

# **THE UKeU REPORTS**

Publications from the Archive  
of UK eUniversities Worldwide Limited

REPORT 10

## **Generic Agreements with Higher Education Institutions**

UKeU

March 2003

Edited by Paul Bacsich

Disseminated by The Higher Education Academy

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## Editor's Overview\*

The nature of creating legal agreements means that it is hard to assert who exactly is the “author”; hence, in consultation with former UKeU colleagues, the editors have taken the view that the documents here were authored anonymously. Thus there will be no “contextualisation by the author”. Some background is given by the editors in this section.

Section 1 is a verbatim copy of a position paper prepared by UKeU staff in September 2002 for a UKeU Board meeting.

Section 2 is a typical contract between UKeU (“eUniversities”) and a university (“the University”) together with its university trading company (“the Supplier”). The contract was being finalised in March 2003, hence the date of this report.

There were several variations in contracts with HEIs, much more so than in the case of overseas accredited partners. The following are the main types:

1. Contracts between UKeU and one HEI
2. Contracts between UKeU and one HEI plus its university trading company
3. Contracts between UKeU and a consortium of HEIs (plus in some cases trading companies as well).

In theory, the situation was further complicated in several ways:

- The HEIs came from any of the four home nations including some from Scotland. However, UKeU normally required that “This Agreement shall be governed by and interpreted in accordance with the law of England and Wales and the Parties agree to submit to the jurisdiction of the courts of England and Wales”.
- Some HEIs contracted with UKeU for only a subset of services – in particular, in the later months of UKeU’s life there were a few contracts for “pure” marketing of courses that remained on the HEI’s own learning platform.
- Several HEIs had an existing course from which the UKeU course was derived, and wished to manage the transition carefully. The contract in Section 2 has aspects of this.
- Some HEIs had an existing course in one or more particular territories and wanted to protect their market in such territories. Since there were rather few of these, it has not been possible to provide a contract of this nature as a guide without breaking confidentiality.

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\* By Paul Bacsich.

### ***A Note on Provenance***

All final signed contracts are stored in the UKeU materials archive. However, the effort of digging the contracts out of the archive and then scanning and proof-reading long documents was deemed to be a bad use of resources. Consequently it was decided to rely on such contracts as were in the UKeU electronic archive. There are seven sets of contracts there, for a range of institutions and consortia. Although one can never be sure that an electronic copy is the final version (without tedious proof-reading), analysis of the document dates and change history (some had Track Changes still enabled) has convinced the editors that the documents are draft final versions even if they cannot be guaranteed to be final versions. In any case, the purpose of this report is to give general information, not to identify specific HEIs (as one could do from a detailed analysis of special-purpose clauses in the contracts).

### ***Production Notes***

The incorporation of contractual material into a report such as this causes some production problems, in particular because of the complex automatic numbering used in legal documents and the different typefaces and spacing conventions (both for spaces after full stops and inter-line spacing) for legal material compared with the conventions used in the reports. The situation was made more complicated because of the heavy amount of editing that is typical of final legal documents, which tends to provide a document with (to say the least) a rather erratic use of Word styles. In the limited time available for production, no systematic answer was found to the production problems – instead, a variety of ad hoc techniques were used to produce polished documents.

Particular compromises were made with hyphenation. Unlike most of the reports in this series, hyphenation in this report was switched off, so as not to force hyphenation of the legal material. In addition, no spell-checking was done on the legal documents; apart from minor layout changes caused by the different margins from the original, the wording and structure is exactly as the originals.

Readers who wish to use contractual material from this report in their own documents are warned that the multi-level automatic numbering in Word is hard to use except in the hands of experts: strange-seeming effects may occur when cutting, pasting and reformatting large blocks of material.

*The original documents now follows, starting on the next page.*

## **1. Summary of Learning Programme Contracts**

This paper summarises the principal features of a typical Learning Programme contract between the HEI course supplier and UKeU.

Learning Programme contracts cover a number of areas, including:

- the development of the Learning Programme content;
- UKeU's hosting of the Learning Programme;
- UKeU's marketing of the Learning Programme; and
- UKeU's administration of the students and tutors.

### ***Commercial Terms***

UKeU receives payment by holding back a proportion of fees collected from students. Typically UKeU charges a commission of 25% for use of its platform and 15% for marketing, although actual percentages retained and the bases of calculation are negotiable.

If UKeU is advancing a capital sum as payment for rights (see below) it charges an additional commission to recover such sum within the life of the contract (based on expected student numbers). The additional commission terms vary depending on whether the HEI is prepared to guarantee minimum revenues or whether UKeU bears the risk of a shortfall if projected student numbers are not achieved.

The commission is subject to VAT. UKeU encourages suppliers to set up a separate VAT-registered subsidiary in order to enable recovery of this VAT. Such a subsidiary would deliver the course to corporate customers (who can in turn recover any VAT charged by the subsidiary). For this to be effective there needs to be some differentiation between the courses offered by the HEI and the subsidiary (e.g. different assessment provisions),

### ***Intellectual Property Rights***

The HEI owns substantially all of the intellectual property rights ('IPR') in the content of the Learning Programme (and indemnifies UKeU against any IPR claims by third parties in respect of such content). UKeU is granted licences to use such content:

- to develop the Learning Programme so that it can be hosted on the platform;
- for delivery of the Learning Programme to students and any connected purpose (e.g. marketing); and
- subject to the consent of the HEI (not to be unreasonably withheld or delayed) for any purpose connected with the provision of education.

Subject to a reasonable royalty payment, UKeU also has the right:

- to reuse parts of the Learning Programme (e.g. individual modules) in other courses, subject to the consent of the HEI (not to be unreasonably withheld or delayed); and
- to sub-licence the entire Learning Programme to any third party (although the HEI would then no longer be obliged to accredit or support it).

UKeU licenses any IPR it may have in the Learning Programme to the HEI for on-campus use.

If UKeU modifies the Learning Programme in such a way as to create new IPR, such IPR belong to UKeU.

### ***Non-Compete***

The HEI agrees not to offer any competing distance learning course (except for pre-existing courses).

### ***Programme Creation, Acceptance and Quality***

Creation of the Learning Programme to a defined schedule is the responsibility of the HEI. Quality obligations are that the Learning Programme must be accredited, and that it must satisfy CAQ standards. UKeU is not obliged to provide services in connection with a Learning Programme that does not satisfy CAQ standards.

The HEI may require funding by UKeU to develop the course. If agreed, this is conditional upon additional commission being payable (see above). Retention of the development funding is conditional upon satisfying the CAQ.

Updating the Learning Programme is the responsibility of the HEI, again to an agreed schedule.

### ***Promotion and Marketing***

Marketing is a major responsibility of UKeU, in collaboration or agreement with the HEI. UKeU acts as exclusive marketing agent of the HEI (unless otherwise agreed for specific territories). UKeU agrees to carry out certain activities but does not undertake to achieve any given level of success re student numbers or revenues.

The course price is to be within a framework agreed with the HEI.

The Learning Programme is co-branded, and each party licenses the other to use its trade marks without charge for that purpose.

### ***Student Relationship***

The contractual relationship is between the HEI (for which UKeU acts as agent) and the student. The HEI must not treat students materially less favourably than its on-campus students (including as to enrolment criteria).

UKeU acts as agent of the HEI in collecting fees, carrying out the administration of enrolment, and so on. The HEI is responsible for accrediting the Learning Programme with specified awards.

### ***Duration and Early Termination***

The contract normally runs for seven years, with a run-out period to cover service continuity for existing registered students. An automatic renewal right for UKeU is now sought.

Termination is only for breach or insolvency. There is normally no contractual provision for early termination of a “failing” course by either party (given that even with relatively low student numbers most courses should still generate incremental profit for UKeU), but the parties would review all possible avenues re. marketing, costs, etc. to improve performance. However, some HEIs have requested an early termination right in the course of ongoing negotiations.

### ***General***

The liability of UKeU under the contract is limited to the sums retained by it from the fees actually received from students pursuing the Learning Programme (i.e. its commission) and liability for indirect loss is excluded.

### ***Contract schedules***

Individual Schedules cover:

- Business Plan
- High-level functional specification of the platform
- Learning Programme specification
- Delivery and updating
- Marketing
- Sub-licence of logos
- Other services to be provided by UKeU
- Service level agreement re platform performance
- Financial terms.

There are detailed descriptions and timetables for tasks to be completed by each party.

## **2. Generic Learning Programme Contracts\***

Four actual but somewhat anonymised contracts are now given, three in Annexes and one in the rest of this Report. The ones in the Annexes are described first.

### **2.1 Contract with one Specific HEI**

Annex 1 (separate file) gives a contract with just one HEI which did not have a trading company. Apart from anonymising institutions and approximating the financial figures, it is verbatim in wording and layout to the real contract, except that a standard Report Series header and footer have been squeezed into the margins

### **2.2 Contract with one Specific HEI (late version)**

Annex 2 (separate file) gives a contract, one of the last to be authorised, concerning a foundation degree. This shows how contract clauses had evolved over the lifetime of UKeU. Apart from anonymising institutions and approximating the financial figures, it is verbatim in wording and layout, except that a standard Report Series header and footer have been squeezed into the margins.

### **2.3 Contract with a Complex Consortium**

Annex 3 (separate file) gives a contract concerning a course delivered from a consortium of universities with a professional association involved. This was one of the more complex contracts negotiated. Apart from anonymising institutions, making some contextual information a little vague, and “smearing” a large amount of detailed financial information, it is verbatim in wording and layout, except that a standard Report Series header and footer have been squeezed into the margins

### **2.4 Contract with one Specific HEI (plus Trading Company)**

This contract listed in the rest of this report is given in its entirety (apart from specific annexes which would identify the HEI and not add much to an already overlong block of material). It is between UKeU and one HEI plus its university trading company. In order to produce a version between UKeU and an HEI alone, it is only necessary to replace “Supplier” by “University” and delete all clauses which refer to insolvency and similar fatal issues concerning the supplier.†

*The contract now follows: it starts on the next page and continues until the end of this document.*

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\* This page is an “editorial” page written by Paul Bacsich.

†

## **AGREEMENT**

between

- (1) UK eUniversities Worldwide Limited
- (2) the University of [name]
- (3) [university trading company] Limited

for the provision of learning programmes

Final draft [March] 03

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This Agreement is made on the [day] of [month] 2003 between:

- UK eUniversities Worldwide Limited of 14 Buckingham Gate London SW1E 6LB (“eUniversities”);
- the University of [name], [address] (“the University”); and
- [university trading company], [address] (the “Supplier”).

WHEREAS:

The parties have agreed to co-operate with a view to offering a MSc. course in [subject] as described in the Business Plan.

NOW IT IS AGREED AS FOLLOWS:

## 1 DEFINITIONS

### 1.1 In this Agreement, save where the context otherwise requires:

“Affiliate” shall mean 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;

“Business Day” shall mean a day (other than a Saturday or a Sunday) on which the clearing banks in London are open for business;

“Business Plan” means the business plan set out at Annex A;

“Delivery and Refreshment Profile” means the delivery and refreshment profile set out at Annex C;

“eLearning” means the delivery of an academic programme which includes a substantial element of delivery by way of the Internet 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;

“Financial Annex” means the financial annex set out at Annex D;

“Formal Enrolment” means the process by which a student who has been successfully registered under the Initial Registration process with eUniversities is then formally enrolled with the University on the University’s award track;

“Initial Registration” means the process by which a prospective Student who has applied to eUniversities for a place in the Learning Programme is registered with eUniversities as eligible for Formal Enrolment;

“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;

“Launch Month” means September 2003 or such other month as the Parties may agree;

“Learning Module” means any module of study counting for a minimum of 15 credits forming part of the Learning Programme;

“Learning Object” means any discrete item of content within a Learning Programme;

“Learning Programme” means the entire student learning experience, including digitised and interactive course material, tutor support, learner support materials, accreditation and assessment and awards, as is more specifically detailed in the Learning Programme Specification, and where the context allows includes any part or parts of the whole learning programme;

“Learning Programme Specification” means the learning programme specification to be agreed between the Parties by no later than [31 March 2003];

“Marketing Plan” means the marketing plan set out at Schedule 3;

“Parties” means the parties to this Agreement;

“Platform Functional Specification” means the functional specification for eUniversities’ delivery platform as set out in Schedule 2;

“Run Out Period” means the period during which any student who has Formally Enrolled to pursue the Learning Programme during the currency of this Agreement continues to pursue the Learning Programme following termination of this agreement in accordance with the terms and conditions of their enrolment with eUniversities and/or the Supplier or University, subject to a maximum of four years;

“Service Level Agreement” means the provisions set out in Schedule 4;

“Student” means any individual who has been formally enrolled with the University on the University’s award track for the Learning Programme pursuant to Formal Enrolment;

“Supplier Style Guide” means the Supplier’s style guide as set out at Annex E;

“Support Services” means the services set out in paragraph 1 of Schedule 1.

1.2 Except where otherwise expressly stated:

1.2.1 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;

1.2.2 any reference to a Clause, Schedule or Annex is a reference to a Clause in or

Schedule or Annex to this Agreement;

- 1.2.3 words in the singular may be interpreted as including the plural and vice versa;
- 1.2.4 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;
- 1.2.5 the Clause headings in this Agreement are for convenience only and shall not affect the validity or construction of this Agreement; and
- 1.2.6 the word “including” shall be construed as being by way of illustration only and not by way of limitation.

## 2 TERM

- 2.1 Subject to earlier termination pursuant to clause 19, this Agreement shall be for an initial term being the period from signature until the end of the seventh full year from Initial Registration of the first Student to receive the Learning Programme, unless the Parties by written agreement resolve to extend this period.
- 2.2 In any event, the Agreement shall remain in force as necessary during the Run Out Period.
- 2.3 eUniversities undertakes, to the extent that it wishes to continue to offer the Learning Programme beyond the initial term, to negotiate with each of the Supplier and the University terms in good faith for the extension of the initial term.
- 2.4 Each of the Supplier and the University undertakes, to the extent that it wishes to continue delivery of the Learning Programme beyond the initial term, to negotiate terms in good faith for the extension of the initial term.

## 3 SUPPLIER'S OBLIGATIONS

- 3.1 The Supplier's primary obligations are:
  - 3.1.1 to create, by arrangement with the University and otherwise, a Learning Programme entitled Master of Science ([subject]) [on-line] complying with the Learning Programme Specification in accordance with the Delivery and Refreshment Profile;
  - 3.1.2 to procure that the University accredits the Learning Programme with the following awards: MSc; Postgraduate Diploma; and Postgraduate Certificate;\*
  - 3.1.3 to procure that the University uses all reasonable endeavours to begin Formal Enrolment of students for provision of the Learning Programme in the Launch

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\* It is normal to accredit an MSc at all these three stages.

Month subject to prior receipt of correctly processed application forms from eUniversities following Initial Registration;

- 3.1.4 to procure that the University Formally Enrols students to pursue the Learning Programme (or any Learning Module as appropriate) on conditions and considerations which are determined by the Supplier and have regard to the nature of the Learning Programme and its mode of delivery but are not materially less favourable overall than those which the University applies to any other students enrolling with it;
- 3.1.5 to provide the Learning Programme to Students via the facilities for eLearning provided by eUniversities during the currency of this Agreement and for a Run Out Period thereafter; and
- 3.1.6 to refresh and update the Learning Programme in accordance with the Delivery and Refreshment Profile, such updating to include the incorporation of any relevant new content developed by the Supplier or the University into the Learning Programme.

#### 4 eUNIVERSITIES' OBLIGATIONS

##### 4.1 eUniversities' obligations are:

- 4.1.1 to provide a delivery platform for the Learning Programme conforming to the Platform Functional Specification, using all reasonable endeavours to deliver such platform in May 2003,\* and to update such platform as reasonably necessary to enable the Student to receive the Learning Programme and a high quality of learner experience. For the avoidance of doubt the look and feel and appearance of the delivery platform shall be as reasonably determined by eUniversities;
- 4.1.2 to market the Learning Programme as set out in the Marketing Plan and commencing from the date of this Agreement, with the aim of achieving the student numbers set out in the Business Plan (provided that the creation of the Learning Programme proceeds according to the timetable provided for in the Delivery and Refreshment Profile) until the end of this Agreement;
- 4.1.3 to process applications from prospective Students and otherwise be responsible for conducting Initial Registration;
- 4.1.4 to provide the Supplier with the Support Services; and
- 4.1.5 to comply with the Service Level Agreement.

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\* This is a fixed date, corresponding to the launch windows for the releases of the UKeU learning environment. Later contracts would have later dates.

## 5 LEARNING PROGRAMME

- 5.1 The Supplier will use all reasonable endeavours to adhere to the Delivery and Refreshment Profile which will be overseen and monitored by nominated project teams. The Parties acknowledge that the development of the eUniversities platform and the development of the Learning Programme are interdependent and are proceeding in parallel.
- 5.2 The content of Learning Programmes shall be structured into discrete Learning Modules and Learning Objects as agreed between the Parties' respective contract managers noted in clause 15 by [platform launch date, in this case 31 May 2003]
- 5.3 The Learning Programme shall be of suitable quality so as to be accredited by the University such that those Students who satisfy the University that they have successfully completed the Learning Programme shall be entitled to receive the appropriate qualification from the University. The Learning Programme will not be offered to students until it has been so accredited, although it may be marketed in advance of accreditation.
- 5.4 The Supplier does not warrant that any Learning Module or Learning Object in the Learning Programme is fit for any purpose other than its role within the Learning Programme.

## 6 QUALITY CONTROL

- 6.1 eUniversities and the Supplier will co-operate during the development of the Learning Programme in particular with reference to quality issues in the manner set out in the Delivery and Refreshment Profile.
- 6.2 Without prejudice to the Supplier's responsibility for quality and quality assurance in respect of courses which the University accredits, or to the Supplier's or the University's own quality standards, the Learning Programme shall also be subject to the quality standards of the Committee for Academic Quality established by eUniversities to the extent that such Committee shall satisfy itself that the detailed quality standards and processes laid down by the Supplier and/or the University are sufficiently robust so as to comply with the Committee's own quality standards. The quality standards of the Committee for Academic Quality will be published in advance and shall have due regard, *inter alia*, to the need to protect academic freedom. The Committee for Academic Quality shall act in a timely fashion to satisfy itself as to such quality standards and shall carry out its work on a module by module basis. eUniversities will use its reasonable endeavours to assist the Supplier and the University to comply with such standards and to resolve any dispute in relation thereto.
- 6.3 The Parties acknowledge that eUniversities will be unable and is not obliged to deliver or provide services in connection with a Learning Programme which does not satisfy the quality standards of the Committee for Academic Quality In such event

eUniversities shall remain liable to fulfil its obligations towards Students Formally Enrolled to receive the Learning Programme prior to that event.

- 6.4 Without prejudice to eUniversities' responsibility for its own quality standards, the Learning Programme shall also be subject to the quality standards to which the Supplier and/or the University is ordinarily subject in respect of its courses. The Parties acknowledge that the Supplier is unable and is not obliged to deliver or provide services in connection with a Learning Programme which does not satisfy the quality standards to which the Supplier and/or the University is ordinarily subject in respect of the University's courses.

## 7 BRANDING

- 7.1 The Parties hereby agree that the Learning Programme is to be delivered by eUniversities on behalf of the Supplier and the University (except where the Learning Programme is delivered pursuant to clause 14.2). Any marketing, advertising or similar material may show both the logos and brands of the University and eUniversities at the same time, save that the Parties shall make clear at all times that the Learning Programme is an academic programme provided by the Supplier and the University and delivered via the technical support means of eUniversities.
- 7.2 The University hereby grants a royalty-free licence to eUniversities to use the logos and/or trade marks set out in the Supplier Style Guide in connection with the marketing and/or delivery of the Learning Programme (but not in relation to the provision of any part of the Learning Programme pursuant to clause 11.4.4). eUniversities undertakes to use the logos and/or trade marks in accordance with the Supplier Style Guide and not in such a way as to damage the reputation of the University, the Supplier or the value of such logos and/or trade marks. Grant of this licence is conditional on the continued compliance of the Learning Programme with the quality standards to which the Supplier and/or the University is ordinarily subject and automatically terminates on occurrence of the events in clause 14.2 unless agreed otherwise in writing by the Parties.
- 7.3 Any use of the University's logos and/or trade marks by eUniversities and any goodwill and reputation generated in them by eUniversities shall inure to the benefit and be on behalf of the University, and eUniversities will hold any such goodwill and reputation generated thereby as bare trustee for the University.
- 7.4 eUniversities grants a licence in the form set out in Annex F to the Supplier and the University to use those of its logos and/or trade marks referred to in that licence in connection with the marketing and/or delivery of the Learning Programme. Grant of this licence is conditional on the Committee for Academic Quality established by eUniversities certifying that the Learning Programme satisfies its quality standards
- 7.5 The Parties agree that where appropriate in any dealings with Students or prospective

Students, it shall be made clear that the offering of the online Learning Programme is a collaborative effort between the Supplier, the University and eUniversities whereby the Supplier and the University provide the content and academic support and eUniversities provides the platform for delivery and technical support, and that Students will be clearly directed to appropriate helpdesk contacts reflecting these separate responsibilities.

## 8 MARKETING

- 8.1 Subject to clause 8.2, the Supplier hereby appoints eUniversities as its exclusive agent to recruit prospective Students to the on-line Learning Programme save that the Supplier and the University reserve the right to recruit applicants for the on-line Learning Programme and to market and promote the on-line Learning Programme as and when such opportunities may arise. The Supplier agrees that it will pass any such applicants to eUniversities for Initial Registration. Nothing in this clause derogates from the rights of the Parties to reach any additional agreement in accordance with clause 8.5.
- 8.2 The Parties acknowledge that the University has existing agents who act on its behalf to recruit students for the University's courses and that should eUniversities accept prospective Students for Initial Registration by way of referrals from those agents then eUniversities shall bear the cost of any associated agents' fees (up to a maximum of 10% of the fees paid by the relevant student). The Supplier shall use its reasonable endeavours to procure that each such agent enters into a direct contractual relationship with eUniversities.
- 8.3 The Parties may from time to time agree in writing that local agents should carry out certain defined support activities in respect of the Learning Programme. In such a case, the local agent shall charge the Student separately for such activities and the terms of the Financial Annex shall not be affected.
- 8.4 Subject to the Marketing Plan, eUniversities acting in consultation with the Supplier shall agree the marketing strategy which eUniversities will follow in promoting the Learning Programme. Any proposed marketing or advertising concerning the Learning Programme, the University or the Supplier shall not be made available to the public until the Supplier has seen and agreed the text of the proposed marketing or advertising.
- 8.5 The Parties may by agreement in advance in writing resolve that the Supplier and/or the University should carry out certain defined marketing activities in respect of the Learning Programme. In such a case, eUniversities shall pay the Supplier and/or the University the sum agreed in advance in writing by the Parties on satisfactory performance by the Supplier and/or the University of the marketing activities in question.

8.6 A reasonable range for the price to be charged to Students for the Learning Programme will be determined from time to time by the Supplier in consultation with eUniversities, and eUniversities acting reasonably and in accordance with any applicable laws shall determine the price to be charged to customers for the Learning Programme within that range.

## 9 ENROLMENT

9.1 Whilst eUniversities shall provide facilities and services in support of the delivery of the Learning Programme, delivery of the Learning Programme to the student shall be by eUniversities on behalf of the Supplier and eUniversities will register the prospective Students by way of Initial Registration. eUniversities will act as agent on behalf of the Supplier in accordance with Schedule 1 with regard to Initial Registration of prospective Students and to the Supplier's relationship with the students, and shall comply with the Supplier's instructions in that regard. eUniversities shall in particular comply with applicable data protection legislation and the provisions of the Consumer Protection (Distance Selling) Regulations 2000.

9.2 All applicants to enrol in the Learning Programme must be made through eUniversities using an application form approved by the Supplier. Any terms and conditions offered to prospective Students in the course of Initial Registration must be approved in writing in advance by the Supplier.

9.3 The Supplier shall provide eUniversities with all necessary information to be supplied to the students (including details of the Learning Programme and the University's Rules and Regulations).

9.4 The Supplier shall provide eUniversities with relevant information and requisite assistance to enable it to deal with queries from applicants on academic matters.

9.5 eUniversities will be responsible for processing all applications and, subject to final approval by the Supplier in accordance with an fast track approval system to be agreed, for offering places on the Learning Programme. The Supplier shall formally approve applicants in accordance with agreed procedures save that both Parties acknowledge that any such agreed procedures must be subject to any general rules of the University governing admission of students.

## 10 DELIVERY OF THE LEARNING PROGRAMME

10.1 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, and any Party shall have the right (at its own expense) to take any necessary steps in that regard.

10.2 The provisions of the Service Level Agreement shall have effect.

10.3 The Parties will jointly review the delivery of the Learning Programme at intervals of no

greater than six months in accordance with a process to be agreed by the parties. The Parties will each use all reasonable endeavours, within their respective responsibilities detailed in this Agreement to adhere to the Business Plan and the budgets agreed for the Learning Programme. If the delivery of the Learning Programme deviates significantly from the Business Plan and the budgets agreed for the Learning Programme to the detriment of any Party, the Parties will meet to agree revisions to this Agreement or the Business Plan necessary to attempt to correct such deviations.

## 11 INTELLECTUAL PROPERTY RIGHTS

11.1 eUniversities shall not own any Intellectual Property Rights in the Learning Programme.

11.2 eUniversities shall not be entitled to make any modifications to the content of the Learning Programme save as permitted under clause 11.4.2 and save that in any event eUniversities may make suggestions to the Supplier for amendment. Any new intellectual property rights arising as a result of any such amendment will vest in the Supplier. eUniversities agrees, at the request of the Supplier, to do all acts and execute such documents as the Supplier may require to vest absolutely the assigned rights in the Supplier.

11.3 In this clause 11 "Use" means to do any act capable of being restrained or controlled by any Intellectual Property Right.

11.4 The Supplier and University license eUniversities:

11.4.1 to Use the Learning Programme in connection with the delivery of the Learning Programme to Students;

11.4.2 to Use the Learning Programme for any purpose which eUniversities reasonably considers necessary in connection with the marketing or delivery of the Learning Programme to Students;

11.4.3 subject to the consent of the Supplier (not to be unreasonably withheld or delayed) to make any development in respect of the "look and feel" of the Learning Programme or to the platform which eUniversities reasonably considers necessary in order that the Learning Programme may be delivered by means of the eLearning facilities offered by eUniversities;

11.4.4 subject to the prior written consent of the Supplier (not to be unreasonably withheld or delayed) and in accordance with clause 12.2, to Use any of the Learning Modules or Learning Objects forming part of the Learning Programme within another learning programme or learning programmes offered by eUniversities to a maximum of 60 credits in any one programme;

11.4.5 subject to the prior written consent of the Supplier (not to be unreasonably withheld or delayed), to sublicense any other person approved by the University to Use such Learning Modules or Learning Objects so far as such

sublicence is necessary for eUniversities to exercise its rights gained pursuant to clause 11.4.3 or 11.4.4. The Supplier or the University shall not be under any obligation to accredit such use or to provide tutor support or other services in respect of such use, or to update Learning Modules or Learning Objects so used.

11.5 The Supplier shall be responsible for the observation of all moral rights in the Learning Programme and shall secure appropriate consents, permissions or waivers as requested to allow the use of the Learning Programme as contemplated by this Agreement.

11.6 The licences granted in clauses 11.4.1 to 11.4.3 above shall terminate when this Agreement terminates (save that they shall continue in force until the end of the Run Out Period as necessary for the delivery of education to Students during that period) and shall be subject to the financial provisions set out in the Financial Annex. Such licences shall be exclusive save that the Supplier reserves the rights to Use any or all of the Learning Modules, Learning Objects and Learning Programme to:

11.6.1 deliver the Learning Programme, Learning Modules and Learning Objects itself by means of a non-eLearning taught course;

11.6.2 continue to deliver the Learning Programme for 3 years during the course of a roll-out period for students currently pursuing the Supplier's existing distance learning [similar] course;\*

and otherwise for the purposes of academic development.

For the avoidance of doubt, the Supplier undertakes that applicants for September 2003 for the University's existing distance learning [similar] course will not be enrolled in such course but will be invited to transfer to the Learning Programme offered through eUniversities.

11.7 The licences granted in clause 11.4.4 and 11.4.5 shall be non-exclusive and shall terminate when this Agreement terminates (save that they shall continue in force until the end of any run out period as necessary for the delivery of education to Students during that period) and are subject to the financial provisions set out in Clause 12.2. The Supplier undertakes to renegotiate in good faith the continued licensing and sublicensing of any such Learning Modules or Learning Objects in the case that this Agreement terminates.

11.8 The Supplier warrants that it or the University owns or is licensed to use the Intellectual Property Rights in the Learning Programme such that it may grant the licences referred

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\* Not all HEIs had an existing "similar" course which was being revised and transferred to the UKeU learning environment; but it was a common occurrence, even among the early contracts.

to in this Clause without infringing any other person's Intellectual Property Rights. The Supplier further warrants that so far as it is aware use of the Learning Programme by eUniversities within the scope of the licences granted in this Clause will not infringe the Intellectual Property Rights of any third party.

11.9 eUniversities warrants that it has all necessary rights to enable it to deliver the Learning Programme in accordance with this Agreement and that the use of eUniversities' platform to deliver the Learning Programme to Students under this Agreement will not infringe the intellectual property rights of any third party.

11.10 Subject to clauses 18.2 and 18.3 each Party ("the Indemnifying Party") shall indemnify and keep indemnified each other Party ("the Indemnified Party") against any loss, damage, cost or expense it may suffer (including reasonable legal costs on a solicitor and client basis) arising out of or connected with any claim that the use and/or the delivery of the Learning Programme and the Learning Modules within it in accordance with the Indemnified Party's rights permitted by the Indemnifying Party under this Agreement infringes or may infringe the intellectual property rights of any third party. The Indemnified Party shall allow the Indemnifying Party (at its own expense) to defend or settle any such claim and shall provide all reasonable assistance to the Indemnifying Party (at the Indemnifying Party's request and expense) in that regard.

## 12 FINANCIAL PROVISIONS

12.1 The provisions of the Financial Annex shall have effect.

12.2 If a Learning Module or Learning Object from the Learning Programme is incorporated by eUniversities into a product or service (other than the Learning Programme) pursuant to the licence granted in clause 11.4.4 and/or 11.4.5, eUniversities acting reasonably shall determine a payment (whether a lump sum, recurrent fixed fee or royalty) to the Supplier in respect of such use, taking into account the value contributed to the overall product or service by the Learning Module or Learning Object. Within 30 days of receipt of written notification of eUniversities' determination of the payment to be made, the Supplier and/or the University may challenge the reasonableness of such a payment, whereupon the Parties will meet and negotiate in good faith to agree an appropriate payment. If agreement cannot be reached within six weeks, the matter shall be referred for determination to an expert in accordance with clause 15.4. Payment shall be made within 21 days of the Parties reaching agreement or of notification of the expert's determination as appropriate.

12.3 eUniversities will keep sufficient records to enable the Supplier to verify the sums passed on to it. These records shall be available to the Supplier and the University for inspection on reasonable notice during business hours (at the Supplier's own cost), provided that the Supplier and/or the University shall use its access to those records for the purpose of verifying the sums passed on to it and for no other purpose, and shall not disclose the records to any other person (other than for the purpose of obtaining advice from any professional adviser, provided that such an adviser is him or herself bound by equivalent obligations of confidentiality to those in this Agreement).

### 13 COMPETITION

13.1 Except as permitted under Clause 11.6.2, the Supplier shall not offer the Learning Programme or any other [similar] Master of Science ([subject]) course, by way of eLearning without the prior written approval of eUniversities, provided that such consent shall not be required to the use by the Supplier of any of the Learning Modules or Learning Objects forming part of the Learning Programme within another eLearning programme or eLearning programmes offered by the Supplier or University to a maximum of 60 credits in any one programme.

13.2 eUniversities shall not offer:

13.2.1 within the period of three years from launch of the Learning Programme another [similar] Master of Science ([subject]) eLearning course;

13.2.2 any other eLearning course which is or would be directly competitive with the Learning Programme, without the prior written consent of the Supplier, such consent not to be unreasonably withheld. For the avoidance of doubt, but without limiting this clause 13.2; it shall be reasonable for the Supplier to withhold consent where the other eLearning course has or is likely to have a material effect on the Supplier's income with respect to the Learning Programme.

### 14 NON-DELIVERY BY THE SUPPLIER

14.1 If the Supplier does not deliver a Learning Programme which is materially complete as to content in accordance with the Business Plan and that failure is due to the fault of the Supplier, the Supplier will not be eligible to receive fees under the Financial Annex. However, if any of the Learning Modules or Learning Objects which the Supplier has delivered are used by eUniversities pursuant to the licences granted under this Agreement, the Supplier shall be entitled to a payment determined under clause 12.2.

14.2 If, having regard to the staged development process for the Learning Programme, eUniversities reasonably concludes that the Supplier will not deliver the Learning Programme by the Launch Month, it may sublicense any of the Learning Modules or Learning Objects actually delivered by the Supplier to another supplier to enable

delivery of a complete Learning Programme. For the avoidance of doubt this shall be without prejudice to eUniversities' entitlement to use all or any Learning Modules provided by the Supplier. The Supplier or the University shall not be obliged to accredit a Learning Programme completed with Learning Modules or any other facilities or services from any other supplier in respect of such a Learning Programme.

- 14.3 The external cost to eUniversities of obtaining Learning Modules or any other facilities or services from another supplier shall be deducted from any payment which might otherwise be paid to the Supplier in respect of the use of those Learning Modules which it has supplied. This shall be without prejudice to any other rights or liabilities of any Party in respect of any failure to deliver a complete Learning Programme.

## 15 DISPUTES

- 15.1 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	Supplier	University
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Name:

Tel:

Mobile:

Fax:

Email:

Address:

- 15.2 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	Supplier	University
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Name:

Tel:

Mobile:

Fax:

Email:

Address:

- 15.3 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 pursuant to Clause 15.4.

- 15.4 Any dispute connected with clause 12.2 or 14.3 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 his or her own procedure and the Parties shall co-operate with the expert and offer him or her 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.

## 16 REPRESENTATIONS AND WARRANTIES

- 16.1 Each Party represents and warrants to each other Party that:

16.1.1 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;

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

16.1.3 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 any other Party;

16.1.4 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;

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

16.1.6 no other Party is acting as a fiduciary or financial, investment or legal advisor for it.

## 17 FORCE MAJEURE

- 17.1 No Party shall be in breach of this Agreement if it fails to discharge any obligation imposed on it hereunder, to the extent that the failure is any cause or event outside the

control of the Party in question, including, but not limited to, 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 whether of a similar nature to the foregoing or not.

## 18 LIABILITY

18.1 No Party shall be responsible for any delay or failure to deliver to the extent caused by any other Party failing to meet any of its commitments under this Agreement.

18.2 With the exception of liabilities connected with death or personal injury, to which no limit shall apply, for any twelve month period each Party's total liabilities to another Party in connection with any breach of this Agreement shall be limited to the sums paid by eUniversities to the Supplier or the University in that twelve month period (in the case of the liabilities of the Supplier or the University) or the sums payable by eUniversities to the Supplier or the University in that twelve month period (in the case of the liabilities of eUniversities).

18.3 No Party will in any event be liable for any special, consequential or indirect damages, loss of profits, loss of goodwill or loss of anticipated savings arising out of or in connection with this Agreement

18.4 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 Supplier or the University.

## 19 TERMINATION

19.1 This Agreement may be terminated by the Supplier and the University if the number of Students Formally Enrolled in the Learning Programme is not at least 50% of the forecast student numbers set out in the Business Plan three years after the start of the programme. Written notice of such termination shall be given by the Supplier/University to eUniversities 30 days prior to termination provided that if within that 30 day period the student numbers Formally Enrolled in the Learning Programme reach the numbers set out in the Business Plan, the Agreement will continue and such notice shall cease to have effect.

19.2 Subject to clause 19.4, this Agreement may be terminated by any Party if any other Party (the 'defaulting party') commits any serious breach of any of its provisions (provided that, in the case of any breach which may be remedied, the defaulting party shall be given written notice of the breach requiring it to be remedied and shall have 30 days in which to remedy the breach and if remedied this Agreement shall not be terminated), or if the defaulting party is wound up or commits or is subject to any act of insolvency.

19.3 Termination of this Agreement shall be without prejudice to the rights and obligations of the Parties subsisting prior to termination, and in particular the Parties shall remain obliged to fulfil their respective obligations towards Students Formally Enrolled to receive the Learning Programme before termination of this Agreement.

19.4 The Supplier shall not be permitted to terminate this Agreement by reason solely of a breach by the University, nor shall the University be permitted to terminate this Agreement by reason solely of a breach by or the insolvency of the Supplier.

## 20 GUARANTEE

20.1 Subject to limits set out in clause 18, the University hereby guarantees to eUniversities the due and punctual performance by the Supplier of its obligations pursuant to the provisions of this Agreement of whatever nature or howsoever arising (the "Guaranteed Obligations"), which shall include the Supplier's liabilities to pay damages agreed or otherwise under this Agreement provided that eUniversities acknowledges that demand may be made in respect of this guarantee only in circumstances where eUniversities has first used all reasonable endeavours to recover from the Supplier the sum to be demanded.

20.2 As a separate and independent obligation, the University shall be liable as principal debtor to pay to eUniversities on demand and shall indemnify eUniversities in respect of all sums of money whatsoever which may be required to discharge the Guaranteed Obligations or to be paid by the Supplier to eUniversities under this Agreement but which may be irrecoverable against the University as a guarantor for any reason whatsoever, or irrecoverable against the Supplier by reason of any incapacity or disability whatsoever of the Supplier or of any agent or servant or other person acting or purporting to act on behalf of or in the name of the Supplier or by reason of any provision or rule of law whether statutory or otherwise rendering any debts, obligations or liabilities of the Supplier void or otherwise unenforceable.

20.3 eUniversities may at any time without prejudice to its other rights and remedies hereunder and without discharging or in any way affecting the liability of the University to eUniversities hereunder:

20.3.1 grant to the Supplier or any other person time or other indulgence;

20.3.2 release, discharge, accept any composition or make any arrangement with the Supplier or any other person whatsoever; or

20.3.3 vary, supplement, cancel or replace either in whole or in part any terms or conditions governing the relationship between eUniversities and the Supplier and the liability of the University shall extend to every obligation of the Supplier as so compromised, varied, supplemented or replaced.

20.4 Furthermore, neither the obligations of the University contained herein nor the rights,

powers and remedies conferred in respect of the University upon eUniversities by this Agreement or by law shall be discharged, impaired or otherwise affected by:

- 20.4.1 the winding-up, dissolution, incapacity or lack of authority or legal personality of the Supplier or any other guarantor or any change in its status, function, control or ownership;\*
  - 20.4.2 any of the obligations of the Supplier under this Agreement being or becoming illegal, invalid, unenforceable or ineffective in any respect; or
  - 20.4.3 any other act, event or omission which but for this Clause might operate to discharge, impair or otherwise affect any of the obligations of the University contained in this Agreement or any of the rights, powers or remedies conferred upon eUniversities by this Agreement or by law.
- 20.5 Any settlement or discharge between the University and eUniversities shall be conditional upon no security or payment to eUniversities by the University or any other person on behalf of the University being avoided or reduced by virtue of any provisions or enactments relating to bankruptcy, insolvency or liquidation for the time being in force. If any such security or payment is so avoided or reduced, eUniversities shall be entitled to recover the value or amount of such security or payment from the University subsequently as if such settlement or discharge had not occurred.
- 20.6 eUniversities shall not be obliged before exercising any of the rights, powers or remedies conferred upon it in respect of the University by the guarantee herein contained or by law:
- 20.6.1 to take any legal action or obtain judgment in any court against the Supplier;
  - 20.6.2 to make or file any claim or proof in a winding-up or dissolution of the Supplier; or
  - 20.6.3 to enforce or seek to enforce any other security taken in respect of any of the obligations of the Supplier under this Agreement.
- 20.7 The guarantee contained herein shall be a continuing guarantee binding on the University and shall not be capable of termination without the written consent of eUniversities.
- 20.8 Any right which the University may at any time have to be indemnified by the Supplier in respect of sums paid out by the University in the performance of this or any other guarantee to which the University is a party shall be subordinated (whether in a liquidation of the Supplier or otherwise) to the right of eUniversities to recover from the Supplier in full all sums which may at any time become due from the Supplier to

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\* This is to cover the situation where the University Trading Company runs into financial or other difficulties or in an extreme case is closed down.

eUniversities under this Agreement.

## 21 CONFIDENTIALITY

21.1 The terms and conditions of this Agreement and all confidential or commercially sensitive information provided by or on behalf of one Party to or on behalf of any other Party in the course of this Agreement or negotiations for this Agreement 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:

21.1.1 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;

21.1.2 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;

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

21.1.4 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;

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

21.1.6 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;

21.1.7 to any expert appointed pursuant to Clause 15.4; or

21.1.8 to the extent that such information is in or lawfully comes into the public domain other than by breach of this Clause 21.

21.2 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.

21.3 The confidentiality obligations set out in this Clause 21 shall survive termination of this Agreement for five years.

## 22 NOTICES

22.1 Any notice or other communication to be given or made under this Agreement by one

Party to any other Party shall be given or made in writing to the other at such address or facsimile number (as appropriate) as that Party may respectively notify to the other Parties from time to time.

22.2 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 22.1 shall be deemed to have been received:

22.2.1 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;

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

22.2.3 if posted, 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.

22.3 Without prejudice to Clause 22.1, 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.

## 23 MISCELLANEOUS

23.1 The Parties agree to act reasonably and in good faith with regard to this Agreement and the rights and obligations created under it.

23.2 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. No 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, any other Party.

23.3 This Agreement is personal to the Parties and may not be transferred or assigned (save that the benefit of this Agreement may be assigned to a wholly-owned subsidiary company of any Party, subject to that Party giving a satisfactory guarantee for its subsidiary's obligations, and on terms that the benefit of the Agreement shall

immediately revert to the original Party if the subsidiary to which it was assigned ceases to be wholly owned by that Party). Any Party may use subcontractors to discharge some or all of its obligations under this Agreement, but shall itself remain responsible for the proper discharge of those obligations.

- 23.4 If any provision of this Agreement shall be prohibited by or adjudged by a court to be unlawful, void or unenforceable, such provision shall to the extent required be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement.
- 23.5 No waiver, failure, or delay by any 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 any other Party under this Agreement, nor shall the same be relied upon as a consent or waiver in respect of any breach whether of a like or different nature.
- 23.6 Save in respect of Students which are Formally Enrolled, 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.
- 23.7 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 save that nothing in this Clause 23.7 shall limit or exclude any liability for fraud.
- 23.8 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.
- 23.9 This Agreement shall be governed by and interpreted in accordance with the law of England and Wales and the Parties agree to submit to the jurisdiction of the courts of England and Wales.

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 **the University of [name]**

in the presence of:

Signature:

Name:

Address:

Occupation:

SIGNED by: .....(Signature)

on: .....(Date)

for and on behalf of **[university trading company] Limited**

in the presence of:

Signature:

Name:

Address:

Occupation:

## **SCHEDULE 1**

### **SUPPORT SERVICES**

The services set out below will be further defined by the Parties following signature of this Agreement.

#### INITIAL SERVICES

- 1 eUniversities shall provide the following services to the Supplier:
  - 1.1 dealing with all queries from prospective applicants;
  - 1.2 providing support and advice to prospective applicants;
  - 1.3 processing all applications in accordance with an agreed procedure including authenticating the qualifications of applicants;
  - 1.4 administering where necessary English language proficiency tests (British Council's IELTS, the computer based American TOEFL Test);
  - 1.5 collecting fees from the Students and after the deduction of the agreed commission remitting the balance to the Supplier in accordance with the Financial Plan;
  - 1.6 ensuring that delivery of the Learning Programme by eLearning within each territory complies with all relevant legal requirements within that territory;
  - 1.7 following the University's relevant published policies in relation to the recruitment of students, including equal opportunities; and
  - 1.8 complying with such timescales as may be agreed for notifying the Supplier of the number of students applying for each cohort.

#### SERVICES TO BE DEFINED

- 2 eUniversities shall in addition be responsible for the following areas, subject to the exact nature of its responsibilities being agreed between the Parties:
  - 2.1 Infrastructure
    - Hosting
    - Security
    - Testing
    - Networking
    - Software development
    - Hardware

## 2.2 Customer Service

- Helpdesk and contact centre
  - Student admin support
  - Tutor admin support
- Invoicing
- Credit control
- Password administration
- Student registration
- Registry liaison
- Generic training for e-tutors – course specific training to be provided by the Supplier

## 2.3 In-country Support – to be developed

- Student administration and customer service
- Creating options for the Supplier's appointment of tutors, exam centres and local student support (it being acknowledged by eUniversities that that the Supplier is not obliged to appoint tutors from eUniversities' tutor pool and that eUniversities shall make provision for the Supplier to ensure that tutors are meeting their obligations)
- Local assessment/exam administration
- Development of regional centres in selected countries in due course

## SERVICES FOR CONSIDERATION

3 eUniversities may provide the following services subject to separate negotiation of any further charges to be paid by the Supplier:

- Rights management
- Advice on course development methodology
- Market research/market analysis
- Financial modelling

## GENERAL

4 The Supplier agrees to indemnify eUniversities and keep it indemnified against any liability, damage, cost, expense or liability which eUniversities may directly or indirectly incur as a result of any action or omission by eUniversities in relation to this Agreement (to the extent that the same arises as a result of a breach by the Supplier or the University of its obligations)

- 5 eUniversities agrees to indemnify the Supplier and the University and keep them indemnified against any liability, damage, cost, expense or liability which it may directly or indirectly incur as a result of any breach by eUniversities of its obligations under this Agreement.
- 6 Any additional charges for the Services shall only be payable if and to the extent agreed in writing in advance.
- 7 eUniversities shall take reasonable care to ensure that the information it generates itself and provides to the Supplier and the University is accurate in all material respects. Other than in relation to authentication of qualifications, where forwarding third party information, including from students, eUniversities shall not be obliged to check for or notify the Supplier of errors except where such errors are reasonably apparent to eUniversities in which case eUniversities will notify the Supplier as soon as is reasonably practicable.
- 8 eUniversities shall provide the Services with reasonable care and skill and to the standard reasonably required from an experienced professional qualified in this field.

## SCHEDULE 2

### PLATFORM FUNCTIONAL SPECIFICATION

#### 1 Introduction

##### 1.1 Reference Architecture

The Reference Architecture is an open framework for constructing enterprise scale eLearning systems geared towards the academic sector. eUniversities with Sun Microsystems are working with the IMS Group to ensure compliance with the developing IMS Abstract Learning Framework and the Open Knowledge Initiative led by MIT.

##### 1.2 Flexibility

Flexibility was a key driver in developing the framework, allowing anyone to adopt it regardless of their existing infrastructure investment and allowing for a wide choice of implementations with multiple vendors.

##### 1.3 Reusable Learning Objects

Reusable Learning Objects (RLO) are the building blocks of a personalized learning experience. Widely accepted as the future of distance learning, these can be described as the smallest 'chunk' of learning resource that can be re-used in multiple learning contexts. Used in conjunction with a learning profile, they can be assembled to deliver a tailored set of learning outcomes.

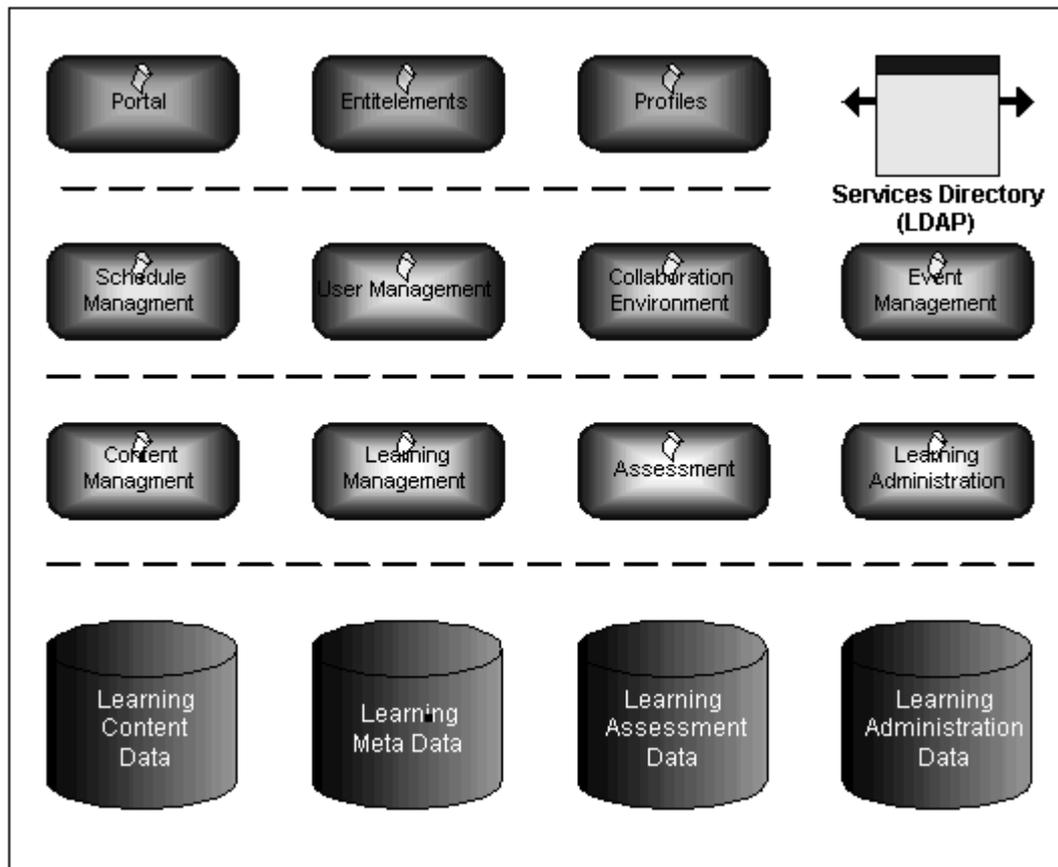
The framework is designed to inherently support RLOs and to support both static and adaptive sequencing in learning programme definition.

#### 2 Distributed Services Based Architecture

The framework consists of a collection of service definitions separated from implementation as shown in Figure 1. The services are completely interoperable and can be implemented as a complete collection or standalone. In applying the framework to a current environment, it is possible to choose which services to implement to complement the existing implementation.

The framework is layered with the common services abstracted from the learning specific services to remove all redundancy and allow for increased flexibility. Services 'discover' each other through the Services Directory that describes both internal and external resources and services.

Figure 1 – Distributed Services Based Architecture



### 3 Access Interface Services

#### 3.1 Portal

The Portal provides a single point of entry to for all users to the platform. The user's profile will dictate the services they will be able to see. Single sign on ensures the user enters their credentials only once, no matter how many services or systems they interact with. The portal is customisable to tailor for every Institution's guidelines and can easily integrate with an existing portal solution.

#### 3.2 Entitlements

This sets the privileges and access rights of the various groups entering the platform e.g. Students, Developers, Users.

#### 3.3 Profiles

This dictates the tailored profile of each user and how the interface will appear to that user.

## 4 Common Services

### 4.1 Schedule Management

All services have access to a single schedule management system controlling both synchronous and asynchronous messages between the services and the users. Examples include reminder messages to chase the progress of a student application for enrolment. User calendar functionality is also supplied by the Schedule Management Service.

### 4.2 User Management

All services in the framework delegate the task of managing users and groups to a central service. This User Management Service provides the backbone for the user authentication and authorisation for all services in the framework.

### 4.3 Collaboration Environment

The power of the Reference Architecture is the abstraction of common facilities from the typical 'LMS only' model. This is demonstrated in the use of a central collaboration environment being made available to all users of the platform. This is the backbone of the all-pervasive feedback mechanism allowing users to collaborate on any of the services available in the Reference Architecture and have their comments directed to the appropriate resource owner.

The Collaboration Environment supports multiple forms of interaction and is able to adopt new mechanisms with advances in technology. The main formats supported include:

- Email
- Threaded Discussions
- Web Cast
- Desktop Sharing & Simulations
- White-boards & Chat

### 4.4 Event Management

All interaction between users and services are captured in the Event Management System. This data provides invaluable information for both program management and research into the pedagogy of eLearning. This warehouse of events then allows for both canned and dynamic reporting.

An example of dynamic reporting might include the ability to ask 'How long does it take for a tutor to respond to a student's query?'

## 5 Learning Services

### 5.1 Learning Content Management Service

The Learning Content Management Service uses a workflow driven approach to the production of both online and traditional instructional material to support blended learning. Learning Objects are discovered and assembled using a meta-data language allowing flexible course construction. The workflow model supports course specification and author peer review when constructing the learning programme. The learning material can be imported from other Content Systems using IMS interoperability standards and similarly exported to the Learning Management Service for learning delivery.

### 5.2 Learning Management Service

The Learning Management Service is responsible for the delivery and management of the course instance. It manages all interaction between the learning material and its participants including tracking progress and monitoring the usage levels to detect how the environment is being used. This information is invaluable in assessing the quality of the learning experience and detecting problems early enough to address them.

The Learning Management Service is distinguished from a typical 'LMS' is the flexible support for multiple pedagogic models through static and adaptive Reusable Learning Object sequences. The Learning Management Service manages a catalogue of static sequence learning programs or learning profiles for adaptive sequencing.

### 5.3 Assessment System

Both formative and summative assessment is provided through a collection of tools available to the tutor to assess the student's progress against their learning objectives. The tools support the following assessment types:

- Multiple Choice Questions
- Multiple Right Answer
- Short Answer
- True/False
- Essay Assignments
- Simulations
- Group Work

Using these tools the assessment process becomes a more interactive model instead of the typical automated solution.

#### 5.4 Learning Administration System

The Learning Administration System manages all reference data in support of the learning services as a series of domains specific to the individual education institution. A standard domain might include:

- Student Applications
- Student Records
- Student Personal Development Plan
- Tutor Records
- Learning Programs
- Digital Rights Management

#### 5.5 Digital Repositories

The repositories contain libraries of digital resources for constructing learning material. Resources are discovered through an open search interface and made available to both the Learning Content Management Service for sequence definition of courses and the Learning Management Service for delivery. Reusable Learning Objects are represented using a Meta-data language for mark up of digital media including descriptions, specifications and usage guidelines.

#### 5.6 Open Standards

All data is held in Open Standards accessible databases which can be interrogated by the End User's own MIS and student administration systems.

## SCHEDULE 3

### MARKETING PLAN

Process for marketing the Learning Programme

*eUniversities' marketing strategy is to invest the majority of its marketing budget on the promotion of learning programmes. Brand marketing will be undertaken primarily as a subset of this activity.*

*This Annex indicates the approach that eUniversities will adopt in marketing this learning programme. It provides a list of areas that need to be developed in collaboration with the Supplier and the University to maximise the success of the Learning Programme. It indicates the responsibilities and activities that eUniversities will accept to promote the Learning Programme to achieve the Student numbers set out in the Business Plan.*

*eUniversities will operate a multi-channel marketing strategy, using both direct and indirect routes to prospective Students.*

*A nominated key person will be the principal point of contact with the Supplier. At review meetings, relevant marketing data relating to the Learning Programme will be shared with Supplier and the University.*

Philosophy and approach

The marketing of the e-learning programme is designed to accomplish the following:

- Maximise the attractiveness of the Learning Programme to prospective Students by making courseware available in suitable bundles, enabling easy access, and extending the benefits beyond the learning outcomes.
- Generate awareness of the Learning Programme's existence.
- Provide information, appropriate in content, level of detail, and channel of communication to enable the prospective Student to evaluate and arrive at a buying decision.
- Provide support and advice as required to enable a buying decision to be made.

#### 1. Course

*The course, any sub-sets (e.g. Certificates or Diplomas), and modules if available individually/in bundles together with any purchasing restrictions are to be described with input from the Supplier. Facilities to develop related programmes and re-versioned programmes are also to be described. Additional value that can be added to the Learning Programme by association with other organisations/institutes is to be researched and noted for marketing development. Additional value from the University's accrediting body plus value added by eUniversities is to be acknowledged and included in the marketing promotion.*

eUniversities will investigate with Supplier the possibility of a digest of the Learning Programme as a Director's briefing/refresher.

The parties will jointly determine the extent of customisation available (creation of alternative modules, modification to case studies, etc). This will be required by eU sales personnel when approaching corporate prospects.

With input from Supplier, eUniversities will identify if any additional benefits might be offered, e.g. membership of relevant trade associations or institutes – rights to work in other countries etc. If any are agreed, eUniversities will negotiate with relevant body.

eUniversities will develop marketing material which includes promotion of the University and its award and information about eUniversities and its added value (quality assurance processes etc).

Action date: Within four weeks of the date of signing this Agreement

Action by: eUniversities with input required from the Supplier

## 2. Support

eUniversities will provide contact centre support to enquiries relating to non-academic aspects of the learning programme as outlined in Schedule 4.

The Supplier will provide support to enquiries relating to academic aspects of the learning programme. This will also be a responsive service with performance levels yet to be defined.

## 3. Course fees at launch

If known, the proposed fees for the programme and its sub-sets and bundles or alternatively an outline of the pricing framework and approval process are shown.

Pricing approval procedure will be as specified in the Agreement.

## Specific Marketing Actions

### 4. Target markets

The primary regional/country targets and customer types (including Corporates) which will form the basis of the marketing effort will be defined.

A market matrix (region/ type of customer) will be prepared by eUniversities with input from the Supplier indicating the primary targets for marketing effort.

A list of corporate/government/institutional targets that may find the programme (or parts of it) appropriate for their employees/members will be developed for direct sales effort by eUniversities.

A list of "influencers" that have a significant part to play in securing a sale will be identified and included in the marketing & communications activities.

Action date: Within 6 weeks of the date of signing this Agreement

Action by: eUniversities with input required from the Supplier

5. Channels/Mix

Action is for eUniversities unless otherwise specified.

Marketing will extend to “influencers” (indirect channels) identified above. This may include Careers Officers, Advisory Bodies (e.g. national education bodies etc.), key journalists, scholarship bodies.

<b>Channel</b>	<b>Action</b>	<b>Action Date before:</b>
Internet	Set up web micro site to promote the programme in liaison with Supplier	During eU web site development
	Identify and secure links to other relevant sites	2 months after eU site activated
	Register Learning Programme with search engines	After programme micro site set up
	Evaluate potential for a free excerpt/lecture from associated "thought leader" on web to generate interest	2 months after signing contract
	Identify with Supplier a small learning chunk as a demo for free evaluation and make available to prospective Students	1 month after learning objects tested and CAQ approved
Advertising	Identify with Supplier relevant directories in the target markets and ensure entry for the Learning Programme.	2 months after signing contract
	Where advertising is identified as being a primary channel to reach a target group eUniversities will use it as appropriate to achieve the Business Plan objectives.	
Direct Marketing	eUniversities will create marketing collateral to describe the Learning Programme and will develop print & e versioned brochure in two parts:	3 months after signing contract
	1) overview of course, awarding institution, eU values in order to promote the learning programme 2) details about individual modules, learning outcomes etc to enable a prospect to understand the contents and benefits	
	These will be mailed or emailed to those prospects who request or are identified on the eUniversities database as being potential prospects as appropriate. They will also be published on eUniversities' web site relating to the Learning Programme.	4 months before programme delivery
	Other targeted marketing using this marketing collateral and other specific print or e material (possibly including viral marketing) will be used to promote the learning programme through intermediaries such as trade associations, careers offices, institutions and professional associations as identified in the list of influencers.	

Third Party Agents	<p>eUniversities will secure overseas representation for the programme. This may be from specialist promoters of higher education or other persons or organisations that will assist in raising the awareness of eUniversities and of the Learning Programme.</p> <p>Third party agents will be provided with appropriate promotional materials to ensure they can provide prospects with adequate information.</p> <p>eUniversities intends to establish its own representation in selected major markets to replace non-exclusive services.</p>	<p>4 months from signing contract</p> <p>The earlier of on appointment of agent or on production of materials listed above</p>
Public Relations	<p>Prepare and distribute suitable press releases relating to the Learning Programme. Identify appropriate publications and journalists to keep informed about the learning programme.</p>	
EU Staff	<p>Sales Research relevant contacts in prospective corporate customers listed earlier. Make contact and establish opportunities for providing service. Negotiate and secure agreement with the corporate for promotion of the Learning Programme within their organisation and if possible their agreement to pay for employees to study the course. If issues relating to customisation and price arise, discuss these with the Supplier prior to making a commitment.</p> <p>Contact appropriate intermediaries such as trade associations, careers offices, institutions and professional associations as identified in the list of influencers with a view to securing their endorsement of the Learning Programme.</p>	<p>4 months after signing contract</p>

## **SCHEDULE 4**

### **SERVICE LEVEL AGREEMENT**

#### **A PURPOSE**

The purpose of this Schedule is to define the service (the "Service") and associated service levels for the eUniversities eLearning software application and hardware infrastructure which constitutes the eUniversities platform (the "Platform") on which the Supplier will run the Learning Programme and associated services.

#### **B PLATFORM**

The Platform will be accessible via the Internet and the Supplier and University will have password protected Internet access to dedicated areas for the development, testing and running in the production environment of the Learning Programme.

##### **B.1 Hosting**

eUniversities will host the Platform at a secure data centre facility (the "Facility") which is operated on a 24 hours per day 365 days per year ("24 x 7") basis. The data centre will have power and air conditioning redundancy (including UPS and generator back-up) for all components of the Platform.

Physical access to the Facility will be restricted to individuals specifically authorised by eUniversities and its suppliers. The Supplier will not have physical access to the Facility.

##### **B.2 Equipment, Operation and Maintenance**

eUniversities will be responsible for the purchase of all hardware and software items including licences associated with running the Platform. eUniversities will also be responsible for all necessary maintenance contracts and operational service contracts.

eUniversities will provide changes, and/or other hardware/software improvements or upgrades necessary to run the Platform and in accordance with the manufacturers advisory information as appropriate.

##### **B.3 Backup Services**

Full and incremental backups will be performed in accordance with eUniversities' standard practice at the time. This will include off-site storage of backup tapes on a regular basis.

eUniversities will not be responsible for:

- failure of backups due to changes that are made by the Supplier without the consent of eUniversities; or
- failure to comply with any backup schedules, testing, and tape retention periods which are specific to the Supplier (provided that eUniversities has used its reasonable endeavours to comply).

#### B.4 Internet Access

eUniversities will provide Internet access to the platform via dual connections. Network traffic will be monitored to ensure sufficient bandwidth is available for the predicted traffic. Traffic routing will also be monitored to ensure that appropriate routing and peering agreements are in place wherever possible.

The Supplier and University will access the Platform via the Internet – no other network connections will be made available. The Platform will have a connection to the UKERNA 'JANET' network.

#### B.5 Security

eUniversities will operate intrusion detection software on a real-time basis and may, if necessary, shut down access to part or all of the Platform if it deems that there is an imminent probability of a security breach.

The Supplier agrees that it will not make any deliberate attempts to breach the security provisions of the Platform. In the event that such attempts are detected, eUniversities reserves the right to immediately stop Supplier access to the platform.

#### B.6 Disk storage

eUniversities will provide all disk storage required to run the Learning Programme. In addition, for each registered student it will provide 10 Mbytes of space for each student Web site which will be accessible to all other students who are using the Platform.

### C AVAILABILITY

eUniversities will use its reasonable endeavours to ensure that the then current version of the Platform will be available for use by the Supplier and the University's students (as appropriate) 24 hours per day 365 days per year, with an availability target as a result of unscheduled outages of 99% measured each calendar month (i.e. no more than 7.2 hours downtime in any calendar month) except in the event of:

- a) the act, omission or default of the Supplier or any third party (e.g. student) for whom eUniversities is not responsible under this Agreement;
- b) the circumstances referred to in Clauses 17 or 18.1 of this Agreement;
- c) routine maintenance, technology refresh, or other scheduled outages (as referred to below);
- d) any action or omission by eUniversities or its agents or sub-contractors at the request of the Supplier;
- e) the exercise by eUniversities of any rights permitted under this Agreement;
- f) Platform or network shutdown to secure against imminent or actual security breaches; or
- g) the total or partial destruction of the data centre.

For these purposes availability shall mean the ability for Internet network traffic to flow to and from the server(s) on which the Learning Programme is hosted.

It may be necessary from time to time for eUniversities or its sub-contractors to schedule downtime for software updates or network enhancements. eUniversities will where possible give the Supplier a minimum of three working days notice of such events, and where possible will schedule such events so as to cause minimum impact to the Supplier. For the avoidance of doubt, it may not be possible to give such notice where downtime is necessary to deal with incidents occurring in connection with the Platform or the Learning Programme.

#### D SUPPORT SERVICES

eUniversities will provide telephone support to the Supplier, the University and its students (as appropriate) within the hours specified in the table below.

Service	Available to:	Call Window
eUniversities Operational Help Desk	Nominated Supplier representatives Initially Registered and Formally Enrolled students	24 hours per day 7 days per week
Application Support	Nominated Supplier/University representatives	09:00 – 17:00 Mon-Fri UK time, excluding Bank Holidays
Student administration	Nominated Supplier/University representatives	09:00 – 17:00 Mon-Fri UK time, excluding Bank Holidays

#### E ADMINISTRATION SERVICES

eUniversities will provide student administration services as listed below.

##### E.1 Student Contract

The contract will in all instances, be between the Supplier and the student. A copy of the executed contract will be made available to the Supplier.

##### E.2 Student Invoicing

This will be provided in accordance with the Financial Annex.

##### E.3 Registration and password administration

eUniversities will provide all registration information and log-in procedures to the student and will be responsible for ongoing password maintenance. Access to the Platform will be dependant upon eUniversities being in receipt of payment from the student. eUniversities will have the right to restrict or stop student access if, at the sole discretion of eUniversities, the

account has not been paid in a timely or acceptable manner.

In any event, eUniversities reserves the right within reason to restrict or stop student access at any time. Such action will be communicated immediately to the Supplier.

#### F CHANGE CONTROL PROCEDURE

Either party may request changes to this Schedule 4 at any time ("CR"). Since a change could affect the fees, schedules or other terms related to Schedule 4, both the Supplier and eUniversities must approve each change, and Schedule 4 must be appropriately amended before implementation of any change. The change request procedure is as follows:

- i) The nominated representative for the requesting party will submit a CR in writing. The CR will describe the change and include the rationale and/or estimated effect the change will have on Schedule 4.
- ii) The other party's nominated representative will review each CR. The nominated representative will weigh the merits of the proposed change and any proposed fees and within 14 days of having received the CR either approve it for investigation or reject it. If rejected, the nominated representative will within 14 days of having received the CR return the CR to the requesting party, together with the reason(s) for rejection.
- iii) Written approval of a CR for investigation by both parties constitutes authorisation by the Supplier for eUniversities to investigate the CR. During such investigation, the effect on the fees, service terms or other terms of Schedule 4 will be determined. Following completion of such investigation, the requested change will then be approved or disapproved, such investigation and approval or disapproval to be completed within 14 days of eUniversities having received the written approval of the CR for investigation.
- iv) Approved changes will be incorporated into Schedule 4 through written modifications, which shall be signed by duly authorised representatives of both parties.

#### G EVENT NOTIFICATION

eUniversities will provide initial notice to a designated Supplier representative by telephone, e-mail, pager or comparable notification service within one hour of eUniversities becoming aware of an event that has caused or may cause an unscheduled outage. In the event that the Supplier first becomes aware of such event or of any failure of the Platform, the Supplier shall promptly provide initial notice to eUniversities via its support number (currently [support number]). Status reports about the event will be provided by eUniversities as information is available and pertinent until either the event has been resolved or both eUniversities and the Supplier have determined a course of action that does not require continued notification.

## H GENERAL

For the avoidance of doubt the Supplier shall be responsible at all times for the content within the Learning Programme, including the management and maintenance thereof.

The Service does not include any server resident hardware nor the installation, monitoring or maintenance of the connectivity which reside on the Supplier's servers.

In no event shall eUniversities be liable for any damage to the Supplier's source environment or servers related to or arising from the Service or the Platform, except to the extent that such damage was caused by the negligence or wilful misconduct of eUniversities.

eUniversities will have no liability for any failure of, or disruption to, the Service as a result of failure of any hardware or software belonging to the Supplier or which is caused, directly or indirectly, by the acts or omissions of the Supplier or its representatives.

The Supplier agrees that any equipment connected to the Platform or eUniversities' data networks will be adequately secured against unauthorised use and that the Supplier and its representatives will use generally accepted security practices to minimise any risks of unauthorised use of its or their equipment or data networks.

ANNEX A  
BUSINESS PLAN

[Supplier to provide; eU to review]

ANNEX B  
LEARNING PROGRAMME SPECIFICATION

[to follow]

ANNEX C  
DELIVERY AND REFRESHMENT PROFILE

[to be jointly agreed]

ANNEX D  
FINANCIAL ANNEX

[eU to provide; Supplier to review]

ANNEX E  
SUPPLIER STYLE GUIDE

[Supplier to provide]

ANNEX F  
LICENCE AGREEMENT

[eU to provide]