KNOWLEDGE ECONOMY SKILLS SCHOLARSHIP (KESS2)

PARTNER PhD STUDENTSHIP AGREEMENT

THIS AGREEMENT is made on the ______ day of ______ 2019

BETWEEN:

1. Cardiff University established under Royal Charter, and a charitable body registered in England and Wales (number 1136855) whose administrative offices are at 7th floor, 30-36 Newport Road, Cardiff CF24 ODE, (the “University”); and,

2. [Full name of Partner Organisation] incorporated with Company Number [insert registered company number]) whose registered address is [insert full registered address] (the “Partner”), and whose operational base in Wales is [the same / insert address].

referred to individually as “Party” and collectively as “the Parties”.

BACKGROUND:

(1) The Welsh European Funding Office ("WEFO"), an Executive Agency of the Welsh Government, has made available funding through the European Social Fund for East Wales ("Programme") for the delivery of Knowledge Economy Skills Scholarships (KESS2) ("KESS2 Operation").

(2) Bangor University is the lead institution for the delivery of the KESS2 Operation and has received funding under WEFO’s grant offer letter dated [To be confirmed]. The University is contributing to the KESS2 Operation as a Joint Beneficiary. Bangor University and the University have entered into agreement confirming the University’s role and responsibilities in respect of the KESS2 Operation.

(3) The Partner has agreed to collaborate with the University to support a Doctor of Philosophy (PhD) project at the University under the KESS2 Operation and upon the terms set out in this Agreement.

OPERATIVE PROVISIONS:

Definitions and Interpretation

1 In this Agreement unless the context otherwise requires:

1.1 The headings in this Agreement shall not affect its interpretation.
1.2 Words denoting the singular shall include the plural and words denoting any gender shall include any other gender.

"Background" means any know-how, inventions, information and Intellectual Property Rights owned or controlled by any Party prior to the commencement of or independently from the Project and which a Party contributes or uses in course of performing the Project (but excluding Project Results);

"Confidential Information" means Background, Project Results and any other information (including samples, materials, drawings, specifications, photographs, designs, computer code, computer programs, software, data, formulae, processes, know-how, any technical or commercial information), reports, papers, correspondence or documents which is disclosed by one Party to the other, or to any of such other's officers, employees or students, in whatever form, (including written, oral, visual or electronic), and which is which is marked as ‘confidential’ or ‘sensitive’, or which should reasonably be expected to be, of a confidential nature;

"CTSA" means the Counter-Terrorism and Security Act 2015 (as amended from time to time);

"Student" means a person registered by the University to undertake a degree of Doctor of Philosophy (PhD) at the University who is eligible to receive financial support for research training under the Principal Contract, and who will undertake the Project;

"FOIA" means the Freedom of Information Act 2000 (as amended from time to time);

"Information" shall have the meaning as defined under section 84 of the FOIA;

"Intellectual Property Rights (IPR)" means all intellectual and industrial property rights, including without limitation patents, confidential information, rights in know-how, trade marks, registered designs, models, unregistered design rights, unregistered trade marks and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process and applications for and rights to apply for any of the above in each case in any part of the world;

"KESS2 Operation " means the “Knowledge Economy Skills Scholarships II (KESS2)” Operation funded through the European Social Fund (ESF) East Wales Programme via Bangor University;

"Partner Supervisor" means [<<insert name>>] or his or her successor, as appointed from time to time by the Partner;

"Principal Contract" means the grant offer letter issued by WEFO to Bangor University in respect of the KESS2 Operation and which the University has approved in its capacity as a Joint Beneficiary;

"Project" means the PhD project entitled [<<insert project title>>] which is the subject matter of this Agreement, as further detailed in Appendix 1 of this Agreement;
“Project Period” means the period of the Project from \[<<\text{insert start date}>>\] to \[<<\text{insert end date}>>\];

“Project Results” means the information and IPR (if any) arising out of or generated under the Project by one or more of the Parties and/or the Student;

“KESS2 Postgraduate Skills Development Award (PSDA)” means an award made by Bangor University to students of the KESS2 Operation following achievement of 60 credits of skills training relevant to the Student’s needs, including attendance at a mandatory residential KESS2 Graduate School;

“Student Agreement” means the agreement that will be signed between the University and the Student in relation to the Project;

“University Supervisor” means \[<<\text{insert name}>>\] of \[<<\text{insert name of School within University}>>\] or his or her successor, appointed by the University and who will be the Student’s primary supervisor for the purposes of the Project.

2. The Project

2.1 The Partner will collaborate with the University to supervise and support the Student to carry out and complete the Project at the University, with the aim of the Student obtaining a Doctor of Philosophy (PhD) qualification and a KESS2 Postgraduate Skills Development Award.

2.2 The specification of the Project is as outlined in Appendix 1 of this Agreement. Any material variation from this specification must be agreed in writing by the Parties following consultation. It is acknowledged that material variations to the agreed specification may need to be referred to WEFO for approval. The Project must, at all times, maintain sufficient intellectual content so as to be eligible for submission for the degree of Doctor of Philosophy (PhD) from the University.

2.3 The Project and Student will be supervised by the University Supervisor and the Partner Supervisor. Each Party will consult the other and the Student about any proposed change in its supervisor and all changes must be agreed by the Parties in writing.

2.4 The Partner will allow the Student to undertake part of the Project at the Partner’s premises for a minimum of 30 days per year during the Project Period. The periods of such attendance will be scheduled by mutual agreement of the Parties and the Student. During such placement, the Partner will use its reasonable endeavours to provide adequate facilities, equipment, supervision and training for the Student’s work on the Project.

2.5 The Parties will adhere to the University’s policy and procedures for ethical review and approval of the Project prior to its commencement.

3 Duration
3.1 This Agreement shall be effective from, and the Project shall run for the Project Period, unless otherwise agreed in writing by an authorised representative for each Party or terminated earlier in accordance with this Agreement.

3.2 The Partner will continue to provide any necessary supervisory support to the Student beyond the end of the Project Period until the submission of the Student’s thesis and for up to a maximum of six (6) months from the end of the Project Period.

4 **Partner Support and Obligations**

4.1 The Partner will be consulted on the recruitment of the Student and will approve the selection of the Student in writing to the University before the Student Agreement is completed. For the avoidance of doubt, the Student shall not at any time be an employee of the Partner and the Partner will not require the Student to sign any contract of employment.

4.2 The Partner agrees to manage all financial and other activities relating to this Agreement in accordance with the latest rules and guidance as published by WEFO and as communicated to it from time to time by the University.

4.3 The Partner will comply with all relevant statutory duties in force from time to time in respect of health and safety and will ensure that adequate health and safety management procedures are in place for the Student and University staff whilst at the Partner’s premises.

4.4 The Partner agrees to be involved in the KESS2 Operation’s internal and external evaluation of the Project (as reasonable and appropriate to its contribution), and to respond to all reasonable requests by the University or the KESS2 Operation’s nominated representatives for any information and documentation where this is necessary for the University to meet its obligations under the KESS2 Operation and/or to confirm the impact of the Project activity on the Partner.

5. **Financial Contribution and Payment**

5.1 The Partner shall pay a minimum cash contribution to the Project of \([<<£X,000 (XXXX thousand pounds)>>]\) (exclusive of any applicable VAT) over the Project Period. VAT will be charged in addition to all payments, where applicable.

5.2 The Partner shall pay the cash contribution referenced in **clause 5.1** in response to invoices issued by the University \([<<in 3 (three) equal instalments (annually in advance)>>]\) over the Project Period. The first invoice shall be due from the commencement of the Project Period.

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<th>Year</th>
<th>Payment</th>
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<tr>
<td>Year 1</td>
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5.3 All invoices issued by the University under this Agreement will be settled within 30 days. The University reserves the right to charge the Partner interest on late settlement at the interest rate in force pursuant to the Late Payment of Commercial Debts (Interest) Act 1998. That interest will be calculated from the date or last date for payment to the actual date of payment, both dates inclusive will be compounded quarterly.

5.4 The University's contact for financial queries shall be:

Esther Meadows   MeadowsE@cardiff.ac.uk   Research & Innovation Services

or such other person as shall be notified to the Partner.

6 Reporting

6.1 Minuted meetings will take place at least quarterly between the University Supervisor, the Partner Supervisor and the Student to review the progress of the Project. Meetings may be held by teleconference, video conferencing or in person as agreed by the Parties.

6.2 The Student will be required to report annually on the academic progress of the Project to meet the University’s requirements for undertaking a PhD. This report will form the basis of an annual report from the University to the Partner.

6.3 The University will submit to the Partner a copy of a final third year report within 90 days of completion of the Project.

7 Confidentiality

7.1 The Party receiving or acquiring Confidential Information (the “Receiving Party”) from the other Party (the “Disclosing Party”) undertakes for so long as such Confidential Information remains confidential in character:

7.1.1 to keep all such Confidential Information confidential, and to take all reasonable steps to ensure that copies of the Confidential Information made by or on behalf of the Receiving Party are protected against theft or other unauthorised access;

7.1.2 not to communicate or otherwise make available any such Confidential Information to any third party except with specific prior written consent from the Disclosing Party;

7.1.3 to disclose Confidential Information only to the Student and to such personnel employed by the Receiving Party who have a specific need to receive such Confidential Information for the Project, and who are aware and have accepted that the Confidential Information is, and should be treated as, of a confidential nature; and

7.1.4 not to use, or allow to be used, Confidential Information other than solely for or in relation to the Project, unless (and then only to the extent to which) any other use shall have been specifically authorised in writing by the Disclosing Party.

7.2 The obligations contained in this clause 7 shall not apply to any Confidential Information
which:

7.2.1 is publicly known at the time of disclosure to the Receiving Party;

7.2.2 after disclosure becomes publicly known otherwise than through a breach of this Agreement by the Receiving Party, its officers, employees or students;

7.2.3 has been received by the Receiving Party from a third party who did not acquire it in confidence from the Disclosing Party, or someone owing a duty of confidence to the Disclosing Party; or

7.2.4 the Receiving Party is specifically required to disclose pursuant to an order of any Court of competent jurisdiction in order to fulfil the Court Order or in order to comply with any other legislation. Before making such a disclosure the Receiving Party shall inform the Disclosing Party of the requirement to make such disclosure.

7.3 Subject to the obligations of confidentiality contained in this clause 7, nothing in this Agreement shall:

7.3.1 prevent the Student from submitting for a degree of the University, a thesis based on the Project Results, the examination of such a thesis by examiners appointed by the University, or the deposit of such a thesis in a library of the University in accordance with the relevant procedures and regulations of the University (such procedures to include provisions to place the thesis on restricted access within the University’s library, if deemed appropriate); or

7.3.2 impede the University from complying with the reporting procedures prescribed from time to time by WEFO.

7.4 The obligations of confidentiality under this Agreement shall continue for a period of five (5) years following expiry or termination of this Agreement.

8 Publicity and Publications

8.1 The Project will form part of the actual carrying out of a primary charitable purpose of the University, that is the advancement of education through teaching and research.

8.2 The University will provide the Partner with a copy of any proposed publications arising from the Project (other than the Student’s thesis) at least thirty (30) days prior to submission for publication or before presentation as the case may be. The Partner may require deletion or amendment of any reference to its Confidential Information in the proposed publication.

8.3 If the University has not received notice from the Partner requesting amendment to the proposed publication received under clause 8.2 within twenty (20) days of receiving a copy of the proposed publication, the University shall be free to assume that the Partner has no objection to the proposed publication and the University may proceed with the publication.

8.4 If the Partner requires amendment to the proposed publication on the basis that the publication contains its Confidential Information, the University shall amend or remove the Confidential Information from the proposed publication in accordance with the Partner’s request.
8.5 The University and the Partner may publish details of one another’s involvement in the KESS2 Operation, however, a Party shall not use the name of another Party, or its staff, logo or branding in any advertising, news release or as an endorsement of Project Results without the other Party’s consent.

8.6 The Partner will comply with the publicity requirements for the Project as stipulated by WEFO, and as set out in Appendix 2 or otherwise notified to the Partner by the University from time to time.

9 Intellectual Property Rights

9.1 All Background used in connection with the Project is and shall remain the property of the Party introducing the same (or, where applicable, the third party from whom the right to use the Background has derived) and shall be subject to the confidentiality obligations set out in clause 7 above.

9.2 Each Party shall grant to the other and to the Student a royalty free, non-exclusive licence to use its Background (where it is free and able to do so, subject to any third party rights in such Background) for the purpose and duration of the Project only.

9.3 All Project Results and any Intellectual Property arising out of or generated under the work under this Agreement shall be owned by the University. The University grants to the Partner a non-exclusive, royalty free licence to use the Project Results solely for the purposes of completing the Project and for no other purpose.

9.4 The University agrees to grant the Partner the option, at the Partner’s sole selection, to take either an exclusive (subject to clause 9.5) or non-exclusive licence to use the Project Results. The terms of any such licence shall be negotiated upon fair and reasonable commercial terms having regard to the market value of the Project Results and the value of any non-financial and financial contributions of the Parties. The option shall be valid for a period of 3 months following the end of the Project Period or otherwise from the date of termination of this Agreement if earlier save where termination has arisen under clause 11.1 through material breach by the Partner (“Option Period”).

9.5 If the Partner does not exercise its option within the Option Period or the Company are unable to agree the terms of a licence pursuant to clause 9.4 within 3 months of the date of the exercise of the option, the University will be free to exploit the Project Results either itself or through a third party, howsoever it chooses, and the Partner shall have no further claim to any licence to use the Project Results.

9.6 If the Partner notifies the University in writing that it wishes a patent application or application for other Intellectual Property protection be filed in respect of the Project Results (or any part), the University or its appointed agent shall promptly prepare, file and prosecute such protection as the Parties mutually agree is necessary (acting reasonably) provided that the Partner shall bear the full costs incurred in connection with the same. The Partner will cooperate with the University and do all things necessary to vest such Intellectual Property in the University as beneficial owner.

9.7 If either Party requires the use of any Background introduced by the other to exploit any of the Project Results owned by or licensed to it, the Parties agree that they will negotiate a licence for the purpose upon fair and reasonable commercial terms.
9.8 The University will be entitled to use the Project Results for educational and research purposes and irrespective of whether the Partner exercises its option to select an exclusive licence pursuant to clause 9.4.

10 Liabilities

10.1 Whilst the University will use reasonable endeavours to ensure the accuracy of the work performed and any information given, the University does not make any representations or warranties that the work carried out under or pursuant to this Agreement will lead to any particular result and the Partner acknowledges and understands that the success of the Project is not guaranteed.

10.2 The University does not accept any responsibility for any use which may be made of any work carried out under or pursuant to this Agreement, or of the Project Results, nor for any reliance which may be placed on such work or the Project Results, nor for advice or information given in connection with them.

10.3 The Partner undertakes to make no claim in connection with this Agreement or its subject matter against the Student, the Academic Supervisor or any other employee, student or appointee of the University (apart from claims based on fraud or wilful misconduct). This undertaking is intended to give protection to individual researchers: it does not prejudice any right which the Partner might have to claim against the University.

10.4 Subject to clause 10.5, in no event shall either Party be liable to the other in contract, tort, negligence, breach of statutory duty or otherwise for:

10.4.1 loss of contracts, loss of goodwill, loss of opportunity, loss of profits, loss of turnover or loss of anticipated savings; or

10.4.2 any indirect or consequential loss or special loss or damage of any nature whatsoever.

10.5 Nothing in this Agreement limits or excludes either Party’s liability for:

10.5.1 death or personal injury;

10.5.2 any fraud or for any sort of liability that, by law, cannot be limited or excluded; or

10.5.3 any loss or damage caused by a deliberate breach of this Agreement.

11 Termination

11.1 In the event that either Party shall commit any breach of or default on any of the terms and conditions of this Agreement, and that Party fails to remedy such default or breach within 30 days or other such period as agreed by the Parties following receipt of written notice from the other Party, the Party giving notice may, at its option, and in addition to other remedies which it may have at law or in equity, terminate this Agreement by sending notice of termination in writing by registered mail to the defaulting Party to such effect. Such termination shall be effective as of the date of receipt of such notice.

11.2 If WEFO withdraws funding for the Project or the Principal Contract is terminated for any
reason the University reserves the right to terminate this Agreement with effect from the date of termination of the Principal Contract. In the event of such termination, the Partner shall be entitled to recover those payments made in advance to the University under clause 5.2 pro rata from the date of termination.

11.3 If the Student withdraws his/her student registration or the Student Agreement is terminated for any other reason the University may terminate this Agreement with immediate effect.

11.4 In the event of termination by the University under clause 11.1, the Partner shall remain liable to pay to the University all outstanding Cash Contributions due under clause 5 as if this Agreement had not been terminated.

12 Rights of Access, Monitoring and Audit

12.1 The Partner agrees to grant rights of access, monitoring and audit during normal office hours to the University and/or the University’s representatives and to the National Assembly for Wales, European Commission, European Court of Auditors, Welsh European Funding Office or their respective representatives for the purposes of evaluating the progress of the KESS2 Operation, the auditing of ESF Eligible Expenditure, and other any other legitimate matters concerning the Project and the KESS2 Operation, subject to reasonable prior written notice. The Partner will grant all reasonable assistance necessary to such officials for the full and proper execution of their duties.

12.2 The Partner agrees to respond to all reasonable requests by the University for any additional information and supporting documentation where this is reasonably necessary for the University to meet either its own internal control requirements in relation to the Project or its obligations in respect of the KESS2 Operation.

12.3 The rights of access and audit of all relevant documents relating to the Project and KESS2 Operation, and ESF Eligible Expenditure shall survive the termination or expiry of this Agreement, and originals of such documents must be retained to the date specified by WEFO and as advised to the Partner by the University in accordance with the auditing and monitoring requirements set out in the Principal Contract.

13 General

13.1 Entire Agreement: This Agreement, together with the documents referred to in this Agreement, constitute the entire agreement between the Parties and supersedes any previous agreement or representations written or verbal relating to the particular subject matter of this Agreement.

13.2 Illegal / unenforceable provisions: The invalidity or unenforceability of any provision of this Agreement shall not prejudice or affect the validity or enforceability of any other provision of this Agreement.

13.3 Assignment: The Partner must not, in any manner, assign, hold on trust, sub-contract or otherwise dispose of its rights, benefits, obligations or duties under this Agreement without the prior written consent of the University.

13.4 Amendments: No amendment or variation of this Agreement will be effective unless made in writing and approved by the mutual agreement of an authorised representative for each of
the Parties, save that the University reserves the right to unilaterally amend the Agreement at any time to reflect any changes that may be made to the Principal Contract at the instigation of WEFO. The University shall notify the Partner of any such amendments in writing as soon as reasonably practicable.

13.5 **Third Parties**: WEFO shall be entitled to enforce the rights and obligations under this Agreement. Other than WEFO, the Parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

13.6 **Waiver**: Failure by any Party to exercise or enforce any rights conferred upon it by this Agreement shall not be deemed to be a waiver of any such rights or operate so as to prevent the exercise and enforcement at any subsequent time or times of that right or any other rights.

13.7 **Survival**: Clauses 4.2, 4.3, 4.4, 5, 6.3, 7, 8, 9, 10, 11.4, 12, 13 and 15 shall survive expiry or termination of this Agreement howsoever caused.

13.8 **Counterparts**: This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which taken together shall constitute one and the same instrument.

13.9 **Governing law**: This Agreement shall be governed by the laws of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

13.10 **Partnership**: Nothing in this Agreement shall constitute either a Partnership or a joint venture between the Parties.

14 **Notices**

14.1 Any demand, notice or other communication to be given pursuant to the terms of this Agreement must be given in writing by Recorded Delivery or Post to the Party due to receive such notice at its address set out at the head of this Agreement (or such other address as maybe notified in writing for such purpose). Notices shall be deemed to be given (in the absence of evidence of earlier receipt) within 2 business days after posting. Such notices should be marked for the attention of:

- **For the University**: Director, Research & Innovation Services, Cardiff University, 30-36 Newport Road, Cardiff, CF24 ODE.

- **For the Partner**: [<<Name and postal address to be inserted>>]

15 **Legislation**

15.1 The Parties shall each comply with all such legislation, regulations and codes of conduct as applicable and relevant to the Project, including but not limited to:

15.1.1 Data Protection Act 2018 (as amended from time to time) in respect of any Personal Data (as defined under such Act) which may be collected and transferred between them;
15.1.2 all applicable, laws, directives, regulations in force and as amended from time to time relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010.

15.2 The Partner acknowledges that the University is subject to requirements under the Counter Terrorism and Security Act 2015 and the Freedom of Information Act 2000 (each as amended from time to time) and agrees to cooperate with and assist the University to enable it to discharge its obligations under the respective Acts, as appropriate, and as set out below:

**Freedom of Information**

15.2.1 where the University receives a request to disclose any information which constitutes the Partner's confidential information under this Agreement, it will notify and consult with the Partner. The Partner shall respond to the University within five (5) working days after receiving the University’s notice of the request. In the event that the Partner fails to respond within the requisite period, the University reserves the right to disclose any such information it deems appropriate;

15.2.2 the University shall be responsible for determining at its absolute discretion whether the information is required to be disclosed or is exempt from disclosure in accordance with the FOIA. In no event shall the Partner respond directly to a request for information unless expressly authorised to do so by the University

**Counter Terrorism and Security Act**

15.2.3 the CTSA places an obligation on the University to have due regard to the need to prevent people from being drawn into terrorism. The obligations extend to all persons who come into contact with the University, whether students, staff, contractors, speakers, volunteers or otherwise.

15.2.4 the Partner shall promptly report to the University any suspicions or concerns under the CTSA and, where requested, shall provide the University with all relevant and necessary information as may be required in order for the University to discharge its obligations under the CTSA.

**IN WITNESS WHEREOF** this Agreement is executed as follows:

For and on behalf of the **Partner**

Signed: 

Name: (Block Capitals):

Position:

Date:

For and on behalf of the **University**

Signed:

Name: (Block Capitals):

Position:

Date:
APPENDIX 1 – PROJECT SPECIFICATION

As per the KESS2 Project Proposal Form prepared by the University and the Partner in relation to the Project, copies of which both the University and the Partner have already received and further copies of which are available from the University upon request.

[INCLUDED AS SEPARATE ATTACHMENT]
APPENDIX 2

KESS 2 Marketing and Publicity Guidance Note

Students and supervisors must acknowledge KESS 2 funding on any external publicity, including published papers and presentations, and where feasible display the ESF, KESS 2 and Cardiff University logos (and Partner logos, where agreed).

Please use the following wording:

Knowledge Economy Skills Scholarships 2 (KESS 2) is a pan-Wales higher level skills initiative led by Bangor University on behalf of the HE sector in Wales. It is part funded by the Welsh Government’s European Social Fund (ESF).

Ysgoloriaeth Sgiliau Econom Ewybodaeth 2 (KESS 2) ym Gymru gyfan sgiliau lefel uch y fenter a arweinir gan Brifysgol Bangor ar ran y sector AU yng Nghymru. Fe’i cyllidir ym rhannol gan Gronfeydd Cymdeithasol Ewropeaidd (ESF).

Text should be used in full at the bottom or end of each document. Include once per full document and in the language of your choice, unless the document is bilingual. The approved text must not be edited or changed in any way. The text should be displayed in a legible size and font with clear spacing above and below.

Further guidance, text and logo downloads:

KESS 2 Programme publicity downloads and guidance: https://www.bangor.ac.uk/doctoral-school/kess/KESSIIDownloads.php


Contact for queries:
Cardiff University KESS 2 Programme Office kess@cardiff.ac.uk, or the KESS2 Programme Marketing, Design and Publicity Officer Mererid Hâf Gordon, m.h.gordon@bangor.ac.uk