OF TERMS**

**PROPOSED CONSORTIUM AGREEMENT FOR THE [INSERT NAME] PROJECT**

**DATE:** 201[]

This document sets out the principal terms and conditions on and subject to which the following parties (**the Parties**) are willing to enter into a Consortium Agreement, provided the Parties agree and sign a detailed and legally binding agreement Consortium Agreement (**the Consortium Agreement**).

**The contents of this document are not exhaustive and they are not, and are not intended to be, legally binding except where they are specifically stated below to be binding.**

1. **THE PARTIES**
2. **[INSERT NAME]**, whose administrative offices are at [*insert address*] (**AAA**)
3. **[INSERT NAME]**, whose administrative offices are at [*insert address*] (**BBB**)
4. **[INSERT NAME]** [**LIMITED**][**PLC**], [a company registered in [England] under number [………………], whose registered office is at [*insert address of registered office*] **OR** [*insert status of the Collaborator, e.g. NHS Trust*] of [*insert address of principal office*] (**XXX**)
5. **[INSERT NAME]** [**LIMITED**][**PLC**], [a company registered in [England] under number [………………], whose registered office is at [*insert address of registered office*] **OR** [*insert status of the Collaborator, e.g. NHS Trust*] of [*insert address of principal office*] (**ZZZ**)

AAA and BBB are the Academic Parties, and XXX and ZZZ are the Commercial Parties.

1. **THE PROJECT**

The proposed start date of the Project is [insert date].

The proposed end date of the Project is [insert date].

If work starts before the Consortium Agreement is signed by all of the Parties, the agreement [is]**OR**[is not] to have retrospective effect.

[AAA] will provide the following resources (human and other): [insert details of resources].

(Key people are marked with an asterisk.)

2.5 [BBB] will provide the following resources (human and other): [insert details of resources].

(Key people are marked with an asterisk.)

2.6 [XXX] will provide the following resources (human and other): [insert details of resources].

(Key people are marked with an asterisk.)

2.7 [ZZZ] will provide the following resources (human and other): [insert details of resources].

(Key people are marked with an asterisk.)

A copy of the draft Project Plan is attached to these Heads of Terms.

2.9 If a Party is to provide any materials, the Parties will enter into a separate Materials Transfer Agreement in relation to those materials. The proposed terms of that Materials Transfer Agreement are attached to these Heads of Terms.

2.10 The Project is expected to make use of the following third party resources: [insert details of third party resources].

2.11 [Insert name of Party] will be responsible for putting in place arrangements to allow those third party resources to be used for the purposes of the Project.

1. **PROJECT MANAGEMENT**

[Insert name of Party] will be the Lead Party, and will appoint the Project Manager and be responsible for claiming and managing any external funding.

The Project Manager will be: [insert details].

Each Party may appoint one representative to the Steering Committee [and the party providing any external funding will be invited to appoint a representative to sit on the Steering Committee].

The terms of reference of the Steering Committee are attached to these Heads of Terms.

Each Party will have one vote in the Steering Committee, and the quorum for a meeting of the Steering Committee will be: [insert details].

The chairman of the Steering Committee will be: [insert details]. The chairman will [not] have a casting vote.

Decisions of the Steering Committee will be taken by a simple majority except where a decision necessitates a change to the Project Plan or a change to the allocation of any funding. In that case a unanimous decision will be required.

Each Party will provide the Project Manager with [monthly][quarterly][annual] reports.

1. **FINANCIAL CONTRIBUTIONS [AND THE EXTERNAL FUNDING][ AND THE PAYMENT PLAN]**
   1. The financial contribution of each Party will be as set out in the draft Project Plan attached to these Heads of Terms.

[4.2 The Project is expected to be supported by the following external funding: [insert details].

The conditions which it is anticipated will attach to that external funding are attached to these Heads of Terms.

All Parties will comply with those conditions.

The allocation of the External Funding will be as set out in the draft Project Plan attached to these Heads of Terms.]

* 1. Each of the other Parties will indemnify the Lead Party against any repayments which the Lead Party is required to make to the Funding Body on behalf of that other Party.
  2. [The draft Payment Plan is attached to these Heads of Terms.][[1]](#footnote-1)
  3. Each Party will have the right to audit the accounts of the Project Manager and of the other Parties.

**BACKGROUND**

* 1. AAA will provide the following Background: [insert details] [and the Background (its Specified Background) which it is willing to license for the purposes of exploiting the Results of the Project (the Results) is: [insert details]].

5.2 BBB will provide the following Background: [insert details].

* 1. XXX will provide the following Background: [insert details].
  2. ZZZ will provide the following Background: [insert details].

Other companies in each Commercial Party’s group will need to use the other Parties’ Background for the purposes of the Project.

The following items of AAA Background are confidential: [insert detail*s*].

The following items of BBB Background are confidential: [insert details].

The following items of XXX’s Background are confidential: [insert details].

The following items of XXX’s Background are confidential: [insert details].

[In return for the payments to be made by it under the Payment Plan,] each Party will have a non-exclusive licence (with the right to sub-license) to use the other Parties’ Background to the extent necessary to allow it to exploit the Results.][[2]](#footnote-2)

**OR**

[In return for the payments to be made by it under the Payment Plan,] the Lead Exploitation Party will have a non-exclusive licence (with the right to sub-license) to use the other Parties’ Background to the extent necessary to allow the Lead Exploitation Party to exploit the Results.][[3]](#footnote-3)

**OR**

[In return for the payments to be made by it under the Payment Plan,] [insert name of Party] and [insert name of Party] will have a non-exclusive licence (with the right to sub-license) to use the other Parties’ Background to the extent necessary to allow them to exploit the Results.][[4]](#footnote-4)

**OR**

Each Party may serve notice on any other Party requiring it to negotiate with it during an exclusivity period of [insert period] for a licence or assignment of its Background.][[5]](#footnote-5)

**THE RESULTS**

[6.1 The Party which creates any Result will own that Result.

6.2 Where any Result is created or generated by two or more Parties jointly and it is impossible to distinguish each Party's intellectual contribution to the creation of that Result, that Result will be co-owned by those Parties in equal shares.

6.3 Any co-owner of any Result may deal with and exploit it as though it were the sole owner.

6.4 In return for the payments to be made to it under the Payment Plan, each Party grants each of the other Parties a non-exclusive licence to use its Results for the purposes of the Project [and for any other purpose].

6.5 [Each Party will use all reasonable endeavours to exploit the Results and the Parties will try to agree an exploitation strategy.]][[6]](#footnote-6)

**OR**

[6.1 The Lead Exploitation Party will be [insert the name of one of the Parties].

* 1. In return for the payments to be made by it under the Payment Plan, the Lead Exploitation Party will [own the Results]**OR**[have a worldwide exclusive licence to exploit the in the Results] [for the Exclusive Period]].
  2. The Lead Exploitation Party will use all reasonable endeavours to exploit the Results in accordance with the Exploitation Strategy [during the Exclusive Period]. A copy of the draft Exploitation Strategy is attached to these Heads of Terms.
  3. [At the end of the Exclusive Period, the rights of the Lead Exploitation Party under paragraph 6.2 will automatically come to an end and every Party will have a non-exclusive, indefinite[, fully paid-up, royalty free] licence (with the right to sub-license) to use any of the Results for any purpose.]
  4. [The Exclusive Period will be [insert number] years beginning on the date of the Consortium Agreement.][[7]](#footnote-7)

**OR**

[6.1 In return for the payments to be made by it under the Payment Plan, [*insert Party*] will own the following Results: [insert details] and will use all reasonable endeavours to exploit those Results in accordance with the Exploitation Strategy. A copy of the draft Exploitation Strategy is attached to these Heads of Terms.

* 1. In return for the payments to be made by it under the Payment Plan, [insert Party] will own the following Results: [insert details] and will use all reasonable endeavours to exploit those Results in accordance with the Exploitation Strategy.][[8]](#footnote-8)

**OR**

[6.1 The Party which creates any Result will own that Result.

Where any Result is created or generated by two or more Parties jointly and it is impossible to distinguish each Party's intellectual contribution to the creation of that Result, that Result will be co-owned by those Parties in equal shares.

Any co-owner of any Result may deal with and exploit it as though it were the sole owner.

Each Party may serve notice on any other Party requiring it to negotiate with it during an exclusivity period of [*insert period*] for a licence or assignment of its Results.][[9]](#footnote-9)

[6.6] The draft patenting strategy, including responsibility for the costs of patenting the Results, are attached to these Heads of Terms.

[6.7] The Academic Parties will have the right to use the Results for academic and research purposes [including clinical patient care].

**7. CONFIDENTIALITY AND ACADEMIC PUBLICATION**

7.1 Each Party will keep the other Parties’ confidential information confidential [indefinitely]**OR**[for [insert number] years after its receipt under the Consortium Agreement].

7.2 Students and employees of each Academic Party will be able to publish the Results and any Background in journals or electronic repositories, or present them at a conference or seminar, subject to the safeguards to be set out in the Consortium Agreement.

**8. LIABILITY**

8.1 Each Party will warrant that any Intellectual Property which it contributes to the Project or creates in the course of the Project will not infringe third party rights.

**OR**

None of the Parties will give any warranty that any Intellectual Property which it contributes to the Project or creates in the course of the Project will not infringe third party rights.

8.2 [Each [Commercial] Party]**OR**[the Lead Exploitation Party] [will]**OR**[will not] indemnify the other Parties against any third party claims arising from the use of the Results or that other’s Party’s Background. [Each [Commercial] Party’s liability under that indemnity will be capped at an aggregate of £[insert figure].]

8.3 Each Party will indemnify the other Parties in respect of breaches of contract relating to bribery and corruption. [Each Party’s liability under that indemnity will be capped at an aggregate of £[insert figure].]

8.4 Each Party will indemnify the other Parties in respect of breaches of contract relating to data protection. [Each Party’s liability under that indemnity will be capped at an aggregate of £[insert figure].]

8.5 Each Party’s liability for any breach of the conditions of any external funding will be capped at an aggregate of £[insert figure].

8.6 [Each Party’s liability for knowingly infringing Intellectual Property or knowingly breaching any right of confidence will not be capped.]

8.7 [Each Party’s liability for any deliberate breach of the Consortium Agreement will not be capped.]

8.8 Except as set out above, each Party’s liability will be capped at an aggregate of [insert details].

8.9 Each Party’s liability for loss of profits, business, contracts etc. [will]**OR**[will not] be excluded.

8.10 If a Party assigns any Intellectual Property to another Party, it [will]**OR**[will not] give a warranty of full title guarantee.

**9. TERMINATION**

9.1 [In addition to the usual rights of the other Parties to terminate if a Party is in breach of contract or insolvent, the other Parties may terminate the Consortium Agreement if a member of a Party's key personnel leaves or is unable to continue working on the Project and his or her replacement is not satisfactory.]

9.2 [If the right to terminate under paragraph 9.1 above is exercised in relation to an Academic Party, the Commercial Parties will reimburse all costs and expenses which that Academic Party has incurred or agreed to incur and which that Academic Party is unable to cancel and will continue to pay reasonable employment costs].

9.3 Any Party may withdraw from the Project by giving not less than 3 months' notice if any of the key personnel appointed by any Party is unable or unwilling to be involved in the Project.

9.4 Provided, where its Financial Contribution is intended to cover work and costs incurred by another Party, it pays that other Party for work done before termination and reimburses all costs and expenses which that other Party has incurred or agreed to incur and which it is unable to cancel, any Party may withdraw from the Consortium Agreement at any time by giving not less than [3] months' notice.

**10. CONFIDENTIALITY**

10.1 This section 10 is legally binding.

10.2 The contents of this document are confidential to all of the Parties.

10.3 None of the Parties will [at any time]**OR**[for a period of [insert figure] years after the date of these Heads of Terms, disclose to any person any confidential information concerning the business, affairs, customers, clients, suppliers, research projects, products, services or Intellectual Property of any other Party or of any member of the group of companies to which any other Party belongs, except as permitted by paragraph 10.4 below.

10.4 Each Party may disclose any other Party’s confidential information:

10.4.1 as permitted by the proposed Consortium Agreement, if the Parties enter into that agreement;

10.4.2 in confidence and only to the extent necessary to secure any external funding, to any person providing or contemplating providing any external funding for the Project;

10.4.3 to its employees, officers, representatives or advisers who need to know that information for the purposes of negotiating the proposed Consortium Agreement and the terms of any external funding (**the Negotiations**);

10.4.4 so far as may be necessary to comply with the law, the order of any court of competent jurisdiction or any governmental or regulatory authority; and

10.4.5 to any other Party for the purposes of the Negotiations.

10.5 None of the Parties will use any other Party’s confidential information for any purpose except the Negotiations, except as permitted by the proposed Consortium Agreement, if the Parties enter into that agreement.

**11. GENERAL**

11.1 This section 11 is legally binding.

11.2 Each Party will pay its own costs incurred in connection with the negotiation, preparation, and the execution of these Heads of Terms, the proposed Consortium Agreement (whether or not it is entered into) and any documents referred to in either of those documents.

11.3 Any Party may, at any time before the Consortium Agreement has been entered into, withdraw from the Negotiations without having to give any reason for doing so and without incurring any liability to the other Parties.

**12. GOVERNING LAW AND THIRD PARTY RIGHTS**

12.1 This section 12 is legally binding.

12.2 These Heads of Terms and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation are governed by, and are to be construed in accordance with, English law. The English Courts will have exclusive jurisdiction to deal with any dispute (including any non-contractual claim or dispute) which has arisen or may arise out of, or in connection with, these Heads of Terms, except that a Party may bring proceedings to protect its Intellectual Property or Confidential Information in any jurisdiction.

12.4 The Consortium Agreement (if it is entered into) and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation will be governed by, and that agreement will be construed in accordance with, English law. The English Courts will have exclusive jurisdiction to deal with any dispute (including non-contractual claims and disputes) which arises or may arise out of, or in connection with, the Consortium Agreement, except that a Party may bring proceedings to protect its Intellectual Property or Confidential Information in any jurisdiction.

12.5 No one except a Party, its successors and permitted assignees, will have any right to enforce any of the terms set out in these Heads of Terms.

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| **SIGNED** on behalf of **AAA**:  Name: ………………………………………  Position: ………………………………………  Signature: ……………………………………… | **SIGNED** on behalf of **BBB**:  Name: ………………………………………  Position: ………………………………………  Signature: ……………………………………… |
| **SIGNED** on behalf of **XXX**:  Name: ………………………………………  Position: ………………………………………  Signature: ……………………………………… | **SIGNED** on behalf of **ZZZ**:  Name: ………………………………………  Position: ………………………………………  Signature: ……………………………………… |

1. Consortium Agreements B, C and D envisage a Payment Plan under which the Parties share the rewards of exploiting the Results. [↑](#footnote-ref-1)
2. This reflects the terms of Consortium Agreement A. [↑](#footnote-ref-2)
3. This reflects the terms of Consortium Agreement B. [↑](#footnote-ref-3)
4. This reflects the terms of Consortium Agreement C. [↑](#footnote-ref-4)
5. This reflects the terms of Consortium Agreement D. [↑](#footnote-ref-5)
6. This set of wording reflects the terms of Consortium Agreement A under which all Parties have the right to exploit the Results. [↑](#footnote-ref-6)
7. This set of wording reflects the terms of Consortium Agreement B under which the Lead Exploitation Party is to exploit the Results. [↑](#footnote-ref-7)
8. This set of wording reflects the terms of Consortium Agreement C under which the ownership of the Results is split between two Parties. [↑](#footnote-ref-8)
9. This set of wording reflects the terms of Consortium Agreement D. [↑](#footnote-ref-9)