APPROVED BY COUNCIL – 2 JULY 2012

JOINT VENTURES

Establishing a Joint Venture

1. A joint venture (JV) is created when the University plays a substantial role in setting up as a partner, member or shareholder a partnership or company which is not wholly owned by the University. "Substantial" means where the University is, by way of shares or membership, holding at least 20% of the vehicle and investing by way of equity, grants, or loans in excess of £300K or the equivalent in guarantees. There are a number of reasons why the University would choose to enter into a JV to deliver a particular activity:

   a) if the University is invited by others to participate and the concept is not one that originates in the University;
   b) the University does not have the expertise or assets required to deliver a particular activity and cannot easily acquire them;
   c) there is a sharing of working capital and downstream financial risks associated with the undertaking;
   d) a non-public body is best placed to deliver a project for regulatory or other reasons.

2. JVs can consume considerable management time, establish new governance structures which need to be managed and resourced and require sensitive management of relationships with partners, particularly if the expectations of partners are not precisely aligned or entirely complementary over, what is often, an extended period of time. The University does not have full control over the JV and any risk to the University's reputation. The University will, therefore, always address the question as to whether, in any circumstances, it is both possible and desirable to "go it alone" before committing to a JV.

3. A decision to enter into a JV will require the approval of Council. The agreements and documentation establishing a JV are often extensive and complex and Council will normally delegate the negotiation and final approval of such agreements to the Vice-Chancellor and an independent member of Council (or larger group) which, in turn, will have been negotiated by appropriate University officers.

4. Prior to Council considering a proposal, it will have been carefully considered by the Executive Team and, if time allows, Finance Group.

5. In approving a JV Council will consider:

   a) the objectives for the JV and its fit with University strategy. Desirably, the foundations of any JV will be within the University's five-year strategy and the University will have proactively sought a partner and taken the lead in establishing the JV. However, this will not always be the case and the joint venture proposal will come from others and for the University, will to some extent, be opportunistic. Particularly careful consideration has to be given if the objectives of the JV are not evidently supportive of the broad thrust of the University strategy or are substantially different in nature to any aspects of the University's core business and charitable objects;
   b) the resources required from the University to establish and operate the JV, both financial and in staff time, their availability and the impact it will have on the

University's ability to deliver other projects. The prospect of further resources (particularly cash injections) being required at a future point will need to be considered. Once a JV gathers momentum and the alternative is to either invest further or write off past investments, the pressure to commit further becomes very real;

c) the business plan and cost benefit analysis over an appropriate time period for the University (normally at least 5 years) and SWOT, PESTEL and risk analysis;
d) the track record of the prospective partners in the JV and, where partners have been sought by the University, the process of assessment which has taken place. This will include any potential reaction from the student body and impact on the reputation of the University of prospective partners;
e) the strength of commitment from those parts of the University which will be crucial in delivering the JV;
f) compliance with relevant statutory and regulatory frameworks, including European Procurement Regulations, with appropriate legal advice;
g) the governance arrangements for the JV and the University's involvement in strategic and day to day decision making;
h) the arrangements for any party to exit the JV and its implications;
i) who will champion the JV within the University and processes for monitoring and reporting. It is desirable for a single senior officer to have this responsibility who will be in a position to closely and effectively monitor the performance of the JV and the delivery of the original objectives. The performance indicators for the success of the JV should be understood as part of the approval process and there should be a formal process of reporting by the champion to the Executive Team at appropriate intervals on all aspects of the JV's progress. For a new JV, an appropriate reporting interval might be 3 times per year. For substantial and complex JVs it may be appropriate to establish a broader University management committee which exercises more frequent oversight and assists in the development of strategy over time;
j) due diligence undertaken in respect of the prospective partners, including any source of funds being provided by the prospective partner.

6. This is the normal expectation, appropriate to a JV involving the University in significant financial investment, management time or reputational risk. In some cases, Council may accept a "lighter touch". The JV may be modest in scale and objectives; based on existing collaborations; partners may be major public institutions in themselves and no due diligence is required or the JV may be of considerable strategic importance to the University and this may justify commitments and investments with a greater level of uncertainty or less information than might be ideal. However, the above framework will enable those considering a JV to identify where information is lacking and to consider whether in the circumstances, it is still appropriate to progress the JV.

7. When considering a JV Council have a number of options:
   a) approval to proceed, subject to finalisation of the agreement;
   b) approval in principle, subject to additional conditions/requirements being adhered to;
   c) approval to the concept of the JV but with a different prospective partner; or
   d) rejection of the JV concept.

Choosing Partners

8. If the University is actively seeking a partner it should first establish an appropriate profile for that partner including expertise, track record of delivery, financial substance and empathy with the mission of the University and the objectives of the JV. If the JV is a public procurement including a public services or works concession, then appropriate European procurement processes will need to be followed.

9. Whether the partner is sought by the University or presents themselves to the University along with a concept, desirably there will be reference projects which the University can appraise, talking with others who have worked closely with the partner. It is important that the University can establish a rapport with the partner. These are long term commitments and personal relationships will be important.

10. The University and its partners must understand each other's involvement in the delivery of the JV and the limitations of that involvement. It is important to understand the extent to which each partner is both expecting, and is likely to benefit in the future, either by way of charges or returns. Partners must be comfortable with those arrangements.

11. Partners in a JV should therefore, share and document:
    a) expectations in terms of the objectives for the JV and how it sits within their own strategies;
    b) expectations for their inputs to the JV (including any expectations regarding further investment in the future) and what charges will be;
    c) who will be personally involved in the delivery and governance of the JV;
    d) actions to be taken in the event of a potential conflict for either the University or the partner arising during the JV;
    e) ownership of any assets of the JV;
    f) principles to be applied for the development of any intellectual property arising as a result of the JV;
    g) any expectations for a future exit.

12. It should be clear from the above that the whole will be greater than the sum of the parts, that the JV is deliverable and there are no obvious prospects of conflict in the future between partners.

13. It is unlikely, but not impossible that decision makers within the University could have a beneficial interest in a prospective partner. This can be a positive aspect of building relationships. However, care must be exercised in ensuring that individuals in such a position are not party to, or strongly influence, a decision by the University to enter into a collaborative venture or involved in the monitoring of its performance. The normal provisions for dealing with conflicts should apply.

Agreements

14. Most JVs will require a number of more or less complex agreements. Approval of these will normally be delegated by Council (see paragraph 3 above) and underpinned by appropriate legal advice and scrutiny by University officers. Paragraph 11 above points to some of the issues to be included. This paragraph expands this theme further, but is not intended to be exhaustive or prescriptive:

    a) the University is more likely to prefer an LLP structure for a JV where there are to be financial returns to the University. This facilitates the covenanting of surpluses back to the University by way of charitable donation with the tax advantages that that offers. Where there are no financial returns to the University, a company limited by guarantee may be an appropriate vehicle. The University's normal expectation is to hold its interest in any JV through a wholly owned subsidiary of the University, to avoid issues associated with the University's charitable status;

b) the University can capitalise a JV through equity or loans. If all partners are contributing equally to the capitalisation of the JV, it may make little difference. However, if the University is likely to make a significantly higher contribution, loans may be preferable as these may be a stronger call on any future surpluses than relying on dividend payments or other distribution of profits;

c) the services to be provided by any partner to the JV should be clearly documented along with payments to be made. There should be clarity as to how the quality of services is to be tested and the opportunities to use other service providers and how this will be agreed. It is often the case that partners only come into JVs where they can be assured that where certain services are their own core business, they will be the provider. If the charges appear too large or quality suffers this will create difficulties for a JV;

d) a credible business plan to which all partners are fully signed up is an important part of any agreement, clearly reflecting the mutually accepted expectations for the JV. Bringing the plan together should be done at an early stage with the engagement of all parties;

e) there should be clarity as to the financial and other information which will be produced by the JV on a timely basis for the benefit of all parties;

f) the University should always have the right to audit JVs using its own internal or external audit services;

g) the requirements which the FOIA and EIR place upon the University to disclose information should be clear to all parties.

Operating the JV

15. The University should have adequate representation at board level to ensure that the JV continues to deliver on its founding principles and meet the objectives of the University. Consideration should be given to the involvement of an independent chair and/or non executive members in any board. These "independent" members can focus on the business of the JV rather than the partisan interests of the partners and avoid friction. A skilled chief executive who is not otherwise closely associated with one partner or, for whatever reason, influenced by them, can be similarly beneficial. There is no clear prescription, but the above issues should be considered in terms of the governance of the JV.

Monitoring the Performance of the JV

16. Paragraph 5(i) above suggests that the responsibility for the monitoring of performance of JVs which should normally rest with the Executive Team, or with an ad hoc committee. There must be adequate and proportionate reporting at appropriate intervals. There will have been a clear understanding of what success looks like and appropriate performance indicators in setting up the JV and the Executive Team or committee will review progress.

17. Council receives a report on JVs on an annual basis.

Risk Management

18. The Executive Team will have established and considered a risk profile associated with any JV proposal, and the way in which risk will be mitigated. This will be monitored as part of the routine consideration of the performance of a JV. It is also often the case that JVs are of material significance to the University in terms of financial risk, reputational risk and centrality to the University's strategic objectives. If this is the case they will form part of Council's scrutiny of high level risks.

Pre-existing JVs

19. The University has established a significant number of JVs prior to establishing this policy. It is impossible to retrospectively apply all aspects of this policy to them, however, each JV will be reviewed, particularly in terms of monitoring to ensure that it complies with this policy as closely as possible.