

## 3.13: Example Consortium Agreement

Naomi Korn and Professor Charles Oppenheim, March 2009

### Context

This resource is based upon the *IPR Toolkit* created by the JISC-funded Web2Rights Project ([www.web2rights.org.uk](http://www.web2rights.org.uk)) and adapted for SCA sponsors and other organisations across the public sector. It is intended to form part of a toolkit, which can be further adapted to suit specific requirements and issued to content creators and content users across the public sector who are responsible for rights management and rights clearances. This agreement should be adapted to suit specific requirements. Further legal advice should be sought where necessary.

## EXAMPLE OF A BASIC Consortium Agreement

### [INSERT PROJECT NAME] CONSORTIUM AGREEMENT

THIS AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_ 2007

BETWEEN: **[INSERT NAME OF PARTY A]**, whose registered office is at **[insert address]**.

AND **[INSERT NAME OF PARTY B]**, whose registered office is at **[insert address]**.

AND **[INSERT NAME OF PARTY C]**, whose registered office is at **[insert address]**.

AND **[INSERT NAME OF PARTY D]**, whose registered office is at **[insert address]**.

(hereinafter referred to individually as a 'Party' and collectively as 'the Parties')

### RECITALS

**WHEREAS** the Parties wish to cooperate over **[insert details]**;

**AND WHEREAS** this Consortium Agreement sets out the relationship between the Parties and the organisation of the work.

## IT IS HEREBY AGREED AS FOLLOWS:

### 1. DEFINITIONS

1.1 In this Agreement, the following terms shall have the following meanings:

'Background IPR'	means all patents, designs, copyright (including copyright in software), database rights, and any other Intellectual Property Rights excluding Foreground IPR, owned by any of the Parties, in the field and which are necessary for the exploitation of Foreground IPR in accordance with this Agreement.
'Business Day'	means any day other than a Saturday or Sunday or a public or bank holiday in the United Kingdom.
'Confidential Information'	means all information that is marked as Confidential and that is disclosed by one Party to the others for the purpose of conducting the Project, including, without prejudice to the generality of the foregoing, any ideas; finance; financial, marketing, development or manpower plans; computer systems and software; products or services, including but not limited to know-how and information concerning relationships with other parties and all records, reports, documents, papers and other materials whatsoever originated pursuant to this Agreement.
'Consortium'	means the Parties collectively.
'Effective Date'	means the date when all Parties have signed this Agreement.
'Foreground IPR'	means all patents, designs, copyright (including copyright in software), database rights and any other Intellectual Property Rights arising as a direct result of and in the performance of this Agreement.
'Intellectual Property Rights'	means patents, Trade Marks, trade names, design rights, copyright (including rights in computer software and moral rights), database rights, rights in know-how and other Intellectual Property Rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.

'Project'	means the collaborative <b>[insert name of the project]</b> as described in Schedule 1.
'Project Manager'	means the person appointed by the Steering Group to run the day-to-day operation of the Project.
'Personnel'	means any employee, director, agent, subcontractor or other person engaged by a Party.
'Steering Group'	means the committee appointed to be responsible for managing the Project whose individual members are set out in Schedule 2.

- 1.2 Headings contained in this Consortium Agreement are for reference purposes only and shall not be deemed to be an indication of the meaning of the clause to which they relate.
- 1.3 Where the context so implies, words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and vice versa.

*[This section provides clear definitions for key terms in the Agreement, as appropriate]*

## 2. LEAD INSTITUTION

The Parties hereto agree that the **[insert name of institution]** will be the lead institution ('Lead Institution') and authorises it as their agent to sign agreements in their name and on their behalf in relation to the Project. The Parties agree that the Lead Institution will grant a licence to **[insert name of any funding bodies]** of the rights set out in **[insert reference to any funding agreement]**. The Lead Institution will open and maintain a dedicated bank account for the benefit of the Parties and the use of the Project. Without prejudice to its authority to contract on behalf of the Parties in relation to the Project, the Lead Institution agrees to take all reasonable steps in every occasion to seek and obtain the prior consent of each of the other Parties before signing agreements for the benefit of the Project and the other Parties.

*[This section identifies the Lead Institution and explains its role]*

## 3. PURPOSE OF THE CONSORTIUM

The purpose of the Consortium is:

- To specify the organisation of the work between the Parties in carrying out the Project and to set out the rights and obligations of the Parties
- Carry out the Project and to produce the Deliverables as described in Schedule 1

*[This section states the purpose of the Consortium, as decided by the Project partners, which may be wider than simply carrying out the funded Project]*

## 4. COMMENCEMENT AND DURATION

This Agreement shall commence on the Effective Date and shall continue until the completion of the Project on **[insert Date]**.

The duration of this Agreement may be extended beyond **[insert Date]**, at any time prior to that date, by written agreement of the Parties, for such period or periods as are deemed appropriate.

*[This section states the starting date and duration of the Agreement but also makes provision for continuation of the Agreement after the initial funding period, should this be necessary]*

## 5. OVERRIDING CONDITIONS

In all instances, until the completion of the Project, conditions laid down for the Project by the **[insert name of the Funding Body]** or its successor will override any agreement between the Parties concerning the Project, including any terms contained in this Agreement.

*[A Funding Body may sometimes require, as part of the funding award contract, that a project Consortium Agreement contains a clause allowing the Funding Body to intervene in decisions made by the Project partners]*

## 6. PROJECT MANAGEMENT

### 6.1 STEERING GROUP

The Parties shall establish, within thirty days after the Effective Date, a Steering Group, which shall be composed of one duly authorised representative of each Party. After having informed the others in writing, each Party shall have the right to replace its representative and/or to appoint a proxy, although it shall use all reasonable endeavours to maintain the continuity of its representation. The composition of the Steering Group is set out in Schedule 2. The Steering Group shall appoint a Chair from amongst its members. There shall also be a Project Manager, who shall be Secretary to the Steering Group.

### 6.2 RESPONSIBILITIES OF THE STEERING GROUP

#### 6.2.1 Project Oversight

The Steering Group shall be responsible for the delivery of the Project outcomes and to this end will keep the Project plan, and progress towards meeting it, under review.

#### 6.2.2 Appointment of Project Manager

The Steering Group shall be responsible for appointing a Project Manager. The Project Manager will have responsibility for the day-to-day management of the Project and will report to the Steering Group.

#### 6.2.3 Financial Management

The Steering Group shall be responsible for the financial management of the Project, and will manage the Project in accordance with appropriate project management techniques. The Steering Group may choose to take advice from third parties as required.

#### 6.2.4 Publications and Press Releases

The Steering Group shall decide procedures for dissemination of publications and press releases relating to the Project.

#### 6.2.5 Commercial Exploitation Strategy

The Steering Group shall hold two Special Meetings, the first twelve months prior to the end of the Project, and the second at the end of the Project, whose business shall be exclusively to review the Deliverables, discuss the potential for the commercial exploitation of the Project Deliverables and the creation of products based on those Deliverable. and develop a strategy for such exploitation and development.

### 6.2.6 Exit Strategy

The Steering Group shall establish a Sustainability Sub-Group to plan for the future development of the **[insert details and descriptions of the Deliverables]** 'the Deliverables'.

The Steering Group shall hold two Special Meetings, the first twelve months prior to the end of the Project, and the second at the end of the Project, whose business shall be exclusively to develop a suitable strategy or strategies for future development of the Deliverables, including the pursuit of additional funding from appropriate sources.

In the event that additional funding is secured for future development of the Deliverables, the Steering Group shall be responsible for making such financial and administrative arrangements as are necessary to secure the effective and efficient continuation of the Consortium including any necessary revisions of this Consortium Agreement, for approval by the Parties.

### 6.2.7 Division of Exploitation Income

The Steering Group will decide the division of income derived from exploitation of the Deliverables. The sharing of revenue applies to those Parties remaining at the end of the Project. If a Party withdraws 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.

## 6.3 STEERING GROUP MEETINGS

The Steering Group shall determine the frequency of its meetings, but shall meet at least twice yearly. Additional meetings may be called by two or more Parties or at the request of the Project Manager. Meetings will operate under the following rules:

- 6.3.1** At each meeting, the Steering Group will agree on a date for the next meeting. Otherwise the Secretary, in consultation with the Chair or his nominee, shall call meetings, giving notice that is reasonable in the circumstances.
- 6.3.2** The Secretary shall circulate an agenda before the meeting.
- 6.3.3** Each Steering Group member (including the co-opted members, but not the Secretary) will have one vote, except the Chair who has a casting vote. A member may not vote on matters concerning a dispute with the Consortium where the member is the subject of the dispute.
- 6.3.4** The quorum for a meeting will be five (5) voting members.
- 6.3.5** With the approval of the Chair, Steering Group members may nominate a representative to attend meetings and vote on their behalf.
- 6.3.6** Votes, with the exception of a vote to terminate a Party's membership of the Consortium, will be decided on the basis of a majority vote of those attending and eligible to vote.

## 6.4 RESPONSIBILITIES OF THE INDIVIDUAL MEMBERS OF THE STEERING GROUP

In addition to the Steering Group's collective responsibility, individual members of the Steering Group will have specific responsibilities as determined by the Steering Group from time to time.

*[This section deals with the management framework for the Consortium. In this case the management process is handled via a Steering Group and Project Manager, but Project partners could choose a different management mechanism. The Steering Group in this example has a general oversight role over Project progress, appoints the Project Manager, and is responsible for the financial management of the Project. It plays a significant role in developing Project strategy, including decisions on dissemination, commercial exploitation of Deliverables and the*

*distribution of revenue from such exploitation, and planning for the end of the initial period of funding. The section also details the Steering Group meeting procedures, and provides that Steering Group members will have both collective and individual responsibilities under the Agreement.]*

## 7. PROJECT RESOURCES

### 7.1 ALLOCATION

The total funding to be paid, subject to progress against Project milestones as agreed with the [insert name of the funding body] is as follows:

Financial Year 1 [insert Date] – [insert Date][insert amount £XX,XXX]

Financial Year 2 [insert Date] – [insert Date][insert amount £XX,XXX]

Financial Year 3 [insert Date] – [insert Date][insert amount £XX,XXX]

Financial Year 4 [insert Date] – [insert Date][insert amount £XX,XXX]

### 7.2 DISTRIBUTION

Payments are made from the [insert name of the funding body] to the [insert name of Lead Institution]. Thereafter [insert name of Lead Institution] shall apportion the budget between the Parties on the basis of financial plans approved from time to time by the Steering Group.

### 7.3 INVOICING/CLAIMS

Where claimable costs and expenses (that is, approved by the Project Manager or Steering Group) are incurred, claims should be passed to the Project Manager as soon as they have been paid with supporting evidence of the expenditure attached. The Project Manager will be required to make financial reports to the Steering Group from time to time.

[This section describes what the project resources from the initial funding are, and how they will be distributed. In this example, the detailed financial planning is left largely to the discretion of the Steering Group, but it could instead have been dealt with within the Consortium Agreement itself]

## 8. RESPONSIBILITIES OF THE PARTIES

### PERFORMANCE

- 8.1 Each Party undertakes to each other Party to perform and fulfil on time the tasks assigned to it by the Steering Group and all other of its obligations under this Agreement.
- 8.2 Towards the Steering Group and the Project Manager, each Party hereby undertakes to supply promptly to the Project Manager all such information or documents as the Project Manager and the Steering Group need to fulfil obligations pursuant to this Agreement.
- 8.3 Towards each other, each Party undertakes to:
  - 8.3.1 Notify each of the other Parties as a Party becomes aware of any significant delay in performance;

- 8.3.2 Inform other Parties of relevant communications it receives from third parties in relation to the Project.
- 8.4 Each Party shall use all best efforts to ensure the accuracy of any information or materials it supplies hereunder and promptly to correct any error therein of which it is notified.
- 8.5 Each Party agrees not to issue any press releases or other such publicity materials relating to the work of the Consortium without obtaining prior approval from the other Parties.

## WARRANTIES AND UNDERTAKINGS

- 8.6 Each Party warrants that under its contractual relationships with each of its Personnel, any Intellectual Property Rights arising out of or relating to work done by the Personnel for the Party will vest in such Party and that the Personnel will have no right, title or interest, whether legal or beneficial, in any such Intellectual Property Rights. A Party shall, if so required by the Steering Group, produce written evidence of this to the Steering Group signed by its Personnel.

Each Party acknowledges that it is and shall remain liable for the consequences of any failure on its part or on the part of its Personnel to fulfil the tasks and work packages assigned to it under this Agreement and shall accordingly:

- 8.6.1 Procure and maintain its own insurance, with insurers of good repute, to cover its own liabilities and those on behalf of its Personnel
- 8.6.2 Keep true and accurate records of all things done by its Personnel in relation to the tasks and work packages assigned to it under this Agreement
- 8.6.3 Comply and assist the Consortium, the Steering Group and the Project Manager in complying with all relevant statutes, laws, regulations and codes of practice relating to its tasks and work packages from time to time in force
- 8.6.4 Comply with all recommendations and requirements of its insurers and
- 8.6.5 Indemnify, keep indemnified and hold harmless the other Parties from and against all costs (including the costs of enforcement), expenses, liabilities, injuries, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgments which they incur or suffer as a result of a breach of this Agreement or negligent acts or omissions or wilful misconduct of the Party and/or its Personnel including without limitation any resulting liability the Consortium has to the funder or to any third party.
- 8.7 Each Party shall be responsible for providing all appropriate facilities and services as shall be necessary in the proper performance of the tasks and work packages, which will be entirely at the Party's own expense.
- 8.8 Each Party agrees and undertakes at its own expense to make the Personnel available to attend a working group meeting with the Project Manager to review progress at such times and locations as the Steering Group shall reasonably specify.
- 8.9 Each Party shall provide the Steering Group with:
  - 8.9.1 Quarterly statements of expenditure incurred in relation to the provision of the tasks and work packages assigned to it, together with copies of staff timesheets, invoices and other relevant documentation for audit purposes
  - 8.9.2 A declaration that confirms that expenditure has been incurred in accordance with the Funding Agreement and

8.9.3 A final statement of expenditure within 4 weeks of the termination of this Agreement.

*[This section outlines the responsibilities of the Project partners – these may vary according to the nature and scope of the Project. It includes warranties and undertakings between the Project Partners on issues including Intellectual Property, insurance, record keeping, and legal compliance, as well as an indemnity provision to protect the Project partners from financial and other damage arising from acts or omissions on the part of any of the Project partners. It also makes provision for a Project Working Group without fixed membership to be convened, at the discretion of the Steering Group, to review progress. Finally, it deals with issues of Project Partner financial accountability, and record keeping.]*

## 9. ADDITION OF PARTIES TO 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.

*[This section makes provision for third-party institutions to join the Consortium. The conditions laid down for joining may vary according to the nature and scope of the Project. In this case, for a third party to join the Consortium they must agree to the same terms and conditions as the original Parties. As such, an agreement for a third party to join the Consortium which did not meet those criteria would not be valid, unless the Parties agreed to amend this Consortium Agreement accordingly.]*

## 10. REMOVAL OR WITHDRAWAL OF PARTIES FROM THE CONSORTIUM

### 10.1 REMOVAL OF PARTIES

Without prejudice to any other rights or remedies open to the Consortium, the Steering Group may, after a two-thirds majority vote of the full Steering Group in favour of termination, and via a written notice served on the Party, terminate a Party's membership of the Consortium, if the Party:

- 10.1.1 Is in material breach of any of the terms of this Agreement and, where the breach is capable of remedy, the Party fails to remedy such breach within 30 days' service of a written notice specifying the breach and requiring it to be remedied or
- 10.1.2 In the opinion of a majority of the Steering Group, is incompetent, commits any act of gross or persistent misconduct and/or neglects or omits to perform any of its duties or obligations under this Agreement or
- 10.1.3 Fails or refuses after written warning from the Steering Group to carry out the duties or obligations reasonably and properly required of it under this Agreement or
- 10.1.4 Being a company, summons a meeting of its creditors, makes a proposal for a voluntary arrangement, becomes subject to any voluntary arrangement, is unable to pay its debts within the meaning of s.123 Insolvency Act 1986, has a receiver, manager or administrative receiver appointed over any of its assets, undertaking or income, has passed a resolution for its winding-up (save for the purpose of a voluntary reconstruction or amalgamation), is subject to a petition presented to any court for its winding-up (save for the purpose of a voluntary reconstruction or amalgamation), has a provisional liquidator appointed, has a proposal made for a scheme of arrangement under s.425 Companies Act 1985, has an administrator appointed in respect of it or is the subject of an application for administration filed at any court or a notice of appointment of an administrator filed at any court or a notice of intention to appoint an administrator given by any person or is the subject of a notice to strike off the register at Companies House
- 10.1.5 Ceases to operate its business or undertaking
- 10.1.6 Provides the Steering Group with any false or misleading information with regard to its ability to perform its duties or obligations under this Agreement or

10.1.7 Has done anything which brings or might reasonably be expected to bring the Parties or the Project or the Funder into disrepute or otherwise damage other contractors, employees, agents, customers, other business associates or the general public including, but not limited to, committing an act of fraud or dishonesty, whether or not connected with the Project.

## 10.2 WITHDRAWAL OF PARTYS

A Party may withdraw from the Consortium only with the unanimous agreement of the remaining Parties.

## 10.3 CONDITIONS CONSEQUENTIAL ON REMOVAL OR WITHDRAWAL

In the event of withdrawal or expulsion of a Party, the Consortium will be liable to meet only the cost of any work undertaken up to the point at which a Party ceases to be a member of the Consortium. The balance of any payments made to the Party will be returned to the nominated representative of **[insert name of Lead Institution]** within 30 days of withdrawal or expulsion. In all cases, the Consortium reserves the right of access to any work produced in the course of the Party's work as part of the Consortium.

*[This section makes provision for removal or withdrawal of Project Partners from the Consortium. In the case of removal, it provides a set of clear grounds that would justify removal and a specific procedure that must be followed. The section also makes provision for determining the financial outcomes of withdrawal or expulsion, and ensures that work carried out by an expelled or withdrawn Partner remains accessible to the remaining Project Partners. This should be read in conjunction with the Intellectual Property provisions below.]*

# 11. DATA MANAGEMENT

## 11.1 DATA COLLECTION

In the course of the Project, each Party is involved in the production and collection of data in the form of **[insert description]**. The data are to be sent to the Project Manager and stored in an archive at **[insert name of Institution/Project Partner]** ('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 consents.

## 11.2 DATA MAINTENANCE

The **[insert name of Institution/Project Partner]** hereby undertakes to maintain the Project Archive for the duration of the Project and for a period of at least three (3) years after the end of the Project. This period is subject to extension if the Steering Group so decides.

## 11.3 DATA PROTECTION

As a member of the Consortium, each Party will be processing personal data for the purpose of the **[insert name of Project]**. Each Party must be a signatory of the **[insert name of Project]** Data Controllers Agreement, and must sign a Data Processing Agreement with the **[insert name of Institution/Project Partner]**, prior to processing personal data for the purposes of the Project.

*[This section makes provision for data management within the Project, in terms of archiving and preservation of both Project administrative data and Project outputs. This may be particularly important from the Funding body's perspective, but also in terms of ongoing project management and future strategic planning. The section on data protection may, or may not, be necessary depending upon the nature and scope of the Project. It links the Consortium Agreement to a further set of DP-specific Agreements.]*

## 12. CONFIDENTIALITY

- 12.1 Each Party hereby undertakes to the other Parties that it shall procure that its employees, agents and subcontractors shall:
- 12.1.1 Keep confidential all information of a confidential nature (whether written or oral) concerning this Agreement and the business affairs of another 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')
  - 12.1.2 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 subcontractors involved in the implementation or evaluation of the Project who have a need to know the same for the performance of their duties
  - 12.1.3 Use the Information solely in connection with the implementation of the Project and not otherwise for its own benefit or the benefit of any third party
  - 12.1.4 These provisions 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:
    - 12.1.4.1. Known to the receiving Party prior to the date of this Agreement and not obtained directly or indirectly from any other party or
    - 12.1.5.1 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
    - 12.1.6.1 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
    - 12.1.7.1 Required to be disclosed by legal process, law or regulatory authority
- 12.2 Each Party hereby undertakes to the other Parties to make all relevant employees, agents and subcontractors aware of the confidentiality of the Information and provisions of this clause and without prejudice to the generality of the foregoing to ensure compliance by such employees, agents and subcontractors with the provisions of this clause.

*[This is a standard confidentiality clause. It is important that if information of a confidential nature is to be made available between Project Partners, that the providing Partner makes it quite clear that it is to be considered confidential, and that the other Project Partners take all necessary steps to ensure that confidentiality is respected.]*

## 13. INTELLECTUAL PROPERTY

### 13.1 IPR WARRANTIES

Each Party shall obtain the necessary assignments of Intellectual Property Rights or licences from all staff, agents, or subcontractors 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 Intellectual Property Rights in the Deliverables, or that it is duly licensed to use the Deliverables, and that the use of the content of the Deliverables as contemplated in this Agreement does not infringe any Intellectual Property Rights or other proprietary or rights of any natural or legal person.

## 13.2 BACKGROUND IPR

All Background IPR used in connection with this Agreement shall remain the property of the Party introducing the same or any other third parties. Each Party shall take responsibility for ensuring that all necessary permissions have been sought to use Background IPR.

## 13.3 FOREGROUND RIGHTS

All Foreground IPR arising from this Agreement shall belong to the Party generating the same.

## 13.4 ACCURACY

Each Party shall use reasonable endeavours to ensure the accuracy of any information or materials that it supplies to the other Parties under this clause and shall promptly correct any error therein of which it is notified. The donating Party will provide no warranties to recipient Parties in respect of the information and materials, and the recipient Parties shall be entirely responsible for the use to which they put such information and materials.

## 13.5 ACCESS RIGHTS

- 13.5.1 Each Party hereby grants to the other a royalty-free, non-exclusive, worldwide, irrevocable, assignable, perpetual licence to use its (and third parties) Background IPR and Foreground IPR for the purpose of performing their part of the Project.
- 13.5.2 Each Party hereby indemnifies the other Parties against any liabilities, loss, claims or expenses brought against or incurred as a result of its use of and/or sale of products containing the other Parties' Background IPR and/or Foreground IPR.
- 13.5.3 After completion of the Project all Parties shall continue to have the right to use their Foreground IPR at no cost for the purposes of exploiting the materials in the carrying out of their usual educational activities.
- 13.5.4 After completion of the Project the Consortium shall provide on request, to any educational institution (as defined by s.65 (5) of the Further and Higher Education Act 1992), a free copy of the Deliverables subject to a royalty-free non-exclusive perpetual licence to use the Deliverables for non-commercial purposes.
- 13.5.5 Use of Background IPR and/or Foreground IPR by third parties other than Parties, and by educational institutions (as defined by s.65(5) of the Further and Higher Education Act 1992) for commercial purposes, shall be at the discretion of the Parties owning such Background IPR and/or Foreground IPR.
- 13.5.6 Each Party hereby grants to the Lead Institution a royalty-free, non-exclusive, worldwide, irrevocable, assignable, perpetual licence to use all Background IPR and Foreground IPR of the Parties for the purpose of performing its obligations under Clause 2 and in order to licence to **[insert name of the funding body]** the rights as set out in the **[insert reference to the funding body agreement]**.
- 13.5.7 Each Party hereby indemnifies **[insert name of the funding body]** against any liabilities, loss, claims or expenses brought against or incurred as a result of its use of the Deliverable in accordance with the **[insert reference to the funding body agreement]**.

## 13.6 FUNDING AGREEMENTS

The provisions of this clause shall at all times be subject to any conflicting provisions in the funding letter, and in the event of any conflict, the content of the funding letter shall prevail.

*[This section deals with the issue of Intellectual Property. The Intellectual Property sections of a Consortium Agreement will be extremely important in terms of the development of a project and any future exploitation of project Deliverables, and it is vital that Project Partners are clear about the implications of their respective rights and obligations as outlined within it.]*

# 14 TERMINATION

## 14.1 TERMINATION OF FUNDING

This Agreement shall terminate immediately with no liability between the Parties should the Funding Agreement terminate for any reason whatsoever, unless the Parties, by means of written agreement, decide to continue it.

## 14.2 TERMINATION BY MUTUAL AGREEMENT

This Agreement may be terminated at any time by the unanimous written agreement of the Parties.

## 14.3 RIGHTS OF PARTIES

The termination of this Agreement, howsoever arising, is without prejudice to the rights, duties and liabilities of the Parties accrued due prior to termination. The provisions in this Agreement which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

*[This section outlines the conditions under which the Agreement may be terminated, other than its completion as set out in clause 4 'Commencement and Duration', and the implications of Termination for the Project Partners.]*

# 15 GOVERNING LAW AND DISPUTE RESOLUTION

- 15.1 This Agreement shall be governed by and construed in accordance with English law and the parties irrevocably agree that any dispute arising out of or in connection with this Agreement will be subject to and within the jurisdiction of the English courts.
- 15.2 The Parties agree to use best efforts to resolve disputes in an informal manner. Where the Parties agree that a dispute arising out of or in connection with this Agreement would best be resolved by the decision of an expert, they will agree upon the nature of the expert required and together appoint a suitable expert by agreement.
- 15.3 Any person to whom a reference is made under Clause 15.2 shall act as expert and not as an arbitrator and his decision (which shall be given by him in writing and shall state the reasons for his decision) shall be final and binding on the Parties except in the case of manifest error or fraud.
- 15.4 Each Party shall provide the expert with such information and documentation as he may reasonably require for the purposes of his decision.
- 15.5 The costs of the expert shall be borne by the Parties in such proportions as the expert may determine to be fair and reasonable in all circumstances or, if no determination is made by the expert, by the Parties in equal proportions.

*[This section provides a mechanism for resolving disputes between the Project Partners, which cannot be resolved within the Consortium (ie in this case, by the Steering Group). This example envisages a simple binding dispute resolution, but there are a wide range of alternative options for those drafting Consortium Agreements to choose between, including more formal arbitration processes. It is important to consider carefully which model of dispute resolution best suits the arrangements for a particular project. The section also determines which jurisdiction's law will be used when there is any dispute about, or arising from, the Agreement. It also states which country's courts should have jurisdiction to hear any case arising from the Agreement.]*

## 16 GENERAL PROVISIONS

### 16.1 SOLE AGREEMENT

Subject to Clause 5 this Agreement contains all the terms that the Parties have agreed in relation to the subject matter of this Agreement and supersede any prior written or oral agreements, representations or understandings between the Parties relating to such subject matters.

No Party to this Agreement has been induced to enter into this Agreement by a statement or promise which it does not contain save that this clause shall not exclude any liability which one Party would otherwise have to the other in respect of any statements made fraudulently by that Party.

### 16.2 SCHEDULES

The Schedules shall have the same force and effect as if expressly set in the body of this Agreement and any reference to this Agreement shall include the Schedules.

### 16.3 WAIVER

No failure or delay by any Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

### 16.4 SEVERABILITY

If any clause or part of this Agreement is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from this Agreement and shall be ineffective without, as far as is possible, modifying any other clause or part of this Agreement and this shall not affect any other provisions of this Agreement, which shall remain in full force and effect.

### 16.5 FORCE MAJEURE

No Party will be deemed to be in breach of this Agreement, nor otherwise liable to the other for any failure or delay in performance of this Agreement if it is due to any event beyond its reasonable control other than strike, lock-out or industrial disputes but including, without limitation, acts of God, war, fire, flood, tempest and national emergencies and a Party so delayed shall be entitled to a reasonable extension of time for performing such obligations.

## 16.6 ASSIGNMENT

Save as permitted for under this Agreement, neither this Agreement nor any of the rights and obligations under it may be subcontracted or assigned by any Party without obtaining the prior written consent of the other Parties. In any permitted assignment, the assignor shall procure and ensure that the assignee shall assume all rights and obligations of the assignor under this Agreement and agrees to be bound to all the terms of this Agreement.

## 16.7 VARIATION

This Agreement may be amended at any time by written agreement of the Parties. No variation to this Agreement shall be effective unless in writing signed by a duly authorised officer of each of the written Parties. Any variation during the term of the Project shall be subject to the approval of the Funder.

## 16.8 NOTICE

Any notice in connection with this Agreement shall be in writing and may be delivered by hand, pre-paid first class post, Special Delivery post, or facsimile (but not by email), addressed to the recipient at its registered office or its address or facsimile number as the case may be (or such other address, or facsimile number as may be notified in writing from time to time).

- The notice shall be deemed to have been delivered by hand, when left at the proper address for service
- If given or made by pre-paid first class post or Special Delivery post, 48 hours after being posted or in the case of Airmail 14 days after being posted (excluding days other than Business Days)
- If given or made by facsimile, at the time of transmission, provided that a confirming copy is sent by pre-paid first class post to the other party within 24 hours after transmission

provided that, where in the case of delivery by hand or transmission by facsimile, such delivery or transmission occurs either after 4.00 pm on a Business Day, or on a day other than a Business Day, service shall be deemed to occur at 9.00 am on the next following Business Day (such times being local time at the address of the recipient).

*[This section contains general provisions concerning the operation of the Consortium Agreement. For example, clause 16.4 provides that failure of one part of the Agreement does not invalidate the whole Agreement, clause 16.7 allows Project partners to amend the Agreement but only under specific conditions, and clause 16.8 covers the form that communications concerning the Agreement (ie not general day-to-day project messages, but messages specifically relating to the Agreement) should take, and when such communications will be considered to have been received.]*

### SCHEDULE 1 – Project

### SCHEDULE 2 – Composition of Steering Group [\[List\]](#)

Whilst we hope you find the contents of the SCA IPR Toolkit useful and informative, the contents are for general advice and best practice purposes only and do not constitute legal advice. Although we believe the contents are up to date and accurate as well as a true representation of best practice advice, we can give no assurances or warranty regarding the accuracy, currency or applicability of any of the contents in relation to specific situations and particular circumstances. In such circumstances, appropriate professional legal advice should always be sought.

© HEFCE, on behalf of JISC. The contents of this IPR Toolkit are licensed for use under a Creative Commons Attribution-Non-Commercial 2.0 UK: England & Wales Licence.