Appendix 1- Example of employment contract – part-time materials developer

Contract

between

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(hereinafter referred to as the consultant)

and

XXX

(hereinafter referred to as XXX)

Registration No. XXX

This contract is between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and XXX of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

It is hereby agreed that the consultant undertakes a consultancy with XXX, upon terms of reference to be agreed with XXX. The consultant nominates \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_to fulfil the terms of this contract on the consultant’s behalf with respect to development of the following materials …………………. The following conditions will apply:

1. **BACKGROUND TO THE PROJECT**

*It is useful to provide a context illustrating among other things target audience profile, desired learning outcomes and stipulation of the Creative Commons licence.*

1. **OUTPUTS**

The consultant will work on the above project to achieve the following outputs.

**Output 1**: Module outline.

**Output 2**: The introductory and first unit of the module.

**Output 3**: First draft of first half of the module.

**Output 4**:First full draft of the module.

**Output 5**: Second full draft of the module.

**Output 6**: Third full draft of the module.

**Output 7**: Production-ready final module, according to agreed specifications.

*It is important to flag upfront the need for multiple drafts and feedback at key stages. Avoid receiving 300 pages of manuscript that cannot be used.*

All drafts must be submitted in the agreed format and must take into account the feedback given.

1. **TASKS**

The consultant will be expected to:

* Participate fully in the induction workshop of [Date. Time, Place], the team meeting to review the first full draft of the fundamental and the first half draft of the core modules, and the team meeting to review the first full draft of the elective modules.
* Make himself/herself available to receive feedback from the XXX editor on the module outline and the various drafts.
* Develop the module outline in the specified format on the date required.
* Develop the various drafts of the module according to the agreed specifications on the dates required.
* Produce the final module according to agreed specifications and on the dates required.

1. **DURATION**

This contract is effective from [start date] to [end date].

1. **PAYMENT**

XXX undertakes to pay the consultant \_\_\_ (\_\_\_\_) per day excluding VAT for attendance at the induction workshop and the team meetings up to a maximum of \_\_\_ (\_\_\_\_) days.

In addition, XXX undertakes to pay a maximum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ excluding VAT for meeting all the required outputs. This amount is referred to as **T.** In Clause 6, the allocation of **T** for different outputs is specified.

1. **CONDITIONS OF PAYMENT**

XXX requires the following to be delivered to its offices on disc in the required format by the following dates:

* **Outputs 1 and 2**: Module outline and the introductory and first unit of the module **Date** **10%T**
* **Output 3**: First draft of first half of the module **Date 20%T**
* **Outputs 4 and 5**:First and second full draft of the module **Date 40%T**
* **Outputs 6 and 7**: Third full draft of the module and module ready for production **Date 30%T**

Payment for the consultancy will be made upon satisfactory completion of each of the above and on receipt of an invoice with VAT included as appropriate. The invoice should itemise dates, work processes and work products for all days worked.

A penalty of 10% of the value of any one of the outputs will be deducted for delivery after 7 (seven) working days of delivery, unless otherwise agreed by the XXX editors.

*Development of materials always seems to take longer than expected and planned. It may be necessary to consider building in penalty clauses.*

1. **PAYE**

XXX is obliged to deduct 25% off all fees unless a tax directive to the contrary from the Receiver of Revenue is received.

1. **OTHER EXPENSES**

XXX will arrange and pay for the consultant’s travel and accommodation in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_when it is required and authorised.

In the event of other expenditure being approved prior to the event, XXX requires the submission of original invoices for reimbursement.

1. **COPYRIGHT *(we have highlighted this section because copyright clearance is a critical issue for publishing OER)***

The consultant hereby warrants that all materials submitted in terms of this contract are not subject to any existing copyright conditions, unless otherwise specified. In the case of the latter, the consultant will provide a complete list of any material for which any consent, fee or licence may be required to be obtained from a third party.

The consultant shall disclose to XXX all works eligible for copyright made by the consultant during the course of the consultant carrying out his/her duties in terms of this contract, irrespective of whether such works are made during office hours or otherwise, or were made at the premises of XXX or otherwise, or were made in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ or otherwise. The ownership of the copyright in such work shall vest in XXX but will be made available under the Creative Commons licence referred to in Clause 1.

XXX shall ensure the consultant will receive due academic recognition in the materials developed.

1. **SUB-CONTRACTING**

The consultant may not sub-contract the provisions of services in terms of this contract or any part of the services without the written prior approval of XXX. In the event of such permission being given, the consultant remains solely liable for the performance of his/her obligations under this contract.

1. **PROHIBITED USE OF INFORMATION**

The consultant agrees to hold all confidential or proprietary information or trade secrets in trust and confidence and agrees that it shall be used only for the contemplated purpose and shall not be used for any other purpose or disclosed to any third party.

1. **TERMINATION**

At the sole discretion of the XXX editors, this contract may be terminated after failure to submit satisfactorily any of the outputs specified in Clause 2. This discretion will be exercised after feedback has been given to the consultant by the XXX editor with an opportunity to remedy the identified defects within a set timeframe.

In addition to any other rights and remedies in addition of law, this agreement may be terminated by giving written notice to the other party who has breached this agreement or defaulted where XXX or the consultant has committed a serious breach of its obligation under this agreement unless such parties rectify the position as far as is reasonably possible, within 30 (thirty) days of receiving notification of the breach of agreement or default. Failure to deliver the outputs within the timeframes stipulated will be considered to be a breach of contract.

1. **GENERAL PROVISIONS**

*13.1 Entire Agreement*

This contract supersedes all previous contracts, representations or promises, and sets out all the terms agreed between the parties. Any amendments, variations, additions shall be of no force and effect unless reduced to writing and signed by an authorized signatory of each party.

*13.2 Independent Contractor*

The consultant understands and accepts that s/he will be working on the project on a contract basis as an independent contractor for his/her own account and is not being appointed or regarded as an agent or employee of XXX.

*13.3 Notices*

Without prejudice to the right to serve notices by any other means, any notice served under the agreement shall be in writing. For the purpose of this agreement all notices shall be sent to the following addresses, which the parties hereto select as their domicilium citandi et executandi:

XXX

Address

Consultant

Address

*13.4 Indemnity*

The consultant indemnifies XXX and holds it harmless against all loss or damage, including legal costs, caused to any person by the incompetence, negligence or wilful misconduct of the consultant.

*13.5 Force Majeure*

In the event that this agreement cannot be performed or its obligations fulfilled for any reason beyond reasonable control of XXX and the consultant, including ill health, war, industrial action, floods, acts of God, then such non-performance or failure to fulfil obligations shall be deemed not to be a breach of this agreement. In the event that this agreement cannot be performed or its obligations fulfilled for any reason beyond the reasonable control of the defaulting parties for a continuous period of one month, then the other party may at its discretion, terminate this agreement by notice in writing at the end of that period. Provided that both parties agree to negotiate, in good faith, an equitable settlement in respect of the work already performed to the date of termination.

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Signed at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signed:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

AAA for XXX

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Consultant