**This AGREEMENT is made BETWEEN:**

1. **UNIVERSITY OF DURHAM** whose registered address is at The Palatine Centre, Stockton Road, Durham, DH1 3LE (the “University”); and
2. [INSERT] whose registered address is [INSERT].

 each a “**Party**” and collectively the “**Parties**”.

This Agreement records the terms under which the Parties wish to make available certain confidential proprietary information (the “**Confidential Information**”, as defined on Page 2) necessary for the “**Purpose**” (as defined below).

The Parties hereby agree that the terms and conditions listed on Page 2 and 3 and the details provided in Part A on Page 1 of this Agreement shall govern the proposed exchange of Information between the Parties.

**Part A – The Effective Date**

[INSERT]

**Part B – The Purpose**

The purpose of this agreement is develop an enhanced offering of high-quality online master’s programmes, beyond the provision already supported in Durham University Business School (DUBS) and Arts and Humanities. As part of the NDA, University sensitive data will need to be shared with the successful supplier(s) in order to carry out service deliverables. The exact nature will be determined as part of the formal contract.

**THIS AGREEMENT IS NOT INTENDED TO GOVERN ANY RESEARCH PROJECT INVOLVING THE PARTIES, NOR ANY OTHER ARRANGEMENT BEYOND THE PROVISION OF THE INFORMATION. IN ACCORDANCE WITH CLAUSE 10 OF THIS AGREEMENT, SEPARATE FORMAL AGREEMENTS MAY BE REQUIRED TO GOVERN FUTURE ACTIVITIES INVOLVING THE PARTIES.**

**IN WITNESS WHEREOF** this Agreement has been signed by the duly authorised representatives of the Parties

**SIGNED** for and on behalf of **THE UNIVERSITY OF DURHAM**:

 Name:

 Position:

 Signature:

**SIGNED** for and on behalf of **[INSERT]:**

Name:

Position:

Signature:

1. In this agreement: “**Business Day**” means a day (other than a Saturday, Sunday or public holiday) when the University is open for business; “**Confidential Information**” means any and all information, (however recorded, preserved or disclosed) clearly identified as “confidential” at the time of disclosure (or, if disclosed orally, identified as “confidential” at the time of disclosure and confirmed as such in writing within thirty (30) days of such oral disclosure) , which is disclosed by a Party or its Representatives to the other Party or that Party’s Representatives in connection with the Purpose after the Effective Date; “**Disclosing Party**” means a Party to this Agreement which discloses or makes available to the Receiving Party, directly or indirectly, Confidential Information; “**Effective Date**” means the date specified in Part A; “**FOI Legislation**” means the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, as each is in force for the time being, taking account of any amendment, extension or re-enactment, and includes any subordinate legislation for the time being in force made under them; “**Purpose**” means the purpose described in Part B; “**Receiving Party**” means a Party to this Agreement which receives or obtains from the Disclosing Party, directly or indirectly, Confidential Information; and “**Representative**” means a Party’s officers, employees, agents, advisers and students.In this Agreement:
	1. headings are used for convenience and shall not affect its interpretation;
	2. a reference to a “person” includes a natural person, corporate or unincorporated body (whether or not having separate legal personality and wherever incorporated or established) and that person's legal and personal representatives, successors and permitted assigns; and
	3. the words “include”, “including” or “in particular” are deemed to have the words “without limitation” following them.
2. This Agreement has effect from the Effective Date and shall continue in full force and effect for a period of two (2) years.
3. The Receiving Party shall use its reasonable endeavours to keep the Disclosing Party’s Confidential Information confidential and, except with the prior written consent of the Disclosing Party, shall: not use or exploit the Confidential Information in any way except for the Purpose; not disclose or make available the Confidential Information, in whole or in part, to any third party, except as expressly permitted by this Agreement; and apply the same security measures and degree of care to the Confidential Information as the Receiving Party applies to its own confidential information, but no less than reasonable care, to prevent the unauthorised use, dissemination or publication of the Disclosing Party’s Confidential Information.
4. The Receiving Party may disclose the Disclosing Party’s Confidential Information only to those of its Representatives who have a need to know that Confidential Information for the Purpose, provided that it informs those Representatives of the confidential nature of the Confidential Information and the obligations of this Agreement before disclosure. The Receiving Party shall at all times be responsible for those Representatives’ compliance with the obligations set out in this Agreement.
5. This Agreement imposes no obligation upon a Receiving Party with respect to Confidential Information that:
	1. is known, or made available, to the Receiving Party on a non-confidential basis prior to its disclosure by the Disclosing Party under this Agreement;
	2. is, or becomes, publicly known other than as a result of its disclosure by the Receiving Party in breach of this Agreement;
	3. is obtained by the Receiving Party from a third party in circumstances where the Receiving Party has no reason to believe that third party is bound by a duty of confidentiality to the Disclosing Party;
	4. was substantially and independently developed by the Receiving Party without knowledge of the Disclosing Party’s Confidential Information; or
	5. is approved for release in writing by an authorised representative of the Disclosing Party.
6. The Receiving Party may disclose the Disclosing Party’s Confidential Information to the extent such Confidential Information is specifically required to be disclosed by law, by any governmental or regulatory authority, or pursuant to the order of a court or other authority of competent jurisdiction; provided that, to the extent it is legally permitted to do so, it promptly notifies the Disclosing Party of this disclosure and, where possible, takes into account the reasonable requests of the Disclosing Party in relation to the content of such disclosure.
7. The University is a public authority for the purposes of the FOI Legislation, and acknowledges that the other Party may also be classified as a public authority for the purposes of the said legislation. If a Receiving Party receives a request under the FOI Legislation to disclose any of the Disclosing Party’s Confidential Information, it will notify and consult with the Disclosing Party. The Disclosing Party will respond within five (5) days of receiving such notice if the notice requests assistance in determining whether or not an exemption applies to the disclosure of the Confidential Information requested under the FOI Legislation.
8. At the request of the Disclosing Party, and in any event within ten (10) Business Days of the termination of the Purpose in accordance with Clause 13, the Receiving Party shall:
	1. destroy or return to the Disclosing Party all documents and materials (and any copies of the same) containing, reflecting, incorporating or based on the Disclosing Party’s Confidential Information;
	2. erase, to the extent reasonably possible, all the Disclosing Party’s Confidential Information from its computer systems or which is stored in electronic form; and
	3. provide written confirmation to the Disclosing Party that it has complied with the provisions of this Clause 8.

Notwithstanding the above, the Receiving Party may retain documents and materials containing, reflecting, incorporating or based on the Disclosing Party’s Confidential Information solely to the extent:

* 1. required by law or any applicable governmental or regulatory authority; or
	2. reasonable to permit the Receiving Party to keep evidence that it has performed its obligations under this Agreement.
1. All Confidential Information shall remain the property of the Disclosing Party. The Disclosing Party reserves all rights in its Confidential Information. No rights, including to intellectual property rights, in respect of the Disclosing Party’s Confidential Information are granted to the Receiving Party other than those expressly stated in this Agreement.
2. Nothing in this Agreement shall impose an obligation on either Party to disclose any Confidential Information to the other; and the disclosure of Confidential Information by the Disclosing Party shall not form any offer by, or any representation or warranty on the part of, the Disclosing Party to enter into any further agreement in relation to the Purpose or otherwise.
3. If the Confidential Information, in whole or in part, becomes the subject of any further agreement between the Parties then the terms of this Agreement shall be superseded by that further agreement, but only in respect of such part of the Confidential Information as is the subject of such further agreement.
4. Neither Party makes any express or implied warranty or representation concerning its Confidential Information: all Confidential Information disclosed under this Agreement is provided “AS IS”. In particular, neither Party makes any warranty of any kind with respect to the accuracy of the Confidential Information which it discloses or with respect to the suitability of such Confidential Information for the Purpose or any other use.
5. Either Party may decide not to become, or continue to be, involved in the Purpose with the other Party by written notice to the other, in which case each Party shall immediately cease all use of the other Party’s Confidential Information; The obligations of each Party shall, notwithstanding any earlier termination of negotiations or discussions between the Parties in relation to the Purpose, continue for a period of three (3) years from such termination; Termination of the Purpose in accordance with Clause 13 shall not affect any accrued rights or remedies to which either Party is entitled.
6. Each Party to this Agreement undertakes to make no claim in connection with this Agreement or its subject matter against any Representative of the other, except for claims in relation to fraud or wilful misconduct. This undertaking is intended to give protection to individuals: it does not prejudice any right which a Party might have to claim against the other. The benefit conferred by this clause is intended to be enforceable by the persons referred to in it.
7. Neither Party shall use the name nor any trade mark or logo of the other Party, nor the name of any Representative of the other Party, in any press release or product advertising, nor for any other commercial purpose, without the prior written approval of the other Party.
8. This Agreement constitutes the entire agreement between the Parties, and supersedes all previous drafts, agreements, arrangements and understandings between the Parties, whether oral or written, relating to its subject matter. Each Party agrees that in entering into this Agreement it does not rely on any statement, representation, warranty or understanding other than those expressly set out in this Agreement.
9. No variation of this Agreement shall be effective unless it is in writing in the English language and signed by duly authorised representatives of the Parties.
10. No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial waiver of any right or remedy provided under this Agreement shall preclude or restrict the further exercise of that or any other right or remedy.
11. If any court of competent authority finds that any provision of this Agreement, or part of any provision, is invalid, illegal or unenforceable, that provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected. If such provision would be valid, legal and enforceable if some part of it were modified or amended, the Parties shall negotiate in good faith to amend such provision such that, as amended, it is valid, legal and enforceable, and, to the greatest extent possible, achieves the Parties’ original commercial intention.
12. Nothing in this Agreement shall create, evidence or imply any agency, partnership or joint venture between the Parties. Neither Party shall act or describe itself as the agent of the other Party nor shall it represent that it has any authority to make commitments on the other Party’s behalf.
13. Neither Party is entitled to transfer this Agreement or any rights or obligations under this Agreement without the prior written consent of the other Party.
14. No one except a Party to this Agreement has any right to prevent the amendment of this Agreement or its termination, and no one except a party to this Agreement may enforce any benefit conferred by this Agreement, unless this Agreement expressly provides otherwise.
15. This Agreement may be executed in any number of counterparts, each of which when executed will constitute an original of this Agreement, but all counterparts will together constitute the same agreement. No counterpart will be effective until each Party has executed at least one counterpart.
16. 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 and construed in accordance with the law of England and Wales.
17. Each Party irrevocably agrees that 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).