

APPROVAL AND VALIDATION AGREEMENT

between

THE OPEN UNIVERSITY



and

[REDACTED]

APPROVAL AND VALIDATION AGREEMENT

DATED 2021

Between:

1) **THE OPEN UNIVERSITY** a body incorporated by Royal Charter (RC 000391), an exempt charity in England and Wales, a registered charity in Scotland (SC038302); whose principal place of business is at Walton Hall, Milton Keynes, MK7 6AA United Kingdom, (the 'University')

and

2) [*please insert legal entity name and brief description of legal status eg a company incorporated under the Companies Act or a charity etc*] with its registered address at [], (the "Institution")

who may hereafter be together referred to as the 'Parties' or in the singular as the 'Party'.

WHEREAS:

- A. Open University Validation Partnerships is a unit of the University which provides quality assurance to educational establishments, commerce, industry and professional bodies through institutional partnership Approval and Validation (as defined).
- B. The Institution has applied to the University for Approved status to enable it to offer programmes of study leading to Validated Awards (as defined).
- C. The University has agreed to confer Approved Institution status on the Institution subject to conditions and upon the terms set out in this Agreement.

IT IS HEREBY AGREED AS FOLLOWS: -

1. DEFINITIONS AND INTERPRETATION

The following terms shall have the following meanings:

"Agreement"	this Agreement and any schedules and annexes attached to this Agreement and the Handbook.
"Annual Report"	the report which conforms to the University's requirements, as advised to the Approved Institution from time to time, to be submitted by the Approved Institution to the University confirming that the Validated Programmes have been operated in accordance with the principles, regulations and procedures agreed between the Parties.
"Annual Fee"	a flat rate, payable annually, in accordance with clause 17 of this Agreement
"Approval"	the process by which an institution without its own degree awarding powers

is given authority by the University to provide programmes of study leading to Validated Awards and “Approved” shall be construed accordingly.

- “Approval Letter” means the formal letter sent by the University to the Institution confirming the conferment of Approved Institution status, or the outcome of an Institutional Reapproval (formerly known as “Institutional Review”).
- “Approved Institution” means an institution which has, through a process of peer review, been judged to meet the required set of principles covering structures, management arrangements and procedures and therefore to provide a satisfactory environment for the conduct of programmes leading to Validated Awards.
- “Approved Period” the period for which this Agreement shall remain in force beginning on and including the Commencement Date and continuing thereafter until terminated in accordance with the provisions of this Agreement.
- “Board of Examiners” means the board established by the Institution for the purpose of approving assessments and examination results in respect of Validated Programmes.
- “Commencement Date” means the date from which this Agreement comes into force and is effective which shall be the date stated in the first Approval Letter.
- “Confidential Information” means any and all materials and information of or relating to a Party constituting or concerning products, services, contracts, business models, methods or practices, financial projections or results, know how, trade secrets, intellectual property or ideas which, at the time or times concerned, are not generally known to third persons and such other information as may be proprietary or confidential in nature or is identified by such Party as confidential.
- “Data Protection Laws” means as defined in Schedule 1 attached hereto.
- “FOIA” means the Freedom of Information Act 2000 in the United Kingdom.
- “Force Majeure” any circumstances beyond the reasonable control of a Party including, without limitation, Act of God, fire, explosion, flood, malicious damage, lockouts or other industrial action, civil commotion, hostilities, war, or political interference with the operations of a Party.
- “Institutional Reapproval” (formerly known as “Institutional Review”) means the process by which an Institution is critically reviewed for the purposes of confirming that the Institution meets the University’s requirements.
- “Intellectual Property” means, without limitation, patents, registered and unregistered designs, copyrights, trademarks and service marks, trading names whether registered or not, proprietary information, know-how and all other intellectual property protection wherever in the world enforceable.
- “Interim Review” means an activity to review the Institution or its programmes between scheduled visits.
- “Location(s)” means the address(es) where the Institution may teach the Validated Programme(s) as identified in the Approval Letter or as agreed in writing by the University from time to time.

“Marks”	means name and marks of “The Open University”, The Open University’s logo (shield design) and any other name or marks from time to time of The Open University (whether registered or not) that are used by or are the property of the University from time to time.
“Minimum Entry Standards”	means the minimum academic entry standards required of any student to register with the Institution and the University, as set out in the University’s Handbook.
“Per Capita Fee”	means the agreed fee payable by the Institution to the University for each student registered on a Validated Programme in excess of the number of students referred to in clause 17.1.2 based on an annual schedule of fees and is updated each year.
“Personal Data”	means any personal data (as defined in the Data Protection Laws) Processed by either Party in connection with this Agreement.
“Programme”	a programme of teaching and learning delivered to students and contained within the programme documentation encompassing academic study and assessment which leads to an award.
“Programme Document”	a document, the contents of which has been agreed by the University setting setting out full details of structure and syllabus of a Validated Programme and Minimum Entry Standards.
“Programme Review” or “Programme Revalidation”	the process by which a Validated Programme is critically reviewed for the purpose of confirming that such Validated Programme continues to meet the University’s requirements.
“Quality Assurance Agency” or “QAA”	The Quality Assurance Agency for Higher Education established in the United Kingdom.
“Regulations”	Regulations applicable to all students registered for Validated Awards of The Open University and available at http://www.open.ac.uk/about/validate/about-us/regulations-ou-validated-awards .
“University’s Handbook” or “Handbook”	the University’s “Handbook for Validated Awards” (including the “Regulations”) which comprise the University’s regulatory framework for Validated Awards, as may be amended from time to time, and available at http://www.open.ac.uk/about/validate/files/validate/file/ecms/web-content/004-ou-handbook-for-validated-awards.pdf . For clarity, where the context of this Agreement requires a distinction between the Handbook and the Regulations (such as in clauses 2.8 or 3), specific reference to the Handbook in such circumstances shall exclude the Regulations.
“Validation”	the process by which the University assesses that a programme meets the criteria, principles and requirements of a Validated Award (and the word “Validated” shall be construed accordingly).
“Validated Award(s)”	an award of the University conferred to students on successful completion of a Validated Programme.
“Validated Programmes”	academic Programmes of study taught by the Institution which have been successfully Validated by the University.

“VAT” Value Added Tax as levied in the United Kingdom, or any similar tax charged by the revenue authorities in the area in which the Institution is based.

2. INTERPRETATION

- 2.1 The provisions of this clause 2 shall apply to the interpretation of this Agreement.
- 2.2 The recitals, schedules and appendices form part of this Agreement and will have the same force and effect as if expressly set out in the body of this Agreement and any reference to this Agreement will include the recitals, schedules and appendices.
- 2.3 The clause headings are for convenience only and will not affect the interpretation of this Agreement.
- 2.4 Unless the context otherwise requires, any reference to a statute or statutory provision will include the statute or statutory provisions as from time to time amended, modified, extended, re-enacted, consolidated and all statutory instruments, orders, by-laws, directions and notices made pursuant to it in each case whether made before or after the date this Agreement is executed by both Parties.
- 2.5 Unless the context otherwise requires:
- 2.5.1 use of the singular is deemed to include the plural and vice-versa;
 - 2.5.2 use of any gender is deemed to include every gender;
 - 2.5.3 reference to a person includes a natural person, a firm, a corporation, a partnership, a trust, an association, an organisation and any other body or entity whether or not having separate legal personality.
- 2.6 Any undertaking by any of the Parties not to do any act or thing shall be deemed to include an undertaking not to permit or suffer or assist the doing of that act or thing any obligation on a Party not to do or omit to do anything includes an obligation not to allow that thing to be done or omitted by a third party.
- 2.7 In the event of any conflict between the terms of this Agreement and any provisions of the Handbook the provisions of the Handbook shall prevail.
- 2.8 In the event of a conflict between the Regulations and the Handbook, the Regulations shall prevail.

3. HANDBOOK AND REGULATIONS

- 3.1 The University will provide the Institution with access to the University’s Handbook (either in print or online). The Handbook is intended to add detail to this Agreement, forms part of it, and sets out the operational requirements expected of the Institution while an Approved Institution. The Handbook is updated from time to time, and while the University will endeavour to notify the Institution of any changes to the Handbook, it is the Institution’s responsibility to regularly check for updates on the University’s website.

3.2 The University will also provide the Institution with a copy of the Regulations (either in print or online). These Regulations are to apply to all students who register for Validated Awards. It is the responsibility of the Institution to ensure that all students are made aware of and specifically undertake to comply with the Regulations in writing. Failure to ensure that students are made subject to the Regulations will be considered a material breach of this Agreement.

4. **DATE OF COMMENCEMENT AND DURATION**

4.1 This Agreement shall commence on the Commencement Date and subject to the provisions for termination contained herein shall continue in force until the outcome of the next Institutional Reapproval is confirmed which will normally be no later than the fifth anniversary of the Commencement Date.

4.2 The Parties hereto agree that save as otherwise provided in this Agreement the provisions of this Agreement shall continue to subsist for so long as may be necessary for all students as may be registered on Validated Programmes to complete the Validated Programmes.

4.3 The Parties also agree that provisions of this Agreement may continue to subsist in relation to specified Validated Programmes even if it is discontinued for other named Validated Programmes.

4.4 Following an Institutional Reapproval, the University shall have the absolute right to:

4.4.1 make such changes to this Agreement as it sees fit or to require the Institution to enter into a new agreement in a form specified by the University in each case to ensure that the Institution complies with any recommendations of the Institutional Reapproval; or

4.4.2 to terminate this Agreement.

5. **APPROVED STATUS**

5.1 In the event that the University grants Approved status on the Institution and permits the Institution to offer the Validated Programmes for the Approved Period, the Approved Institution must publicise its relationship with the University and its Validated Programmes in accordance with the terms set out in the University's Handbook

5.2 In consideration of the University agreeing to grant Approved status to the Institution, the Institution undertakes:

5.2.1 to ensure that each Validated Programme is designed and operated in accordance with the Programme Documents and within the principles, regulations and provisions of the University's Handbook;

5.2.2 to seek written approval from the University in accordance with agreed procedures prior to commencing a Validated Programme;

- 5.2.3 that it will not teach the Validated Programmes other than at such Locations as agreed in advance by the University. Teaching will be at the address at the head of this Agreement unless specifically altered by agreement by both Parties which agreement is to be recorded in writing and signed by both Parties or if teaching is via a specifically designated distance learning programme;
- 5.2.4 to ensure that the Institution conducts delivery and teaching of the Validated Programme(s) in the English language, unless an alternate medium of language is otherwise agreed in writing by the University;
- 5.2.5 that the Validated Programmes will be operated with sufficient and appropriately qualified staff who teach the Validated Programmes in accordance with the Programme Document and all necessary learning resources and immediately to inform the University of any staffing changes or lack of learning resources where these affect responsibilities for academic quality or leadership of the Validated Programmes or involve persons with whom the University has regular contact;
- 5.2.6 that it will not franchise the Validated Programmes without the prior written consent of the University;
- 5.2.7 that it will not collaborate with any third party in the delivery and assessment of the Validated Programmes without the prior written consent of the University;
- 5.2.8 to seek prior written consent of the University through a process agreed with the University prior to amending a Validated Programme;
- 5.2.9 to comply with the terms of this Agreement and the University's Handbook;
- 5.2.10 to ensure (as set out in clause 3.2) that all students agree, in writing, to comply with the Regulations;
- 5.2.11 to provide to the University, at its request:
- 5.2.11.1 any information or documents required; and/or
 - 5.2.11.2 access to any personnel; and/or
 - 5.2.11.3 premises of the Institution.

6. VALIDATION

- 6.1 In order to apply for Validation of a Programme the Institution shall, at its own expense, submit to the University as directed by the University, all information as set out in the University's Handbook or as otherwise specified by the University. The Institution further undertakes to cooperate with the University to the extent required to enable the University to carry out the Validation process.
- 6.2 The Validation process shall be undertaken by a Validation Panel of which the membership and constitution shall be as set out in the University's Handbook.

- 6.3 The University may at its own discretion either:
- 6.3.1 grant approval for Validation for the respective programme for a specific period of time with or without conditions; or
 - 6.3.2 advise the Institution of the University's decision, with reasons, not to approve the respective Programme for Validation.
- 6.4 Notwithstanding the provisions of clause 6.3 the Institution may appeal against a decision by the University in accordance with the provisions set out in the University's Handbook.
- 6.5 Subject to the Institution receiving written confirmation from the University that a Programme has been Validated, the Institution must advertise and promote the respective Validated Programmes as set out in the Handbook.
- 6.6 Within timeframes specified by the University, following Validation of a Programme, the Institution shall:
- 6.6.1 lodge with the University a Programme Document including the programme regulations as prescribed in the University's Handbook or as otherwise advised in writing by the University from time to time;
 - 6.6.2 only make such changes to the Validated Programme as are in accordance with the terms of the University's Regulations and Handbook or where the University has approved such changes; and
 - 6.6.3 lodge with and as directed by the University any and all approved amendments to the Programme Documents.
- 6.7 The Institution acknowledges and agrees that the Validation process does not include obtaining the requisite professional body accreditations, qualifications or certifications from regulatory authorities whether in the United Kingdom or elsewhere. Where such professional body accreditations, qualifications or certifications are desired, these shall be the sole responsibility of the Institution and shall not be cause for the Institution to delay, postpone or refuse delivering the Validated Programme.
- 6.8 In the event that the Institution decides to discontinue presenting the Validated Programme, the Institution shall notify the University at least six months in advance of the proposed discontinuation and the Institution shall ensure that the students are enabled to transfer to a suitable alternative programme to complete their award at the cost of the Institution.
- 6.9 In the event that the University decides to terminate or withdraw Validation for a Validated Programme or to suspend the registration of students on a Validated Programme, the University shall notify the Institution at least six months in advance of the proposed termination, withdrawal or suspension. It will be the responsibility of the Institution to ensure that arrangements for existing students studying the respective Validated

Programmes are maintained or the students are enabled to transfer to a suitable alternative programme to complete their award at the cost of the Institution.

6.10 In cases of concern regarding academic and admission standards, the University reserves the right to immediately terminate this Agreement and/or withdraw Approval or Validation for a Validated Programme, and/or to suspend the registration of students on a Validated Programme. The Institution shall ensure that students are enabled to transfer to a suitable alternative programme to complete their award at the cost of the Institution.

6.11 Unless expressly agreed in writing by the University to undertake the teach out process for existing students, awards referenced in clauses 6.8 and 6.9 above shall be awards granted by the Institution or alternate higher education provided and not the University.

6.12 **STUDENT PROTECTION PLAN**

6.12.1 As a registered provider of higher education the University has a **Student Protection Plan (SPP)** as approved by the Office for Students (OfS) which sets out how the University ensures the quality of study is maintained and students are able to continue the course of study even if the University, as provider or its partner ceases, campus is closed or programme is discontinued.

6.12.2 The Institution shall, upon grant of the Approval, or earlier if requested by the University, lodge with the University a copy of the Institution's SPP as approved by the OfS or if not an OfS approved institution, the Institution's SPP which shall:

- (a) be as prescribed in the University's Handbook or as otherwise advised in writing by the University from time to time;
- (b) provide transparent information when a Validated Award may/may not be issued to a student pursuing a Validated Programme; and
- (c) not be changed without the prior consent or approval of the University

6.12.3 The Institution shall ensure that all students are made aware of and given a copy of the Institution's SPP.

6.13 The Institution shall indemnify and keep the University fully indemnified against any claims, demands, proceedings that may be raised by students who are unable to obtain a Validated Award in the circumstances contemplated in clauses 6.8 - 6.10

7. **INSTITUTIONAL REAPPROVAL**

7.1 At least once in every five years or as otherwise determined by the University, the University shall conduct an Institutional Reapproval of the Institution to assess that the conduct of and environment of the Institution meets the University's criteria as set out in the University's Handbook and is in accordance with the terms of this Agreement or otherwise notified by the University. The Institution may be subject to an Interim Review or Reviews during the period of this Agreement if the University feels that circumstances

require such a review at the expense of the Institution, such expense to be reasonable and proportionate to the reason and purpose for such Review.

- 7.2 The Parties shall agree mutually convenient dates for the Institutional Reapproval.
- 7.3 For the purposes of conducting an Institutional Reapproval or Interim Review, the Institution shall permit the University and its authorised representatives access to the premises and facilities of the Institution.
- 7.4 Following an Institutional Reapproval the University shall issue a report to the Institution inviting comment upon the factual accuracy of the report.
- 7.5 Subject to receiving confirmation or otherwise from the Institution about the factual accuracy of the report within thirty days of receipt of the report, the University will provide the Institution with a confirmed report of the findings of the Institutional Reapproval.
- 7.6 The Institution shall comply with any requirements of the University that are highlighted in the report or otherwise notified in writing to the Institution as a result of the Institutional Reapproval.
- 7.7 In the event that an Institutional Reapproval reveals that the Institution does not provide a satisfactory environment for the conduct of programmes leading to Validated Awards of the University, the rights of the University stipulated in Clause 4.4 shall apply.
- 7.8 In addition to the Institutional Reapprovals, the Institution shall also be expected to participate in and co-operate with the University in relation to any assessment or inspection undertaken by the Quality Assurance Agency or other external body in respect of the University or the Institution. The Institution will not disclose information which is Confidential Information or trade secrets which are not related to this Agreement
- 7.9 In addition to its other rights under this Agreement, including its rights to terminate under clause 18, the University reserves the right to withdraw or suspend Approval of the Institution at any time.

8. PROGRAMME REVALIDATION

- 8.1 All costs associated with Programme Revalidation shall be conducted at the expense of the Institution and in accordance with timescales agreed with the University but in any event at intervals of not more than five years. These costs shall include and shall not be limited to hotel, travel, subsistence expenses of the Programme Review panel in conducting the revalidation exercise.
- 8.2 Programme Revalidation shall be undertaken by a Programme Review panel of which the membership and constitution shall be as further specified in the Handbook.
- 8.3 Any Validated Programme may be subject to an Interim Review during the period of this Agreement if the University feels that circumstances require such a review at the expense

of the Institution, such expense to be reasonable and proportionate to the reason and purpose for such Interim Review.

- 8.4 In the event that the Programme Review panel recommends that Validation for a Validated Programme shall be withdrawn, representatives of the University will meet with the Institution to discuss the recommendation and to enable the Institution to respond and to consider the position of continuing students and implement the provisions of clause 8.6 below. Otherwise, the Institution shall be treated as having had the Validated Programmes revalidated on the terms of this Agreement until the next Programme Revalidation.
- 8.5 Summaries of the outcomes of Programme Validations may be published by the University on its publicly accessible website.
- 8.6 In addition to its other rights under this Agreement and notwithstanding the provisions of clause 8.4, the University reserves the right to withdraw or suspend Validation for a Programme and/or the registration of students for a Validated Programme at any time and any such notification shall be in writing to take effect at the University's discretion either immediately or from the academic year immediately following the date of notification.
- 8.7 In the event of withdrawal of Validation, appropriate arrangements will be made (at the cost of the Institution) by the Institution for students undertaking the Validated Programme to complete their studies. Unless expressly agreed by the University to undertake the teach out process for existing students, any award granted shall be by the Institution or alternate higher education provider and not the University

9. **RECRUITMENT AND REGISTRATION OF STUDENTS**

- 9.1 Unless otherwise agreed, the Institution may only recruit prospective students for a Programme of study once it has become (and remains) a Validated Programme.
- 9.2 Recruitment and registration of students shall be carried out by the Institution. Students will also be required to be registered with the University in accordance with the Handbook. It is a requirement of the Handbook that certain Personal Data relating to students is sent to the University, and the Institution will ensure that any supply of such data to the University is in accordance with any applicable Data Protection Legislation and in accordance with Clause 23 and with Schedule 1 of this Agreement.
- 9.3 The Institution shall only recruit and register students if they have met the Minimum Entry Standards or as otherwise agreed by the University and the Programme for which the students are to be registered is a Validated Programme for which Validation has not been withdrawn or suspended by the University. The Institution shall ensure that each student is provided at registration with details of the Validated Programme together with the current edition of the University's Regulations relating to Programmes Validated by the University and the Institution's SPP together with the rules and regulations and other information relating to the Validated Programme as specified by the University from time to time. The students shall be subject to the Institution's normal rules and regulations as supplemented

by the Handbook and/or the Agreement.

- 9.4 If the Institution fails to make any payments by the due dates, the University shall have the absolute discretion to suspend registration of students with the University until outstanding payment(s) is received in full or the University elects to terminate this Agreement.

10. **STUDENT STATUS**

- 10.1 All students shall be registered by the Institution with the University for award purposes only in accordance with the University's procedures and requirements as set out in the Handbook or otherwise sent by the University to the Institution and with the Institution for all other purposes.
- 10.2 Registration with the University will not itself allow students access to the University's resources.
- 10.3 The Institution shall be responsible for all aspects of student welfare and the student experience whilst undertaking a Validated Programme.
- 10.4 The University will not be liable if the Institution fails to meet its requirements regarding standards and this leads to the withdrawal of Approval or Validation by the University. The Institution shall indemnify and keep the University indemnified against all claims, costs and expenses that may be instituted or made by students against the University as a result of such withdrawal.

11. **ASSESSMENT AND EXAMINATION**

- 11.1 The method of assessment and/or examination for each Validated Programme shall be as described in the Regulations and Programme Document.
- 11.2 The Institution shall conduct assessments and examinations in accordance with the procedures agreed by the University from time to time.
- 11.3 The external examiners for each Validated Programme will be appointed in accordance with the procedures laid down in the Handbook
- 11.4 Students who complete the assessment to the satisfaction of the Institution, the University and the external examiners shall be granted the relevant Validated Award (referred to in the Programme Document) in accordance with the procedures set out in the University's Handbook.
- 11.5 Unless otherwise provided, awards shall be conferred by the University either through a ceremony organised by the Approved Institution or in absentia. The Institution will be responsible for sending award certificates for awards made in absentia by registered post.
- 11.6 The procedures for the production and distribution of award certificates and transcripts shall be in accordance with the University's Handbook.

12. **ACADEMIC APPEALS, COMPLAINTS AND DISCIPLINE**

- 12.1 All students shall have the right to appeal against the decision of the examiners in accordance with the procedures as set out in the University's Handbook.
- 12.2 The Institution shall ensure that when a student registers with it for a Validated Programme, details of the procedures by which the students may pursue complaints and appeals through the Institution and the University are provided to them.
- 12.3 The Institution shall be responsible for handling complaints and appeals. Complaints in relation to all matters (except those of the University under clause 12.1 in respect of awards) shall be the responsibility of the Institution and dealt with by the Institution in accordance with its own policies and regulations.
- 12.4 The Institution shall have a written student disciplinary code that complies with accepted principles of natural justice and reflects the requirements of the University's Regulations. The Institution shall supply a copy of the said code to the University. Discipline of students shall be the responsibility of the Institution.

13. **ACADEMIC LIAISON**

- 13.1 The Institution and the University shall nominate from time to time representatives who shall on behalf of each institution, liaise on academic matters and review the relationship between the Parties.
- 13.2 The University reserves the right to undertake such activities as it deems appropriate to assure itself that the quality assurance and academic standards of its awards are secure. Examples of these activities are described in the University's Handbook.

14. **MAINTENANCE OF RECORDS AND TRANSCRIPTS**

- 14.1 The Institution shall undertake to maintain the following records in respect of all Validated Programmes for the periods indicated:
 - 14.1.1 a permanent record of student registration, progression, assessment and awards.
 - 14.1.2 copies of transcripts issued to all students for a minimum period of 12 months.
 - 14.1.3 annual Validated Programme monitoring reports and any reports on or about the Institution by the Institution or any third party for a minimum period of 7 years.
 - 14.1.4 minutes and reports on the evaluation of Validated Programme monitoring within its academic committees for a minimum period of 7 years.
 - 14.1.5 external examiners' reports for a minimum period of 7 years.
 - 14.1.6 any written evidence of student feedback relevant to Validated Programme monitoring for a minimum period of 7 years.

- 14.1.7 copies of Programme Documents and Handbooks for a period not less than the maximum period of student registration on each Validated Programme.
 - 14.1.8 copies of all self-evaluation documents and action plans arising from external quality assurance, inspection, accreditation or other approved agencies' institutional or programme or subject reviews related to Validated Programmes or the Institution for a minimum period of 7 years.
 - 14.1.9 copies of all publicity material relating to Validated Programmes for a period not less than the maximum period of student registration on each Validated Programme.
 - 14.1.10 a record of any information necessary to meet requirements of the Quality Assurance Agency for a minimum of 7 years.
- 14.2 At the end of each academic year, each registered student studying a Validated Programme, who has successfully completed any elements of that Validated Programme, shall be issued with a transcript by the Institution which shall specify:
- 14.2.1 the full name of the registered student;
 - 14.2.2 the dates of the student's registration with the Institution;
 - 14.2.3 the elements of the Validated Programme successfully completed by the student with details of the length, level, UK credit points, where applicable, grade achieved, where appropriate, date of completion and language of instruction, if not English;
 - 14.2.4 details of any period of supervised work experience or placement with dates and, where appropriate, grades;
 - 14.2.5 an authorised signature on behalf of the Institution's Academic Board (or equivalent body).
- 14.3 Such records and books shall be kept separate from any records and books not relating solely to the Validated Programme and be open during normal business hours to inspection and audit by the University (or their authorised representatives), who shall be entitled to take copies of or extracts from them.

15. **REPORTING**

- 15.1 The Institution shall undertake (where necessary) to procure the student's consent to send to the University any Personal Data of the students contained in the data and documents listed in this clause, and shall send as soon as reasonably practicable:
 - 15.1.1 upon expiration of an academic year, the Annual Report conforming to the University's published requirements;

- 15.1.2 after commencement of an academic year annual lists of the names of newly enrolled students on each Validated Programme for registration with the University;
 - 15.1.3 after commencement of an academic year annual returns showing the numbers of students enrolled on each year of each Validated Programme;
 - 15.1.4 upon receipt conferment lists signed by the external examiners;
 - 15.1.5 after commencement of an academic year an annual schedule of forthcoming Validation and Programme Review events and of any visits from external quality assurance or approval agencies such as the Quality Assurance Agency and professional bodies relating to Validated Programmes;
 - 15.1.6 prior to publication, a copy of its annual prospectus and publicity material related to Validated programmes, as set out in the handbook;
 - 15.1.7 upon receipt copies of any reports (including drafts) from all external quality assurance or approval agencies relating to accreditation or Validation of the Institution or Validated Programmes;
 - 15.1.8 upon receipt copies of any memoranda of co-operation or association entered into with any third party in the provision of Validated Programmes;
 - 15.1.9 upon receipt copies of any information necessary to meet teaching quality information requirements;
 - 15.1.10 the information in respect of each student that is set out in the Glossary to the Handbook; and
 - 15.1.11 upon demand any other information or documents required by the University.
- 15.2 The Institution shall undertake (where necessary) to procure the student's consent to the University Processing the Personal Data of the students referred to in this clause 15 for the purpose of performing this Agreement.

16. **SAFEGUARDING**

- 16.1 The institution shall inform the University immediately if anyone associated with the institution in any capacity (e.g., staff, student, governor, trustee, volunteer) is subject to any investigation or allegation against them (substantiated or otherwise) of abuse or neglect against a child, adult or vulnerable adult.
- 16.2 The institution shall report to the University on the number of safeguarding incidents on an annual basis and where necessary, provide details of specific incidents within the expectations of confidentiality.

17. FINANCIAL PROVISIONS

17.1 In consideration of the University granting Approved status to the Institution, the Approved Institution will pay the following fees and charges to the University:

17.1.1 The Annual Fee, which at the commencement of this Agreement is £XXX

17.1.2 the Per Capita Fee, (as updated annually) that is applicable at the time of registration for all of the Institution's students registering on Validated Programmes in excess of XXX students per annum.

17.2 All of the Fees are subject to the University's annual adjustment and review.

17.3 All Fees shall be non-refundable and will be paid to the University free and clear of and without deduction for any and all present or future VAT, taxes, duties, levies, imposts, deductions, charges, or withholdings, and all liabilities with respect thereto (hereinafter referred to as "Taxes"). The Institution shall be solely responsible for the payment of such Taxes to the appropriate government entity that is permitted by law to assess, levy and collect taxes (hereinafter referred to as "Tax Authorities"). If the Institution shall be required by law to deduct any Taxes from or in respect of any sum payable under this Agreement to the University,

17.3.1 the sum payable shall be increased as necessary so that after making all required deductions the University receives an amount equal to the sum it would have received had no such deductions been made;

17.3.2 the Institution shall pay the full amount deducted to the relevant Tax Authorities or other authority in accordance with applicable law;

17.3.3 the Institution shall furnish to the University the original or a certified copy of a receipt evidencing payment thereof; and

17.3.4 the Institution shall indemnify and keep indemnified the University from and against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the University at any time in respect of the Institution's failure to account for or to pay any Taxes relating to payments made to the University under this Agreement.

17.4 Payment of all Fees due shall unless otherwise agreed by the University, be paid to the University as follows:

17.4.1 in pounds sterling;

17.4.2 shall become due and payable within 30 days of an invoice issued by the University to the Institution;

17.4.3 net of all bank charges (for which the Institution shall be responsible) without any

deductions whatsoever, except for those which the Institution is legally bound to withhold and in which case the University and the Institution shall liaise accordingly and provide the necessary documentation to enable gross payments to be made;

17.4.4 by electronic transfer unless otherwise specified by the University.

17.5 If the Institution fails to make any payments by the due dates then without prejudice to any other right or remedy of the University, the University shall be entitled to charge the Institution interest (both before and after any judgement) on the amount unpaid at the rate of 3% per annum above the Bank of England's base rate from time to time until such time as payment in full is made (a part of a month being treated as a full month for the purposes of calculating interest). In the event of non-payment, the University also reserves the right to suspend registrations and withhold certificates.

17.6 The University reserves the right, at its sole discretion, to review the Annual Fee upwards.

18. **TERMINATION**

18.1 Each Party shall have the right at any time by giving written notice to the other to terminate this Agreement immediately, if:

18.1.1 the other Party commits a material breach of the terms of the Agreement which is not capable of remedy;

18.1.2 the other Party commits a material breach of the provisions of this Agreement which if capable of remedy, is not remedied to the reasonable satisfaction of the other Party within a reasonable period as specified in a written notice to the other Party notifying the breach and the request for the remedy thereof;

18.1.3 the other Party is in persistent breach of the terms of this Agreement;

18.1.4 the other Party makes a voluntary arrangement with its creditors or becomes subject to any administration order or if an administrator of that Party is appointed or that Party is unable to pay its debts, or is capable of being deemed unable to pay its debts, within the meaning of section 123 of the Insolvency Act 1986;

18.1.5 an encumbrancer takes possession or a receiver is appointed over any of the property, assets or revenues of the other Party;

18.1.6 anything analogous to the provisions of clause 18.1.4, 18.1.5 or 18.1.9 under the laws of any jurisdiction occurs in relation to a Party;

18.1.7 an Institutional Reapproval or Interim Review or a review by an external agency or body such as QAA concludes that the Institution does not provide a satisfactory environment for the conduct of Validated Programmes;

18.1.8 the innocent Party has reasonable grounds to believe that the other Party is engaged in unlawful activities or activities which could bring the innocent Party into

disrepute or otherwise damage the innocent Party's goodwill;

18.1.9 another Party other than for the purposes of a bona fide reconstruction or amalgamation passes a resolution for its winding up, or a court of competent jurisdiction makes an order for it to be wound up or dissolved or that Party is otherwise dissolved.

18.2 Notwithstanding the provisions of clause 18.1 either Party may terminate this Agreement at any time by serving at least six months written notice on the other Party.

Consequences of Termination

18.3 In the event of termination of this Agreement for any reason, the following shall apply:

18.3.1 no new students shall be admitted to any Validated Programme unless expressly permitted by the University;

18.3.2 any outstanding invoices shall become immediately payable and in respect of fees or any other payment due but for which no invoice has been submitted, the University shall submit an invoice which shall be payable in accordance with clause 17.3 and 17.4;

18.3.3 the Institution shall forthwith cease to promote, reproduce, market or advertise any Validated Programme;

18.3.4 all confidential materials of any nature containing Programme information or Confidential Information in relation to the University, and any copies thereof shall be returned to the University, or deleted, such deletion to be confirmed in writing.

18.4 In the event of termination by either Party, it will be the responsibility of the Institution to ensure that arrangements for existing students who are studying on the Validated Programmes are maintained via a teach out process (with the assistance of the University as it sees fit) or the students are enabled to transfer to a suitable alternative programme to complete their award at the cost of the Institution. Subject to clauses 6.8-6.11, awards granted thereby may be an award of the Institution or alternate higher education provider or the University (as the case may be).

19. INTELLECTUAL PROPERTY AND PUBLICITY

19.1 Subject to any third party rights therein, all the Intellectual Property in any item or matter supplied by one party to the other hereunder shall remain the property of the disclosing party. The University shall be entitled to licence any materials to the Institution on the terms of a separate agreement as specified by the University.

19.2 The Institution shall not use or reproduce the University's Marks without the written permission of the University and in accordance with the provisions of any such written permission.

- 19.3 The Institution shall be responsible for the accuracy of all public information, publicity and promotional activity relating to the Validated Programmes howsoever disseminated. The University has the power of veto over any such publicity or information and may require the withdrawal of the material concerned.

20. **OBLIGATION TO COMPLY WITH THE LAW**

- 20.1 The Institution shall obtain, at its own expense, all necessary permissions, consents and licences, to enable the Institution to lawfully operate Validated Programmes.
- 20.2 The Institution undertakes to comply at all times with applicable laws.
- 20.3 The Institution shall indemnify and keep indemnified the University for all costs, claims, damages, expenses, fees or losses suffered or incurred by the University arising out of or in connection with any breach of the obligations set out in clause 20.1 and/or clause 20.2

21. **WARRANTIES**

- 21.1 The Institution represents and warrants to the University that:
- 21.1.1 it has full power and authority to enter into this Agreement and to carry out the actions contemplated under this Agreement;
- 21.1.2 it does not require any consent approval, authorisation or clearance from any government, governmental or regulatory bodies, agencies or authorities in the United Kingdom or otherwise and neither, in its opinion, is any such consent, approval, authorisation or clearance desirable for such purposes.
- 21.1.3 it is not at the date of this Agreement a party to any agreement, arrangement or understanding with any third party that in any manner prevents or hinders it from the performance of any material obligation under the terms of this Agreement.
- 21.1.4 it has disclosed all information to the University which is relevant to the University entering into this Agreement with the Institution.

22. **INDEMNITIES, LIABILITY AND INSURANCE**

- 22.1 The indemnities in this clause are continuing obligations, separate and independent of the other Parties' obligations and survive the termination of this Agreement.

Notwithstanding anything else contained in this Agreement, but subject to the limitation imposed by clause 22.3 (as the case may be), each Party (the "Indemnifying Party") shall indemnify the others (the "Indemnified Party") against:

- 22.1.1 any liability, loss or damage arising under common law or statute from any actions, claims or demands (including the cost of defending or settling any such action, claim or demand) which may be claimed against such Indemnified Party arising out of any act or omission of the Indemnifying Party, its agents, employees or sub-contractors (or any other person for whose acts or omissions such Indemnifying

Party has become liable) and where such acts or omissions are a breach of the terms of this Agreement ;

- 22.1.2 any liability, costs, fines, penalties, expenses, damages and losses and all other reasonable professional costs and expenses suffered or incurred by the Indemnified Party arising out of or in connection with breach of the Data Protection Laws by the Indemnifying Party, its employees or agents, provided that the Indemnified Party gives to the Indemnifying Party prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and authority to manage, defend and/or settle it;
 - 22.1.3 all costs and liability arising out of any injury or death which may be suffered by persons carrying out their duties or exercising their rights pursuant to this Agreement except to the extent that the same may be attributable to the negligence of the Indemnified Party or its agents, employees or contractors.
- 22.2 The Institution shall indemnify the University:
- 22.2.1 for any claims or demands made against the University arising from the performance of their obligations under this Agreement from any relevant authority outside the United Kingdom;
 - 22.2.2 for any injury to or death of any student whilst on the premises of the Institution except to the extent that same may be attributable to the negligence of the University or their agents, employees or subcontractors.
- 22.3 Nothing in this Agreement excludes or limits a Party's liability for death or personal injury caused by that Party's negligence or for fraud, or fraudulent misrepresentation.
- 22.4 Either Party's total liability in contract, tort (including negligence or breach of statutory duty) misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall in the case of the Institution be limited to the sum of £250,000 for any single event and a maximum sum of £1,000,000 for all incidents or matters within any twelve month period or such higher amount as may be recoverable under its insurances; and in the case of the University be limited to the income received by the University under this Agreement for the two years preceding the date of any claim by the Institution or £250,000 (whichever shall be the lower).
- 22.5 Neither Party shall be liable for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with this Agreement.
- 22.6 For the avoidance of doubt, this clause 22 and clause 20.3 shall survive the termination of this Agreement for whatever reason.

22.7 For the avoidance of doubt, the limitation of liability contained in clause 22.3 and clause 22.4 shall not apply to the indemnity set out at clause 120.3 and 22.1.2.

23. **PERSONAL DATA, CONFIDENTIALITY AND FOIA**

23.1 Each Party agrees to comply with its data protection obligations as set out in Schedule 1.

23.2 The Parties shall comply with the Data Protection Laws. Unless otherwise required by the operation of law and in accordance with the Data Protection Laws, the Parties will keep confidential at all times any and all information and Personal Data received from the others relating to teaching strategy, students and tutors, and their performance and progress. No Personal Data received from the other Parties will be divulged to any third party without the prior written approval of the individual to whom such Personal Data relates.

23.3 The Institution acknowledges that the University is subject to the requirements of the FOIA and the Institution agrees that it shall co-operate and provide (at its own expense) all necessary assistance as may reasonably be requested by the University to enable the University to comply with its obligations under the FOIA.

23.4 Each of the Parties agree to keep strictly confidential, the terms of this Agreement and all Confidential Information relating to the other Party that it has obtained during the course of negotiating this Agreement or that it may obtain during the term of this Agreement.

23.5 Each of the Parties hereby agrees:

23.5.1 not to use any Confidential Information save as agreed in writing with the disclosing Party;

23.5.2 to procure that they only disclose the Confidential Information to persons or entities (including employees) for the purpose of the performance of the terms of this Agreement and keep it strictly confidential; and that any such persons are, in respect of such Confidential Information, bound by confidentiality obligations equivalent to the terms of this clause 23; and

23.5.3 not to copy or reproduce any Confidential Information of the disclosing Party without the prior written consent of such Party.

23.6 The provisions of clause 23.4 shall cease to apply to:

22.6.1 information that has come into the public domain other than by breach of this clause or any other duty of confidence; and

22.6.2 information that is obtained from a third party without breach of this clause or any

other duty of confidence.

23.7 Each Party may disclose such Confidential Information if and to the extent that any part of the Confidential Information is required to be disclosed by a regulatory or government body or court of competent jurisdiction with power to compel the disclosure provided the disclosing Party shall, if and to the extent permitted by applicable law, promptly notify the Party who owns the Confidential Information of such requirement, and shall use all reasonable endeavours to keep such Confidential Information confidential notwithstanding any such requirement.

23.8 The provisions of this clause 23 shall continue to apply notwithstanding termination of this Agreement.

24. NOTICES AND CORRESPONDENCE

24.1 All notices and correspondence concerning matters and issues related to this Agreement shall be sent by first class mail, or air mail, or email to the address of the relevant Party set out below, or such other address as that Party may from time to time notify to the other Party in accordance with this clause 24. The relevant contact information for the Parties is as follows:

The University:

All legal notices- For the attention of
Commercial Legal Services Manager
Finance Division
At the address set out at the top of this Agreement
Email: finance-comm-legal@open.ac.uk

All operational and administrative notices to- For the attention of
The Director:-
Open University Validation Partnerships,
Wilson B Block, Walton Hall
Milton Keynes, MK7 6AA;
United Kingdom.

The Institution

All notices and correspondence concerning matters and issues related to this Agreement shall be sent to the Institution at the following address and marked for the attention of
[Head of Institution – e.g. The Principal, The Director, etc]:-

[Address].

24.2 Notices sent as above shall be deemed to have been received 3 working days after the day of posting (in the case of inland first class mail), or 7 working days after the date of posting (in the case of air mail), or next working day after sending (in the case of e-mail).

In proving the giving of a notice it shall be sufficient to prove that the notice was left, or that the envelope containing the notice was properly addressed and posted, or that the applicable means of telecommunication was addressed and despatched and despatch of the transmission was confirmed and/or acknowledged as the case may be.

- 24.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution

25. **ASSIGNMENT**

- 25.1 The Institution may not charge or sub-contract or assign its rights and obligations under this Agreement nor appoint any agent or otherwise delegate any person to carry out its obligations without the prior written consent of the University.

26. **FORCE MAJEURE**

- 26.1 If any Party is affected by Force Majeure it shall immediately notify the other Party of the nature and extent of the Force Majeure event.
- 26.2 No Party shall be deemed to be in breach of this Agreement or otherwise be liable to the other Party, as a result of any delay in performance or non-performance of any of its obligations in this Agreement provided that such delay or non-performance is due to any Force Majeure of which it has notified the other Party.
- 26.3 If the Force Majeure continues, the Parties shall discuss ways to alleviate its effects or agree upon alternative arrangements as may be fair and reasonable which shall include the option of either Party (acting reasonably) to terminate this Agreement.
- 26.4 In the event that this Agreement is to be terminated by reason of such Force Majeure, the Parties shall take such steps as required to bring the Agreement to an end in a timely, cost effective and orderly manner. The University reserves the right to submit an invoice to the Institution for payment to account for all charges properly incurred or committed to in performing this Agreement and which, subject to the duty to minimise such losses, cannot be recovered.

27. **RIGHTS OF THIRD PARTIES**

- 27.1 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties Act) 1999 to enforce any term of this Agreement.

28. **WAIVER**

- 28.1 The failure of a Party at any time to require performance of any provision of this Agreement shall in no manner affect its right to enforce such provisions at a later time. No waiver by any Party of any condition or breach shall constitute a continuing waiver thereof.

29. **LEGAL RELATIONSHIP**

29.1 Nothing in or arising from this Agreement shall:

29.1.1 constitute the Parties as partners or members of a partnership, as prescribed in the Partnership Act 1890, or otherwise and neither do the Parties share or intend to share profits and losses;

29.1.2 constitute the Parties' relationship as employer and employee;

29.1.3 permit a Party to enter into an agreement or make any representation or warranty on behalf of or pledge the credit of or otherwise bind or oblige the other Party.

30. **SEVERABILITY**

30.1 Each clause, term and provision of this Agreement shall be considered severable and if for any reason any clause, term or provision herein is determined to be invalid or unenforceable for any reason such determination shall not prejudice or impair the operation of or affect the remainder. The Parties will endeavour to replace that part determined with a valid clause, term or provision reflecting as far as possible the original intention of the Parties.

31. **VARIATIONS AND AMENDMENTS**

31.1 This Agreement shall not be varied save by an instrument in writing signed by authorised representatives of all the Parties.

32. **ENTIRE AGREEMENT**

32.1 This Agreement constitutes the entire agreement between the Parties and supersedes all previous agreements.

33. **LAW AND JURISDICTION**

33.1 This Agreement shall be governed in accordance with the laws of England and all disputes arising from it or in relation to it shall be subject to the exclusive jurisdiction of the English courts.

33.2 Notwithstanding and without prejudice to the provisions of clause 32.1 of this Agreement in the event of a dispute between the Parties in connection with this Agreement the Parties shall negotiate in good faith in an endeavour to resolve the dispute amicably.

34. **LANGUAGE**

34.1 English shall be the language of all documents, notices, correspondence and meetings in any way relative to this agreement. The Institution shall ensure that any translations required are made faithfully and accurately by a competent translator at its own expense.

35. ANTI-BRIBERY AND ANTI-FRAUD

35.1 The Institution shall, and shall ensure that their sub-contractors, officers, employees, agents and representatives shall:

35.1.1 comply with all applicable laws, statutes, regulations relating to anti-bribery, anti-fraud and anti-corruption including but not limited to the Bribery Act 2010 and not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 (irrespective of the jurisdiction in which such activity, practice or conduct is carried out);

35.1.2 comply with the University's Anti-Bribery Policy (available at <https://help.open.ac.uk/documents/policies/anti-fraud/files/11/anti-fraud-policy.pdf>); and

35.1.3 comply with the University's Anti-Fraud Policy (available at <http://www.open.ac.uk/students/charter/sites/www.open.ac.uk.students.charter/files/ecms/web-content/anti-fraud-policy.pdf> or on request)

35.2 If any breach of this clause is suspected or known, the Institution must notify the University immediately.

35.3 A breach of this clause by the Institution or by anyone employed by or acting on behalf of the Institution is a material breach and shall entitle the University to terminate this Agreement forthwith.

36. COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS AND POLICIES

36.1 In performing its obligations under the Agreement, the Institution shall:

36.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and

36.1.2 have and maintain throughout the term of this agreement its own policies and procedures to ensure its compliance; and

36.1.3 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK.

THE REMAINING PART OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK

SIGNED for and on behalf of:

the University by:

Signature:

Name:

Position:

Date:

SIGNED for and on behalf of:

the Institution by:

Signature:

Name:

Position:

Date:

DRAFT

SCHEDULE 1

DATA PROTECTION

1. DEFINITIONS

In this Schedule the following definitions shall apply:

"Controller", "Processor" "Data Subject" and "Data Protection Officer"	shall have the meaning given to those terms in the applicable Data Protection Laws;
"Data Protection Laws"	means (a) any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to the Processing of Personal Data to which a Party is subject, including the Data Protection Act 1998 (" DPA ") and EC Directive 95/46/EC (the " DP Directive ") (up to and including 24 May 2018) and on and from 25 May 2018, the GDPR and all legislation enacted in the UK in respect of the protection of personal data; and (b) any code of practice or guidance published by the ICO (or equivalent regulatory body) from time to time;
"Data Processing Particulars"	means, in relation to any Processing under this Agreement: (a) the subject matter and duration of the Processing; (b) the nature and purpose of the Processing; (c) the type of Personal Data being Processed; and (d) the categories of Data Subjects; as set out in Appendix A.
"Data Subject Request"	means an actual or purported request or notice or complaint from or on behalf of a Data Subject exercising his rights under the Data Protection Laws in relation to Personal Data including without limitation: the right of access by the Data Subject, the right to rectification, the right to erasure, the right to restriction of processing, the right to data portability and the right to object;
"GDPR"	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016;
"ICO"	means the UK Information Commissioner's Office, or any successor or replacement body from time to time;
"ICO Correspondence"	means any correspondence or communication (whether written or verbal) from the ICO in relation to the Processing of Personal Data;
"Losses"	means all losses, fines, penalties, liabilities, damages, costs, charges, claims, amounts paid in settlement and expenses (including legal fees (on a solicitor/client basis), disbursements, costs of investigation (including forensic investigation), litigation, settlement (including ex gratia payments), judgment, interest and penalties),

other professional charges and expenses, disbursements, cost of breach notification including notifications to the data subject, cost of complaints handling (including providing data subjects with credit reference checks, setting up contact centres (e.g. call centres) and making ex gratia payments), all whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;

"Permitted Purpose"	means the purpose of the Processing as set out in more detail in the Appendix A (<i>Data Processing Particulars</i>)
Permitted Recipients"	means the third parties to whom each Party is permitted to disclose the Personal Data, as set out in more detail in Appendix A (<i>Data Processing Particulars</i>);
"Personal Data"	means any personal data (as defined in the Data Protection Laws) Processed by either Party in connection with this Agreement, and for the purposes of this Agreement includes Sensitive Personal Data (as such Personal Data is more particularly described in Appendix A (<i>Data Processing Particulars</i>));
"Personal Data Breach"	has the meaning set out in the Data Protection Laws and for the avoidance of doubt, includes a breach of Paragraph 1.2.2(e);
"Processing"	has the meaning set out in the Data Protection Laws (and "Process" and "Processed" shall be construed accordingly);
"Restricted Country"	means a country, territory or jurisdiction outside of the European Economic Area which the EU Commission has not deemed to provide adequate protection in accordance with Article 25(6) of the DP Directive and/ or Article 45(1) of the GDPR (as applicable);
"Security Requirements"	means the requirements regarding the security of Personal Data, as set out in the Data Protection Laws (including, in particular, the seventh data protection principle of the DPA and/ or the measures set out in Article 32(1) of the GDPR (taking due account of the matters described in Article 32(2) of the GDPR)) as applicable;
"Services"	means Programme Review, Validation and Validating an Award;
"Special Category Data"	means Personal Data that reveals such special categories of data as are listed in Article 9(1) of the GDPR; and
"Third Party Request"	means a written request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulation.

1. DATA PROTECTION OBLIGATIONS

1.1 Nature of the Processing

1.1.1 The Parties acknowledge that the factual arrangements between them dictate the role of each Party in respect of the Data Protection Laws. Notwithstanding the foregoing, each Party agrees that the nature of the Processing under this Agreement will be as follows:

- (a) the Parties shall each Process the Personal Data;
- (b) each Party shall act as a Controller in respect of the Processing of the Personal Data on its own behalf and in particular each shall be a Controller of the Personal

Data acting individually and in common, as follows:

- (i) the University shall be a Controller where it is Processing Personal Data in relation to accessing details of students applying to register or who have been registered on the Validated Programmes, and recording student details and progression information; and
- (ii) the Institution shall be a Controller where it is Processing Personal Data in relation accessing details of students applying to register or who have been registered on the Validated Programmes; procuring the student's consent and sending the student's Personal Data to the University.
- (c) Notwithstanding Paragraph 1.1.1(b), if either Party is deemed to be a joint Controller with the other in relation to the Personal Data, the Parties agree that they shall be jointly responsible for the compliance obligations imposed on a Controller by the Data Protection Laws, and the Parties shall cooperate to do all necessary things to enable performance of such compliance obligations, except that each Party shall be responsible, without limitation, for compliance with its data security obligations set out in Paragraph 1.2.2 (e), where Personal Data has been transmitted by it, or while Personal Data is in its possession or control.

1.1.2 Each of the Parties acknowledges and agrees that Appendix A (*Data Processing Particulars*) to this Agreement is an accurate description of the Data Processing Particulars.

1.2 Data Controller Obligations

1.2.1 Each Party shall in relation to the Processing of the Personal Data comply with its respective obligations under the Data Protection Laws.

1.2.2 Without limiting the generality of the obligation set out in Paragraph 1.2.1, in particular, each Party shall:

- (a) where required to do so make due notification to the ICO;
- (b) ensure it is not subject to any prohibition or restriction which would:
 - (i) prevent or restrict it from disclosing or transferring the Personal Data to the other Party as required under this Agreement;
 - (ii) prevent or restrict it from granting the other Party access to the Personal Data as required under this Agreement; or
 - (iii) prevent or restrict either Party from Processing the Personal Data, as envisaged under this Agreement;
- (c) ensure that all fair processing notices have been given (and/or, as applicable, consents obtained) and are sufficient in scope to enable each Party to Process the Personal Data as required in order to obtain the benefit of its rights and to fulfil its obligations under this Agreement in accordance with the Data Protection Laws;

- (d) ensure that all Personal Data disclosed or transferred to, or accessed by, another Party is accurate and up-to-date, as well as adequate, relevant and not excessive to enable that Party to Process the Personal Data as envisaged under this Agreement;
- (e) ensure that appropriate technical and organisational security measures are in place sufficient to comply with at least the obligations imposed on the Controller by the Security Requirements including without limitation, (i) ensuring a level of security appropriate to the risk involved in the processing (which shall include without limitation and, as appropriate, taking steps such as the pseudonymisation and/or encryption of Personal Data, taking steps to ensure the ongoing confidentiality, integrity, availability and resilience of the systems and services used to process Personal Data and regularly testing the effectiveness of the systems in place); (ii) adhering to any relevant codes of conduct or approved certifications; and (iii) ensuring that all individuals who have access to Personal Data maintain the confidentiality and security of Personal Data and comply with the terms of this Agreement and where requested provide to the University evidence of its compliance with such requirements promptly, and in any event within 48 hours of the request
- (f) notify the other Party promptly, and in any event within five days of receipt of any Data Subject Request or ICO Correspondence which relates directly or indirectly to the Processing of Personal Data under, or in connection with, this Agreement and together with such notice, provide a copy of such Data Subject Request or ICO Correspondence to the other Party and reasonable details of the circumstances giving rise to it. In addition to providing the notice referred to in this Paragraph 1.2.2(f), each Party shall provide the other Party with all reasonable co-operation and assistance required by the other Party in relation to any such Data Subject Request or ICO Correspondence;
- (g) use reasonable endeavours to notify the other Party if it is obliged to make a disclosure of any of the Personal Data under any statutory requirement, such notification to be made in advance of such disclosure or immediately thereafter unless prohibited by law;
- (h) notify the other Parties in writing without under delay and, in any event, within twenty four (24) hours of it becoming aware of any actual or suspected Personal Data Breach in relation to the Personal Data received from another Party and shall, within such timescale to be agreed by the Parties (acting reasonably and in good faith):
 - (i) implement any measures necessary to restore the security of compromised Personal Data; and
 - (ii) support the other Parties to make any required notifications to the ICO and/or other equivalent relevant Regulator and affected Data Subjects
- (i) take reasonable steps to ensure the reliability of any of its personnel who have access to the Personal Data;

- (j) not do anything which shall damage the reputation of the other Party or that Party's relationship with the Data Subjects;
- (k) not transfer any Personal Data it is processing to a Restricted Country;
- (l) hold the information contained in the Personal Data confidentially and under at least the conditions of confidence as such Party holds Personal Data Processed by it other than the Personal Data.
- (m) not disclose the Personal Data to a third party (including a sub-contractor) in any circumstances without the other Parties' prior written consent, save in relation to: (i) disclosures to Permitted Recipients; and (ii) Third Party Requests. For Third Party Requests, the Party seeking to disclose the Personal Data shall use reasonable endeavours to advise the other Parties in advance of such disclosure, unless that Party is prohibited by law or regulation from notifying the other Parties of that disclosure, in which case it shall do so as soon as practicable thereafter (where permitted by law or regulation); and
- (n) at the other Parties' option or direction, arrange for the prompt and safe return and/or secure permanent destruction of all Personal Data, together with all copies in its possession or control within 5 days unless otherwise prohibited by law, statutory regulation or best practice, and, where requested by the other Parties certify that such destruction has taken place or provide reasons otherwise.

2. **Indemnity**

Each Party shall indemnify and keep the others indemnified against any Losses incurred by, awarded against or agreed to be paid by the indemnified party to the extent arising from the first party's failure to comply with the Data Protection Laws

The remaining part of this page has been intentionally left blank

APPENDIX A
Data Processing Particulars

<p>The subject matter and duration of the Processing</p>	<ul style="list-style-type: none"> • Student full name • Gender • Date of birth • Residential address • Contact phone number and email address • Progression and award details <p>Are kept for the period students' date of birth +120 years</p>
<p>The nature and purpose of the Processing</p>	<p>Purposes of processing:</p> <ul style="list-style-type: none"> • Administration of the Programme and performance of this Agreement, recording student details and progression for purpose of issuing the award. • In accordance with this Agreement and the accompanying Handbook for Validated Awards • Enabling communications between the employees of the Institution and the employees of the University for monitoring the Students' progress and assessment to enable the Students to complete the Programme and obtain the award. <p>Nature of processing:</p> <ul style="list-style-type: none"> • Name, address, email address, telephone number, date of birth of the Student, details necessary to identify the Student may be shared by the Parties. These details will be stored and used for the performance of this agreement, for audit purposes, and any legal and regulatory obligations and compliance with the University's Handbook • Records of Student progress, performance and attainment and any other details required for administration of this Agreement and award will be obtained, stored and used and transferred between the Parties as far as is necessary for the performance of the agreement, for audit purposes, and any legal and regulatory obligations. • Each Party will provide to the other Parties the contact details of their employees engaged in the performance of this agreement for the purpose of

	its performance.
The type of Personal Data being Processed	<ul style="list-style-type: none"> • Students' full name, gender, date of birth, residential address, contact phone number and email address. • Names, positions and email addresses of the University employees engaged in performing this Agreement • Names, positions and email addresses of the Institution's employees engaged in performing this Agreement
The categories of Data Subjects	<ul style="list-style-type: none"> • Students • Signatories to this Agreement and representatives of the Parties • Tutors, Lecturers and employees of Parties involved in the performance of this Agreement
Permitted Recipients	<p>For the University:</p> <p>OU Validation Partnership team in the University</p> <p>Examination Board</p> <p>Module Results Approval and Qualifications Classification Panel (MRAQCP)</p> <p>For the Institution</p> <p>[REDACTED]</p>
Special Category Data (if appropriate)	<p>The personal data transferred concern the following categories of special category data</p> <p>NONE</p>
Additional useful information (storage limits and other relevant information)	NONE
Contact points for data protection enquiries	For Institution: [REDACTED]

	<p>For University: Data Protection Lead/Officer Information Rights Team, The Open University, Walton Hall, Milton Keynes, MK7 6AA, Buckinghamshire. UK</p> <p>Email: Data-protection@open.ac.uk</p>

DRAFT