

THE UKeU REPORTS

Publications from the Archive
of UK eUniversities Worldwide Limited

REPORT 09

Accredited Overseas Partner Agreements

UKeU

August 2003

Edited by Paul Bacsich

Disseminated by The Higher Education Academy

Editor's Introduction.....	3
1. Summary of the Accredited Partner Agreements	4
2. A Generic Accredited Partner Agreement.....	6

Editor's Introduction *

This report provides in Section 1 a summary of the UKeU approach to agreements with overseas partners, officially called “accredited partners”, followed in Section 2 by the verbatim (but anonymised) text of an actual accredited partner agreement. Unlike HEI contracts, these agreements were on the whole very similar to each other, so that the one given here can be taken as a good guide to most others.

There were Overseas Partners in around 10 areas of the world. In late 2003/early 2004 the standard list of “territories” was: UK, Gulf, Hong Kong, SE Asia, MENA (Middle East and North Africa), India, China (excluding the Hong Kong SAR), South America (mainly Brazil in reality) and Southern Africa (mainly South Africa itself) – and the Rest of the World (ROW). Each of these territories (except UK and ROW) had one or more overseas partners.

Note on Provenance

Section 1 below reproduces verbatim a document “Summary of Accredited Partner Agreement” in circulation around UKeU in March 2003. Section 2 reproduces verbatim (after a table of contents to the contract) a specific (but anonymised) Accredited Partner Agreement created as part of a negotiation in August 2003 – thus this is a relatively “late” agreement.

There were no copies of any such documents in the UKeU electronic archive; they were obtained from the editor's personal files.

Production Notes

In view of the fact that the contract dominates this report and that the automatic numbering of contract clauses can be hard to handle when reformatting documents, this document does not use the standard Style Sheet for UKeU reports, even though the layout appears the same.

Apart from changes in margin width to fit in with the layout of this report series, the text of the contract is reproduced in the same font, type size and line spacing as the original – and leaving the two spaces after a full stop which is still typical for legal documents. There are a few footnotes to explain a number of points – but of course these footnotes were not part of the original contract text.

Authors

There is no author identified or asserted for the documents in this report; the documents are deemed to be team efforts.

The original documents now follow, starting on the next page.

* By Paul Bacsich.

1. Summary of the Accredited Partner Agreements

UK eUniversities Worldwide Limited (UKeU) has developed a platform for the delivery via the Internet of higher education courses and modules accredited by UK universities. The following is a summary of the principal terms under which UKeU appoints its accredited partners to recruit and support students:

Appointment

- The appointment is typically for an initial period of 24 months and thereafter is subject to termination by either party giving three months' notice.
- UKeU appoints the partner to promote specific named courses in a named territory, and agrees not to appoint anyone else to promote those courses within that territory without first consulting with the partner.
- The partner is responsible for obtaining any government approvals required and for ensuring compliance with local laws.

Marketing and Applications

- The local selling price for each course is agreed in advance between UKeU, the partner and the relevant university.
- The partner markets and promotes the courses with the aim of achieving specified target student numbers. UKeU has the right to terminate the agreement if targets are not met.
- UKeU has to approve the text of any planned advertising.
- Students are subject to UKeU's standard terms and conditions.
- UKeU is responsible for deciding whether a student meets the course admission criteria and for offering places on each course.
- All courses require the partner to provide the support services for recruitment set out in the Schedule below.

Invoicing

- UKeU is responsible for all invoicing of students.
- UKeU is responsible for collecting all fees from students; the student pays directly to UKeU.

Commission

- The level of commission is negotiated on an individual basis.
- Commission is paid in arrears 50% after the student pays and 50% after the student starts the course.
- The partner bears a pro rata share of any withholding or sales tax and of any refunds.

General

- The partner does not acquire any intellectual property rights in the course.
- UKeU grants the partner a licence to use the UKeU trademark for marketing.
- The partner may not offer a directly competing eLearning course from a UK university.
- The agreement contains provisions dealing with dispute resolution, warranties, limitations on liability, termination and confidentiality.
- Requirements for the partner to provide post recruitment support (if any) will vary from course to course.
- UKeU is responsible for ensuring that courses are accredited by the relevant university.

SCHEDULE – SUPPORT SERVICES

- Assist institutions with Ministry of Education course registration.
- Produce draft course promotion plan – agree with UKeU.
- Implement course promotion strategy.
- Market briefings.
- Post course information on partner's website.
- Create link from partner's website to UKeU website.
- Organise market briefing promotional seminars & mini exhibitions
- Display course information and brochures at the partner's campus or centre
- Placement and management of print and Internet advertisements.
- Send out mail shots to appropriate databases.

- Assist with programmes for representative’s promotional visits.
- Handle any course enquiries.
- Provide individual counselling services for prospective applicants.
- Distribute course information to prospective applicants.
- Certification of academic documents.
- Assist with UKeU application process.
- Maintain basic student details.

2. A Generic Accredited Partner Agreement

*Contents List**

Interpretation	9
Appointment and Term.....	11
Regulatory Approvals.....	12
Marketing	12
Recruitment of Students.....	13
Applications.....	14
Enrolment	15
Alternative Invoicing and Payment Arrangements	15
Post-Recruitment Activities and Support.....	15
Duties of eUniversities	16
Financial Provisions.....	17
Intellectual Property Rights.....	18

* Unlike for most UKeU contracts, the Accredited Partner Agreement did not contain its own Table of Contents – probably because it was rather shorter than the typical UKeU contract.

Competition	18
Disputes.....	19
Representations and Warranties	20
Force Majeure	20
Liability.....	21
Termination.....	21
Consequences of Termination.....	22
Confidentiality.....	23
Notices	24
Assignment.....	24
Miscellaneous.....	25
Signatures	27
Schedule 1: List of Courses	28
Schedule 2: Target Student Numbers	28
Schedule 3: Support Services.....	29
Schedule 4: Income Share	29
Annex A: Trade Mark License	29

The Contract Itself

See over the page.

ACCREDITED PARTNER AGREEMENT

between

UK eUniversities Worldwide Limited

and

[name]

This Agreement is made on [] 2003

between:

- **UK eUniversities Worldwide Limited** of 14 Buckingham Gate, London SW1E 6LB ('eUniversities'); and
- **[Name]** of [address] (the 'Partner').

WHEREAS:

- (a) eUniversities has developed a platform for the delivery via the Internet of higher education courses and modules accredited by UK Higher Education Institutions.
- (b) eUniversities wishes to appoint the Partner as its accredited partner pursuant to the terms and conditions set out herein and the Partner wishes to accept such appointment.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. INTERPRETATION

- 1.1. In this Agreement unless the context otherwise requires the following words and expressions shall have the following meanings:

'Accepted Student' means a person who has accepted an offer of a Course from the relevant Course Supplier;

'Affiliate' means any holding company or subsidiary company of such person or any company which is a subsidiary company of any holding company of such person, and the expressions 'holding company' and 'subsidiary' shall have the meanings respectively ascribed thereto by Section 736 of the Companies Act 1985, as amended by Section 144 of the Companies Act 1989;

'Application' means an application by a prospective student within the Territory for the supply of a Course;

'Business Day' means a day (other than a Saturday or a Sunday) on which the clearing banks in London are open for business;

'Codes of Conduct and Codes of Practice' means those codes of conduct and practice which eUniversities reasonably adopts from time to time in relation to its overseas partners, as from time to time notified by eUniversities to the Partner with a prior notice in writing of not less than 14 days before they take effect provided that in the event of conflict, inconsistency and/or ambiguity between the terms and conditions of the Codes of Conduct and/or Codes of Practice and this Agreement, this Agreement shall prevail to the extent of such conflict, inconsistency and ambiguity;

'Commencement Date' means the date set out at the head of this Agreement;

'Course' means a course or module offered by eUniversities as listed in Schedule 1 and such other courses or modules as from time to time agreed in writing between the Parties hereto to be offered by eUniversities;

'Course Supplier' means such UK Higher Education Institutions as from time to time approved by the Partner responsible for supplying the content of the Course(s);

'e-Learning' means the delivery of an academic programme which includes a substantial element of delivery by way of the Internet or interactive television or similar technology, to students who, for the majority of time during which they receive guided learning or instruction, are not physically present at premises occupied by the supplier of the programme;

'Income Share' means the fees payable by eUniversities to the Partner for its services hereunder pursuant to this Agreement;

'Intellectual Property Rights' means all intellectual property rights of whatever nature, including copyright, trade marks, design rights, registered designs, database rights, and all rights of a like nature anywhere in the world including (but not limited to) any renewals, reversions and extensions created or provided by the laws of any country from time to time, either registered or unregistered;

'Month' means a calendar month during the currency of this Agreement;

'Parties' means the parties to this Agreement;

'Run Out Period' means the period during which any student who enrolled to pursue any Course during the currency of this Agreement continues to pursue such Course in accordance with the terms and conditions of their enrolment with eUniversities and/or the Course Supplier, subject to a maximum of four years;

'Support Services' means the services set out in Schedule 3;

'Territory' means [details]^{*} and such other region or country that the Parties may agree from time to time;

'Trade Mark Licence' means the trade mark licence in the form attached hereto as Annex A, to be entered into by the Parties on the Commencement Date;

'Trade Marks' means the trade marks referred to in the Trade Mark Licence together with such other trade marks as are used by eUniversities in relation to its business at any time.

1.2. Except where otherwise expressly stated:

1.2.1. references to time are to the time in London;

* Examples would include individual or groups of countries and semi-autonomous regions – Thailand, Brazil, Hong Kong, etc.

- 1.2.2. any reference in this Agreement to any agreement (including this Agreement) is to the same as amended, novated, modified or replaced from time to time in accordance with its terms;
- 1.2.3. any reference to a Clause, Schedule or Annex is a reference to a Clause in or Schedule or Annex to this Agreement;
- 1.2.4. words in the singular may be interpreted as including the plural and vice versa;
- 1.2.5. words importing individuals shall be treated as importing corporations and vice versa;
- 1.2.6. any reference in this Agreement to a statute or statutory instrument or order is a reference to that statute, statutory instrument or order as from time to time amended, re-enacted or supplemented;
- 1.2.7. the Clause headings in this Agreement are for convenience only and shall not affect the validity or construction of this Agreement;
- 1.2.8. the word 'including' shall be construed as being by way of illustration only and not by way of limitation;
- 1.2.9. a 'person' includes any individual, company, corporation, firm, partnership, joint venture, association, organization, unit or trust (in each case, whether or not having separate legal personality; and
- 1.2.10. a 'tax' includes any present or future tax, levy, impost, duty, charge, fees, deduction or withholding of any nature and whatever called, by whomsoever, on whomsoever and wherever imposed, levied, collected, withheld or assessed.

2. APPOINTMENT AND TERM

- 2.1. eUniversities hereby appoints the Partner to promote the recruitment of students within the Territory onto Courses and the Partner hereby agrees to act in that capacity, subject to the terms and conditions of this Agreement.
- 2.2. Subject to earlier termination pursuant to Clause 18, this Agreement shall commence on the Commencement Date and unless terminated in accordance with the terms hereof shall continue in force for 24 months (the 'Initial Period') and thereafter unless or until terminated by either Party giving to the other three month's prior written notice which may expire at any time after the Initial Period.
- 2.3. During the second year of this Agreement the Parties shall seek to agree new recruitment targets for the 12 months following the end of the Initial Period. If such targets are agreed, the Initial Period shall be extended until the end of such 12 month period.
- 2.4. The Parties shall enter into the Trade Mark Licence immediately following signature of this Agreement.

- 2.5. eUniversities shall not appoint another person to market the Course(s) listed in Schedule 1 within the Territory during the period of this Agreement without first consulting with the Partner.
- 2.6. In the event of early termination, eUniversities shall ensure that the Course Suppliers fulfil their respective obligations to all enrolled students.

3. REGULATORY APPROVALS

- 3.1. It shall be a condition precedent to this Agreement that all necessary government approvals, if any, required to sell, market or support each Course in the Territory shall have been obtained. The Partner shall be responsible for obtaining such approvals where necessary and to maintaining them during the term of this Agreement.
- 3.2. The Partner shall be responsible for registering this Agreement with the appropriate authorities in the Territory (if so required) and for paying the costs of registration and stamping if necessary.
- 3.3. The Partner shall comply with all applicable laws and regulations relating to the marketing and support of Courses and the recruitment of students (including all applicable data protection legislation) and shall indemnify eUniversities against any liability for any contravention of such laws or regulations (unless the same is caused solely by the failure of eUniversities to comply with the Partner's recommendations).
- 3.4. The Partner shall work within the guidelines and rules, if any, established by the relevant authorities in the Territory in relation to the recruitment of students and the marketing or support of the Courses. The Partner shall inform eUniversities if any change or proposed change is introduced or announced which might affect the recruitment of students or the marketing or support of the Courses.

4. MARKETING

- 4.1. The Partner shall cultivate and maintain good relations with Accepted Students and potential students within the Territory in accordance with sound commercial principles and shall use its reasonable endeavours to further the interests of eUniversities.
- 4.2. The Partner shall market the Courses with the aim of achieving the student numbers set out in Schedule 2. eUniversities will deliver a reasonable quantity of marketing materials to the Partner. The Parties will discuss appropriate joint marketing campaigns from time to time (which may include the relevant Course Supplier).
- 4.3. The Parties hereby agree that Courses delivered by the eUniversities shall be co-branded as if they were supplied by the relevant Course Supplier and eUniversities. The Partner may describe itself as an accredited partner of eUniversities and (where agreed with the relevant Course Supplier) as the provider of local tutorial support.

- 4.4. The Partner shall forward all PR and marketing materials to eUniversities and receive prior written approval of all text before publication. In the event that the Partner does not receive any approval of text within seven days from the date of receipt by eUniversities, such text will be deemed to have been approved by eUniversities.
- 4.5. The Partner shall be responsible for the safe storage and custody of all non-digital learning materials, manuals, books and other materials supplied by eUniversities to the Partner until such time as the Partner delivers the same to students.
- 4.6. The Partner shall observe the highest standards of integrity and courtesy in its dealings with members of the public in relation to the Courses.
- 4.7. Each party agrees not to engage in any conduct which in the reasonable opinion of the other party is prejudicial to the reputation or business of that other party or any Course Supplier or to the recruitment of students within the Territory or the marketing of higher education courses generally. eUniversities acknowledges that the Partner may offer courses in other subjects and aimed at other price bands.
- 4.8. The Partner shall not without the prior written approval of eUniversities incur any material expense in relation to which it has a right under this Agreement to seek reimbursement from eUniversities.

5. RECRUITMENT OF STUDENTS

- 5.1. The Partner shall not seek or accept applications for Courses from persons resident in any other territory in respect of which eUniversities has appointed another accredited partner (as notified from time to time by eUniversities to the Partner). This clause does not apply to students of the Partner's campus or affiliated campus outside the Territory who wish to study the course by residing in the Territory.
- 5.2. eUniversities shall determine a reasonable framework for the price to be charged to Accepted Students for each Course after consultation with the Partner, and the Partner acting reasonably and in accordance with any applicable laws shall determine the price to be charged to Accepted Students for each Course within that framework.
- 5.3. All recruitment of students for Courses by the Partner shall be made on such terms and conditions as eUniversities may from time to time specify in writing to the Partner, and accordingly:
 - 5.3.1. the Partner shall, in the course of dealing with all Accepted Students and prospective students, bring to their notice such terms and conditions;
 - 5.3.2. the Partner shall not give or make any promises, warranties, guarantees or representations concerning any Course or Course Supplier other than those contained in the then current terms and conditions of either eUniversities or the relevant Course Supplier;

- 5.3.3. the Partner shall not vary, waive or modify such terms and conditions including any provisions relating to the price payable for Courses.
- 5.4. The Partner shall not agree to the supply of Courses in advance of payment being received from the Accepted Student or otherwise extend the credit of eUniversities in any way except with the prior written consent of eUniversities.
- 5.5. The Partner shall ensure that each potential student is made aware that any contract for the provision of a Course will not become binding on eUniversities or the Course Supplier until a firm offer is made by eUniversities and the Course Supplier and such offer is accepted by the Accepted Student.
- 5.6. eUniversities shall have no liability or responsibility whatsoever under this Agreement for the decisions, actions, omissions or procedures of any Course Supplier (which in so far as they affect any Accepted Student or any prospective student or the Partner shall be final and binding). However, eUniversities will use its reasonable endeavours to help to resolve any dispute or issues between any Course Supplier and either the Partner or any Accepted Student.

6. APPLICATIONS

- 6.1. All applications to enrol in any Course must be made through eUniversities using an application form approved by eUniversities. The Partner may charge a non-refundable application fee of up to US\$50 (or local equivalent).
- 6.2. The Partner shall advise potential applicants in the Territory about the Courses and shall assist them in completing the necessary documentation and in arranging the transmission of the same to eUniversities (in such form as eUniversities shall determine from time to time).
- 6.3. The Partner shall mark all non-digital Applications with the stamp of the Partner prior to submitting them to eUniversities so that any such Applications can be easily identified by eUniversities as having been submitted by the Partner.
- 6.4. The Partner shall promptly submit to eUniversities each Application together with any further relevant information about the prospective student which the Partner may have obtained or which eUniversities may reasonably require.
- 6.5. eUniversities reserves the right, in its absolute discretion, to require Applications to be accompanied by a deposit as required by eUniversities from time to time provided that the requirement for such a deposit has been notified by eUniversities to the Partner at least thirty (30) days prior to such requirement taking effect. eUniversities confirms that it has no intention at present to require a deposit and would only do so after consultation with the Partner.
- 6.6. eUniversities reserves the right, in its absolute discretion, to refuse to accept any prospective student introduced by the Partner.

7. ENROLMENT

- 7.1. Whilst the Partner shall provide facilities and services in support of the delivery of the Course as set out in Part A of Schedule 3, delivery of the Course to the Accepted Student shall be by eUniversities on behalf of the relevant Course Supplier which shall itself enrol each Accepted Student accordingly. The Partner will act as agent on behalf of the relevant Course Supplier with regard to enrolment of students and to the Course Supplier's relationship with the students, and shall comply with the instruction of eUniversities and the relevant Course Supplier in that regard.
- 7.2. eUniversities shall use its reasonable endeavours to provide the Partner with relevant information and requisite assistance to enable the Partner to deal with queries from applicants on academic and technical matters.
- 7.3. eUniversities will be responsible for processing all applications and, subject to final approval by the relevant Course Supplier, for offering places on each Course.. eUniversities shall inform the Partner within fourteen (14) days from the date of receipt of the Application by eUniversities of decisions concerning applications received via the Partner for admission to any Course. eUniversities shall consult with the Partner where practicable in relation to marginal cases and shall disclose to the Partner the reasons for non-admission of any student where eUniversities is made aware of such reason by the Course Provider.
- 7.4. eUniversities shall be responsible for all invoicing in relation to the Courses and all payments have to be made directly by the student to eUniversities (unless otherwise agreed in writing between the parties). eUniversities shall send a copy of each invoice to the Partner when issued. eUniversities shall have the right to terminate access to any Course if a student fails to pay fees in accordance with such terms as are notified to the Partner by eUniversities from time to time but will notify the Partner at least seven days in advance of any intention to terminate access.
8. eUniversities will consider in good faith any proposal from the Partner to adopt alternative invoicing and payment arrangements which are better suited to existing general practice within the Territory, provided that such arrangements do not have a significant adverse effect on eUniversities' cash flow

9. POST-RECRUITMENT ACTIVITIES AND SUPPORT

- 9.1. The Partner shall provide the Support Services specified in Schedule 3.
- 9.2. The Partner shall provide eUniversities with a monthly report on the marketing of Courses and recruitment of students in such format as eUniversities reasonably requires.

- 9.3. The Parties will jointly review the progress of this Agreement at intervals of no greater than six months (or, during the first six months of this Agreement, at intervals of no greater than three months) in accordance with a process to be agreed by the Parties.
- 9.4. The Partner shall promptly inform eUniversities of any significant matters of which it becomes aware which are likely to be of general relevance to the recruitment of students in the Territory.
- 9.5. The Partner shall notify eUniversities of all complaints received by the Partner within two Business Days of the Partner receiving the same (unless the complaint relates solely to the conduct of the Partner). The Partner shall handle all complaints in such manner as eUniversities shall from time to time direct after consultation with the Partner, provided that the Partner may take immediate action to address a complaint where this is reasonably required in the circumstances. Failing this, eUniversities shall be entitled to handle such complaints directly as eUniversities in its absolute discretion thinks fit and may charge the Partner for all resulting costs and expenses.
- 9.6. The Partner shall not make any admission of liability and/or pay damages in relation to any Course without the prior written consent of eUniversities (which shall not be unreasonably withheld).
- 9.7. The Parties agree that material which is offensive or illegal within certain territories should, so far as is technically possible, be rendered inaccessible from within those territories.

10. DUTIES OF eUNIVERSITIES

- 10.1. eUniversities shall at all times act towards the Partner in good faith.
- 10.2. eUniversities shall ensure that the Courses shall be of suitable quality so as to be accredited by the relevant Course Supplier such that those Accepted Students who satisfy the relevant Course Supplier that they have successfully completed a Course shall be entitled to receive the appropriate qualification from the Course Supplier. Such qualification award received directly from the Course Supplier shall be identical to that given to students who study on campus. Courses will not be offered to Accepted Students until they have been so accredited, although they may be marketed in advance of accreditation.
- 10.3. eUniversities shall use its reasonable endeavours to ensure that the Courses are kept up to date by the relevant Course Suppliers but shall ensure that existing Accepted Students are not adversely affected by any changes to Course material.
- 10.4. The Partner acknowledges that eUniversities will be unable and is not obliged to deliver or provide services in connection with a Course which does not satisfy the quality standards of its Committee for Academic Quality.

- 10.5. eUniversities shall have the right to vary the content of any Course for any reason subject to giving reasonable notice if possible as long as it does not affect the existing Accepted Students already in the system.
- 10.6. eUniversities shall have the right to vary the number of credits awarded for any Course or any part thereof provided that this does not adversely affect students already taking the relevant Course.
- 10.7. eUniversities shall comply with its obligations to the Course Supplier(s) at all times.

11. FINANCIAL PROVISIONS

- 11.1. In consideration of the obligations undertaken by the Partner hereunder, eUniversities shall (subject as herein provided) pay the Partner a share of the fees paid by the Accepted Student for each new Application generated by the Partner and successfully processed by eUniversities. For the avoidance of doubt an Application will only attract Income Share once it has passed through all the administrative checks of eUniversities and the relevant Course Supplier without objection.
- 11.2. The Income Share shall be calculated in accordance with Schedule 4. Payments to the Partner will be made in two equal instalments in relation to each Application as follows:
- 11.2.1. the first payment shall be paid at the end of the Month following the Month in which payment in full is received by eUniversities from the Accepted Student (subject to clause 7.5); and
- 11.2.2. the second instalment shall be paid at the end of the Month following the Month in which the supply of the Course commences.
- 11.3. If eUniversities decides in its absolute discretion to refund fees paid by an Accepted Student, no Income Share will become due to the Partner in respect of such fees (and any such Income Share already paid will become repayable by the Partner to eUniversities). eUniversities shall consult with the Partner before making any such refund and shall notify the Partner promptly if it makes any such refund.
- 11.4. After termination of this Agreement the Partner shall be entitled to receive Income Share as if this Agreement remained in force in relation to each Application originated by the Partner prior to termination but processed after the termination of this Agreement.
- 11.5. eUniversities shall be entitled to pay any Income Share due to the Partner net of any sum due from the Partner to eUniversities.
- 11.6. eUniversities reserves the right to introduce a fee for accredited partners at a later stage after consultation with the Partner.

11.7. The Partner shall bear a share of any withholding taxes imposed in relation to any student fees, such share being equal to the proportion the Income Share represents of the total amount payable by the student.

12. INTELLECTUAL PROPERTY RIGHTS

12.1. The Partner undertakes not to do anything to prejudice or damage the value of or goodwill in the Trade Marks.

12.2. Any additional goodwill generated by the Partner in respect of the Trade Marks will be the sole property of eUniversities.

12.3. The Partner will under no circumstances apply for registration of any trade or service mark in respect of the Trade Marks or any part of them or colourable imitations of the same.

12.4. If the Partner becomes aware of any infringement of any Intellectual Property Rights in relation to any Course or the Trade Marks, it shall immediately notify eUniversities thereof in writing but will take no other action against the infringer save as to assist eUniversities at eUniversities' cost in any action eUniversities may take in accordance with Clause 12.5 below.

12.5. When required by eUniversities the Partner will join with eUniversities at eUniversities' cost and take such reasonable action as eUniversities deems appropriate to protect the Trade Marks and all Intellectual Property Rights in the Courses.

13. COMPETITION

13.1. During the currency of this Agreement the Partner shall not sell or promote or have any financial interest in any e-Learning programme offered by any UK Higher Education Institute which is directly competitive with any Course without the prior written approval of eUniversities (not to be unreasonably withheld). For the purposes of this clause 12 a proposed programme shall not be deemed to be directly competitive with a Course unless:

- it comprises at least three modules which mainly relate to the same subject matter as the relevant Course; and
- it is aimed at the same level of student as the relevant Course (i.e. undergraduate or post-graduate); and
- the enrolment criteria are not substantially different from those applying in relation to the relevant Course; and
- the proposed programme is intended to have a selling price per module which is not more than 15% above or below that applicable to modules within the relevant Course.

- 13.2. Except with the prior written consent of eUniversities, the Partner shall not during the period of six months after termination (either on its own account or in connection with or on behalf of any other person) solicit or entice away from eUniversities any person who shall at the date of such termination be employed by eUniversities, whether or not any such person would commit a breach of their contract of employment by reason of leaving such employment.
- 13.3. While the above restrictions are considered by both Parties to be reasonable in all the circumstances, it is agreed that if such restrictions shall taken together be judged to go beyond what is reasonable in all the circumstances for the protection of eUniversities but would be judged reasonable if part or parts of the wording thereof were deleted, the restrictions shall apply with such deletions.

14. DISPUTES

- 14.1. In the event that there is a dispute between the Parties, unless otherwise agreed it shall be put in writing and dealt with by the Parties' respective contract managers from time to time (or their authorised alternates) currently being:

eUniversities	Partner
---------------	---------

Name:

Tel:

Fax:

Email:

Address:

- 14.2. If the contract managers cannot resolve the dispute within one month, or if it exceeds their authority, then the dispute shall be referred to the Parties' respective senior managers from time to time (or their authorised alternates) currently being:

eUniversities	Partner
---------------	---------

Name:

Tel:

Fax:

Email:

Address:

- 14.3. If the senior managers cannot resolve the dispute within 14 days, the Parties shall seek to agree a form of dispute resolution to resolve the dispute which shall be dealt with accordingly. If the Parties cannot agree such method within seven days, the dispute shall be referred to an expert appointed by the Parties, or in default of agreement on

the identity of the expert appointed by the president for the time being of the Institute of Chartered Accountants in England and Wales. The expert shall act as such and not as an arbitrator. The expert shall determine their own procedure and the Parties shall cooperate with the expert and offer all reasonable assistance in connection with the resolution of the dispute. The expert's determination on the matter in dispute shall be final and binding on the Parties. Provided that both Parties have acted in good faith, the expert's costs shall be borne equally between them.

15. REPRESENTATIONS AND WARRANTIES

15.1. Each Party represents and warrants to the other that:

15.1.1. it has obtained, and will use all reasonable endeavours to renew, preserve, comply with and maintain (as applicable) at all times during the currency of this Agreement and any Run-Out Period all licences, authorisations, permits, consents and approvals (or exemptions) necessary to enable it to fulfil its obligations hereunder;

15.1.2. it is not relying upon any representations (whether written or oral) of the other Party other than the representations expressly set forth herein provided always that nothing in this Agreement shall prevent either Party from taking action for any fraudulent representation or act;

15.1.3. it has consulted with its own legal, regulatory, tax, business, investment, financial and accounting advisors to the extent it has deemed necessary, and it has made its own investment decisions based upon its own judgment and upon any advice from such advisors as it has deemed necessary and not upon any view expressed by the other Party;

15.1.4. it understands the terms, conditions and risks (economic and otherwise) of this agreement and is capable of assuming and willing to assume (financially and otherwise) those risks;

15.1.5. it is entering into this transaction as principal, and not as agent, fiduciary or any other capacity; and

15.1.6. the other Party is not acting as a fiduciary or financial, investment or legal advisor for it.

16. FORCE MAJEURE

16.1. Neither Party shall be in breach of this Agreement if it fails to discharge any obligation imposed on it hereunder, if the sole reason for the failure is any cause or event outside the control of the Party in question, including war, riot, act of God, terrorism, extreme weather, interruption of water, power or any essential supply, arson or any criminal act by any third party not connected with the Party affected, trade disputes (other than trade disputes directly involving the Party's own employees) or any other cause.

17. LIABILITY

- 17.1. Neither Party shall be responsible for any delay or failure to deliver caused by the other Party failing to meet any of its commitments under this Agreement.
- 17.2. With the exception of liabilities connected with death or personal injury, to which no limit shall apply, for any 12 month period eUniversities' total liabilities to the Partner in connection with any breach of this Agreement shall be limited to an amount equal to the sums paid by eUniversities to the Partner in that 12 month period.
- 17.3. Neither Party will in any event be liable for any special, consequential or indirect damages, loss of profits, loss of business, loss of revenue, loss of goodwill or loss of anticipated savings arising out of or in connection with this Agreement.
- 17.4. Except in each case of fraudulent misrepresentation, the only remedy available in respect of any misrepresentation or untrue statement made to either Party shall be a claim for breach of contract. For the avoidance of doubts the target student numbers in Schedule 2 do not constitute representations by either Party.
- 17.5. The Parties consider the limitation and exclusions of liability set out in this Agreement to be reasonable in the circumstances and acknowledge that eUniversities could not enter into its obligations under this Agreement without a corresponding increase in cost if it were to assume a greater degree of liability to the Partner.

18. TERMINATION

- 18.1. Either Party may terminate this Agreement by notice in writing to the other taking effect either forthwith or at such time as may be specified in such notice on or after the occurrence of any of the following events:
- 18.1.1. if the other Party commits a material breach of its obligations hereunder which in the case of a breach capable of remedy has not been remedied within 30 days of notice of the breach requiring its remedy having been given by the innocent Party to the other;
- 18.1.2. any meeting of creditors of the other Party being held or any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) being proposed or entered into by or in relation to the other Party;
- 18.1.3. a supervisor, receiver, administrator, administrative receiver or other encumbrancer taking possession of or being appointed over or any distress, execution or other process being levied or any substantial part of the assets of the other Party;
- 18.1.4. the other Party ceasing to carry on business or being unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;

- 18.1.5. a petition being presented or a meeting being convened for the purpose of considering a resolution for the making of an administration order, the winding-up or dissolution of the other Party;
- 18.1.6. a petition for the bankruptcy of the other Party being presented or circumstances existing which would permit such a petition to be presented; or
- 18.1.7. proceedings or steps analogous to any of the above taking place in any jurisdiction to which the other Party is subject.
- 18.2. eUniversities may terminate this Agreement forthwith by notice in writing to the Partner at any time if any of the following events (each of which is to be regarded as fundamental breaches hereof) shall occur:
- 18.2.1. the Partner fails to achieve the target student numbers set out in Schedule 2 (as amended from time to time pursuant to clause 2.3) for any target period (unless in the opinion of eUniversities acting reasonably such failure is not due to any lack of effort or commitment by the Partner);
- 18.2.2. any act or omission of the Partner or its officers, employees or representatives which shall in the reasonable opinion of eUniversities in any way prejudice the interests of eUniversities or bring the name of eUniversities into disrepute;
- 18.2.3. the Partner or any of its officers, employees or representatives is in breach of the Codes of Practice and/or Codes of Conduct
- 18.3. The Partner may terminate this Agreement forthwith by notice in writing to eUniversities at any time if any of the following events (each of which is to be regarded as fundamental breaches hereof) shall occur:
- 18.3.1. any act or omission of eUniversities or its officers, employees or representatives which shall in the reasonable opinion of the Partner in any way prejudice the interests of the Partner or bring the name of the Partner into disrepute; or
- 18.4. Notwithstanding any breach, default or omission by one Party the other Party may elect to treat this Agreement as in full force and effect and to enforce its rights hereunder.

19. CONSEQUENCES OF TERMINATION

- 19.1. The Agreement shall remain in force as necessary during the Run Out Period and in particular the Parties shall remain obliged to fulfil their respective obligations towards students enrolled to receive any Course before termination of this Agreement.
- 19.2. The termination of this Agreement for whatever cause shall not affect any provision of this Agreement which is expressed to survive or operate in the event of termination of this Agreement and shall not prejudice or affect the rights of either Party against the other in respect of any breach of this Agreement occurring prior to termination or in

respect of any monies payable by one Party to the other or in respect of any other rights accrued in each case in respect of any period prior to termination.

- 19.3. Upon the termination of this Agreement for any reason, subject as otherwise provided herein and to any rights or obligations which have accrued prior to termination, neither Party shall have any further obligation to the other under this Agreement.

20. CONFIDENTIALITY

- 20.1. The terms and conditions of this Agreement and all information provided by or on behalf of one Party to or on behalf of the other Party hereunder shall be treated as confidential and shall not be disclosed without the prior written consent of the non-disclosing Party, save that consent shall not be required for disclosure by one Party:

20.1.1. to that Party's Affiliates and to directors or employees of that Party or that Party's Affiliates, provided that they in turn are required by that Party to treat the information disclosed as confidential;

20.1.2. to persons professionally engaged by that Party or that Party's Affiliates, provided that they in turn are required by that Party to treat the information disclosed as confidential;

20.1.3. to any government department or agency or other judicial or regulatory body having jurisdiction over that Party;

20.1.4. to any bank or other financial institution in relation to the financing of that Party's business activities, provided that the bank or other financial institution, as the case may be, is required by that Party to treat the information disclosed as confidential;

20.1.5. to the extent required by any applicable laws, judicial process or the rules and regulations of any recognised stock exchange;

20.1.6. to any intending assignee of the rights and interest of that Party provided that such intending assignee in turn is required by that Party to treat the information disclosed as confidential;

20.1.7. to any expert appointed pursuant to Clause 14.3; or

20.1.8. to the extent that such information is in or lawfully comes into the public domain other than by breach of this Clause 20.

- 20.2. Save as required by law or the rules of any relevant regulatory body, neither Party will make any announcement in respect of the other Party or this Agreement without the prior written consent of the other Party.

- 20.3. The confidentiality obligations set out in this Clause 20 shall survive termination of this Agreement for two years.

21. NOTICES

21.1. Any notice or other communication to be given or made under this Agreement by one Party to the other shall be given or made in writing to the other at such address, email address or facsimile number (as appropriate) as either Party may respectively notify to the other from time to time.

21.2. If in legible form (but not otherwise) and in the absence of evidence of earlier receipt, any notice or notification served in accordance with Clause 21.1 shall be deemed to have been received:

21.2.1. if delivered:

- a) when delivered, if delivered during the hours of 09:00 to 18:00 on a Business Day; or
- b) at 10:00 hours on the next occurring Business Day after the day of delivery, if delivered during the hours of 18:00 hours and 24:00 hours on a Business Day or at any time on any non-Business Day; or
- c) at 10:00 hours on a Business Day, if delivered during the hours of 00:00 hours and 09:00 hours on such Business Day;

and "delivered", for this purpose, means delivered personally with the requirement that a receipt is obtained;

21.2.2. if sent by email, on receipt by the sending Party of electronic confirmation of receipt by the recipient Party; (provided that a separate copy of the communication is sent by other means);

21.2.3. if sent by facsimile, on receipt by the sending Party of confirmation of successful transmission to the recipient Party's facsimile receiving equipment;

21.2.4. if posted by airmail, on the second Business Day following the day of sending, if sent by first class post or on the third Business Day following the day of sending, if sent by second class post.

21.3. Without prejudice to Clause 21.1, where a notice or notification is sent by facsimile but it is not legible upon receipt, the recipient Party shall use all reasonable endeavours to notify the sending Party of that fact without delay.

22. ASSIGNMENT

22.1. eUniversities may assign its rights and obligations under this Agreement or may perform any of its obligations hereunder through any Affiliate subject to the approval of the Partner, such agreement not being unreasonably withheld.

- 22.2. The Partner may assign its rights and obligations under this Agreement or may perform any of its obligations hereunder through any Affiliate subject to the approval of eUniversities, such agreement not being unreasonably withheld.
- 22.3. This Agreement shall be binding upon and ensure to the benefit of the respective successors and assigns (if any) of the Parties.
- 22.4. Either Party may use subcontractors to discharge some or all of its obligations under this Agreement, but shall itself remain for the proper discharge of those obligations.

23. MISCELLANEOUS

- 23.1. The Partner shall be entitled, subject as provided in this Agreement and to any reasonable directions which eUniversities may from time to time give, to perform its duties hereunder in such manner as it may think fit.
- 23.2. The Partner shall indemnify and keep indemnified eUniversities from and against any and all loss, damage or liability suffered and legal fees and costs incurred by eUniversities resulting from any material breach of this Agreement by the Partner (except to the extent that the same arises as a result of a breach by eUniversities of its obligations hereunder). eUniversities agrees to indemnify the Partner and keep it indemnified against any and all loss, damage or liability suffered and legal fees and costs incurred by the Partner as a result of any action or omission by eUniversities in relation to the provision of any Course except to the extent that the same arises as a result of a breach by the Partner of its obligations hereunder.
- 23.3. The Parties agree to act reasonably and in good faith with regard to this Agreement and the rights and obligations created under it.
- 23.4. This Agreement shall not be interpreted or construed as creating any association, joint venture or partnership between the Parties or imposing any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or to act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party. Nothing herein shall or shall be deemed to create the relationship of employer and employee between the Parties.
- 23.5. If any item or provision in this Agreement or any part thereof (in this Clause called the 'Offending Provision') is declared or becomes unenforceable invalid or illegal for any reason whatsoever, the other terms and provisions of this Agreement shall remain in full force and effect as if this Agreement had been executed without the Offending Provision appearing herein. In the event that the exclusion of any Offending Provision shall in eUniversities' reasonable opinion have a material adverse affect on the commercial terms of this Agreement, eUniversities shall have the right to terminate this Agreement by giving the Partner 30 days' written notice.

- 23.6. No waiver, failure, or delay by either Party in respect of any breach by the other of this Agreement or acceptance of payment or performance shall preclude any right, relief or remedy of the other Party under this Agreement, nor shall the same be relied upon as a consent or waiver in respect of such breach whether of a like or different nature.
- 23.7. This Agreement creates no rights for any person not a party to it, whether by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 23.8. This Agreement (including the Annexes hereto) constitutes the entire agreement between the Parties in relation to the subject matter to which it relates and supersedes and extinguishes any documents, drafts, minutes of meetings, letters or notes, or any statements, communications, representations, warranties, understandings, arrangements or agreements (in any such case, whether oral, express or implied) previously given or made other than those included in this Agreement, and those, if any, made fraudulently (and nothing in this Clause 23.8 shall limit or exclude any liability for fraud).
- 23.9. Except as otherwise provided herein, no addition, amendment to or modification of this Agreement shall be effective unless it is agreed in writing and signed by a duly authorised representative of each of the Parties.
- 23.10. This Agreement shall be governed by and construed in all respects in accordance with English law and the Parties agree to submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising in relation to this Agreement.

AS WITNESS the hands of the duly authorised representatives of the Parties the day and year first above written

SIGNED by:(Signature)

on:(Date)

for and on behalf of **UK eUniversities Worldwide Limited**

in the presence of:

Signature:

Name:

Address:

Occupation:

SIGNED by:(Signature)

on:(Date)

for and on behalf of **[name]** in the presence of:

Signature:

Name:

Address:

Occupation:

SCHEDULE 1**[list of Courses]****SCHEDULE 2****Target student numbers**

Target period	Target student numbers (total for all Courses)
Up to 30 June 2003	
1 July 2003 to 31 December 2003	
1 January 2004 to 30 June 2004	
1 July 2004 to 31 December 2004	
1 January 2005 to 30 June 2005	
1 July 2005 to 31 December 2005	

For the purposes of the above table 'Target student numbers' refers to the number of students who have accepted the offer of a course from the relevant Course Supplier and have made payment in full for such course during the target period.

SCHEDULE 3
SUPPORT SERVICES

- Assist institutions with Ministry of Education course registration
- Produce draft course promotion plan – agree with eUniversities
- Implement Course promotion strategy
- Market briefings
- Post course information on Partner’s website
- Create link from Partner’s website to eUniversities website
- Organise market briefing promotional seminars & mini exhibitions
- Display course information and distribute brochures at the Partner’s campus or centre
- Placement and management of print & Internet advertisements
- Send out mail shots to appropriate databases
- Assist with programmes for representative’s promotional visits
- Handle any course enquiries
- Provide individual counselling services for prospective applicants
- Distribute course information to prospective applicants
- Certification of academic documents
- Assist with UK eUniversities application process
- Maintain basic student details
- Managing collection of tuition fees where appropriate

SCHEDULE 4

Income Share

- The Partner shall be entitled to an amount equal to 15% of the fees paid by the Accepted Student for each new Application generated by the Partner and successfully processed by eUniversities, subject to the terms of clause 11.
- eUniversities shall use its reasonable endeavours to procure that each Course Supplier engages the Partner to provide local tutors to support their Courses. The parties acknowledge that the decision on whether or not to engage the Partner is at the discretion of the Course Provider.

ANNEX A Trade Mark Licence

[This is the end of the contract.]