

AGREEMENT

between UK eUniversities Worldwide Limited and
the University of [name]

for the provision of a learning programme entitled
“[award (subject)]”

Draft December 2002

TABLE OF CONTENTS

	Page
1. DEFINITIONS	3
2. TERM	4
3. OBLIGATIONS OF THE SUPPLIER	4
4. OBLIGATIONS OF eUNIVERSITIES	5
5. CREATION OF THE LEARNING PROGRAMME	5
6. DELIVERY OF THE LEARNING PROGRAMME	6
7. INTELLECTUAL PROPERTY RIGHTS.....	7
8. COMPETITION.....	9
9. TERMINATION	9
10. FAILURE TO DELIVER	10
11. DISPUTES.....	11
12. EXPERT	11
13. LIMITATION OF LIABILITY.....	12
14. CONFIDENTIALITY	12
15. REPRESENTATIONS AND WARRANTIES.....	13
16. NOTICES.....	13
17. GENERAL	14
SCHEDULE 1.....	17
PLATFORM FUNCTIONAL SPECIFICATION	
SCHEDULE 2.....	22
MARKETING PLAN	
SCHEDULE 3.....	26
ANCILLARY SERVICES AGREEMENT	
SCHEDULE 4.....	32
SERVICE LEVEL AGREEMENT	
ANNEX A	
BUSINESS PLAN	
ANNEX B	
LEARNING PROGRAMME SPECIFICATION	
ANNEX C	
DELIVERY AND REFRESHMENT PROFILE	
ANNEX D	
FINANCIAL ANNEX	
ANNEX E	
TRADEMARK LICENCE AGREEMENT	
ANNEX F	
SUPPLIER STYLE GUIDE	

This Agreement is made on the of 2002 between:

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

WHEREAS:

The parties have agreed to co-operate with a view to offering a learning programme entitled [MSc in Electronic Product Design] 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:

“Ancillary Services Agreement” means the ancillary services agreement set out in Schedule 3;

“Business Plan” means the business plan set out at Annex A as may be amended from time to time by agreement between the parties;

“Delivery and Refreshment Profile” means the delivery and refreshment profile set out at Annex C as may be amended from time to time by agreement between the parties;

“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 as may be amended from time to time by agreement between the parties;

“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 Date” means the date on which the first Learning Module is delivered to a student;

“Learning Module” means any module of study counting for a minimum of 20 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 may be 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 set out in Annex B to this Agreement as may be amended from time to time by agreement between the parties;

“Marketing Plan” means the marketing plan set out in Schedule 2;

“Platform” means the electronic delivery platform to be developed by eUniversities in accordance with Clause 4.1.2;

“Platform Specification” means the platform specification set out in Schedule 1;

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

“Subsidiary” means [name] of [address], a wholly-owned subsidiary of the Supplier;

“Service Level Agreement” means the service level agreement set out in Schedule 4.

2. TERM

2.1 Subject to earlier termination pursuant to clause 9.1 and to renewal pursuant to clause 2.2, this Agreement shall be for the period from signature until the end of the fifth full year from registration of the first students to receive the Learning Programme. This Agreement shall remain in force as necessary during the Run Out Period.

2.2 Either party shall have the right to require the other party to renew this Agreement on the same terms (subject to such variations as may be reasonably required by either party) if the number of students enlisted on the Learning Programme as at the third anniversary of the Launch Date is at least 75% of that shown in the Business Plan. The party wishing to exercise such right shall give written notice to the other party of its wish to do so, such notice to be given at any time prior to the fourth anniversary of the Launch Date.

3. OBLIGATIONS OF THE SUPPLIER

3.1 The Supplier’s primary obligations are:

3.1.1 to create, by arrangement with the Subsidiary and otherwise, a Learning Programme, entitled “[MSc. In Electronic Product Design]” complying with the Learning Programme Specification, in accordance with the Delivery and Refreshment Profile;

3.1.2 to accredit the Learning Programme with the following awards: [Certificate, Diploma, MSc.];

3.1.3 to enrol students to pursue that 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 Supplier applies to any other students enrolling with it;

3.1.4 to provide that 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; using all reasonable endeavours to begin enrolling students for provision of the first Learning Modules in [March] 2003 (other than introductory modules which shall be available from [February] 2003); and

- 3.1.5 to refresh and update that 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 into the Learning Programme.

4. OBLIGATIONS OF eUNIVERSITIES

- 4.1 eUniversities' primary obligations are:

4.1.1 to market the Learning Programme as set out in the Marketing Document and commencing from [October] 2002, with the aim of achieving the student numbers set out in the Business Plan (provided that the creation of the Learning Programme shall be proceeding according to the timetable provided for in the Delivery and Refreshment Profile at that date) until the end of this Agreement;

4.1.2 to provide the Platform for the Learning Programme conforming to Schedule 1 (which such changes as eUniversities may reasonably consider necessary or expedient), using all reasonable endeavours to deliver the Platform by [January] 2003, and to update the Platform as reasonably necessary to enable the quality of learner experience implicit in the Business Plan. For the avoidance of doubt the look and feel and appearance of the Platform shall be as reasonably determined by the eUniversities; and

4.1.3 to provide the Supplier with the services and service levels listed in the Ancillary Service Agreement for the fees set out in the Financial Annex or set out in the Ancillary Service Agreement as appropriate.

5. CREATION OF THE LEARNING PROGRAMME

- 5.1 The content of Learning Programmes shall be structured into agreed discrete Learning Modules and Learning Objects as agreed.

5.2 The Learning Programme shall be of suitable quality so as to be accredited by the Supplier's academic board such that those students who satisfy the Supplier that they have successfully completed the Learning Programme shall be entitled to receive the appropriate qualification from the Supplier. The Learning Programme will not be offered to students until it has been so accredited, although it may be marketed in advance of accreditation.

5.3 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. Without prejudice to the Supplier's responsibility for quality and quality assurance in respect of courses which it accredits, or to the Supplier's own quality standards, the Learning Programme shall also be subject to the quality standards of the Committee for Academic Quality established by the eUniversities to the extent that such Committee shall satisfy itself that the detailed quality standards and processes laid down by the Supplier 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 however 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. 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.

- 5.4 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 Platform and the development of the Learning Programme are interdependent, and are proceeding in parallel.

6. DELIVERY OF THE LEARNING PROGRAMME

- 6.1 The Parties hereby agree that Learning Programme delivered by the eUniversities on behalf of the Supplier shall be co-branded as if it were supplied by the Supplier and UK eUniversities Worldwide. The Supplier hereby grants a royalty free licence to eUniversities to use the logos and/or trade marks annexed hereto in connection with the marketing and/or delivery of the Learning Programme. eUniversities undertakes to use the logos and/or trade marks in accordance with the Supplier's Style Guide annexed to this Agreement as Annex F and not in such a way as to damage the reputation of the Supplier or the value of the Logos and/or trade marks. eUniversities will offer a licence in the form set out in Annex E to the Supplier 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.
- 6.2 Subject to the Marketing Document, eUniversities acting in collaboration with the Supplier shall determine the marketing strategy which it will follow in promoting the Learning Programme. The parties may by agreement in advance in writing resolve that the Supplier should carry out certain defined marketing activities in respect of the Learning Programme. In such a case, eUniversities shall pay the Supplier the sum agreed in advance in writing by the parties on satisfactory performance by the Supplier of the marketing activities in question. A reasonable framework for the price to be charged to customers for the Learning Programme will be determined by the Supplier after consultation with eUniversities, and the 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 framework.
- 6.3 The provisions of the Ancillary Services Agreement, the Financial Annex and the Service Level Agreement shall have effect.
- 6.4 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 either party shall have the right (at its own expense) to take any necessary steps in that regard.

6.5 The parties will jointly review the delivery of the Learning Programme at least six-monthly intervals 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 either party, the parties will meet to agree revisions to this Agreement or the Business Plan necessary to attempt to correct such deviations. Possible areas for discussion will include:

- the pricing of the Learning Programme;
- the method of marketing the Learning Programme;
- the territories in which the Learning Programme is marketed;
- the functionality and performance of the Platform
- the fixed and variable costs incurred by each Party; and/or
- the amounts charged by eUniversities hereunder.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 The Supplier shall be responsible for ensuring that it either owns or is licensed to use as envisaged by the terms of this Agreement all Intellectual Property Rights in the Learning Programme. eUniversities shall not own any Intellectual Property rights in the Learning Programme.

7.2 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 (subject to clause 7.6).

7.3 If the Supplier shall have subcontracted the creation of material within the Learning Programme to a third party, it shall secure that the Intellectual Property Rights in that material are, so far as is reasonably possible, transferred to it.

7.4 In this clause “Use” means to do any act capable of being restrained or controlled by any Intellectual Property Right. The Supplier licenses eUniversities:

7.4.1 to Use the Learning Programme in connection with the delivery of the Learning Programme to students;

7.4.2 to Use the Learning Programme for any purpose necessary or expedient in connection with the delivery of the Learning Programme to students (such as the preparation of marketing material relating to the Learning Programme);

7.4.3 subject to the consent of the Supplier (not to be unreasonably withheld or delayed) to make any development to the Learning Programme necessary or expedient in order that the Learning Programme may be delivered by means of the eLearning facilities offered by eUniversities (provided that the content of the Learning Programme is not

altered without the consent of the Supplier); and

- 7.4.4 subject to the consent of the Supplier (not to be unreasonably withheld or delayed) to Use any Learning Module within the Learning Programme for any purpose connected with the provision of education (provided that such Use does not represent the equivalent of more than [five] Learning Modules in total). eUniversities shall also be entitled to sublicense any other person to Use such Learning Modules. (The Supplier shall be under no obligation to accredit such use or to provide tutor support or other services in respect of such use, or to update Learning Modules so used after this Agreement has terminated. The Supplier does not warrant that any Learning Module in the Learning Programme is fit for any purpose other than its role within the Learning Programme.)

The licences granted in clauses 7.4.1 to 7.4.3 above shall be sole (subject to the express provisions of this Agreement), 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. The licence granted in clause 7.4.4 shall be irrevocable, non-exclusive and perpetual and is subject to the financial provisions set out in clause 7.5 and 7.6.

- 7.5 If a Learning Module 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 7.4.4 (and no payment therefor is claimed by the Subsidiary) eUniversities acting reasonably shall determine a payment (whether a lump sum, recurrent fixed fee, or royalty) to the Supplier in respect of such use which shall have reference to the value contributed to the overall product or service by the Learning Module. Promptly upon notification of eUniversities' determination of the payment to be made, the Supplier 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 12. Payment shall be made within 21 days of the parties reaching agreement or of notification of the expert's determination as appropriate.
- 7.6 eUniversities recognises that material introduced into the Learning Programme may contain third party rights and that third party material may only be used for the purposes of delivering the Learning Programme to students enrolled with the Supplier unless the appropriate permissions are obtained. eUniversities shall in any event pay or reimburse any incremental third party licensing costs arising from any use pursuant to the licence granted in clause 7.4.4.
- 7.7 The Supplier warrants that it owns or is licensed to use the Intellectual Property Rights in the Learning Programme such that it may grant the licences referred to in clause 7.4 without infringing any other person's Intellectual Property Rights (subject to clause 7.6). The Supplier further warrants that use of the Learning Programme by eUniversities within the scope of the licences granted in clause 7.4 will not infringe the Intellectual Property Rights of any third party (subject as aforesaid).

7.8 Each party (“the Indemnifying Party”) shall indemnify and keep indemnified the 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 use of the Learning Programme and the Learning Modules within it in accordance with the licences granted by the Indemnifying Party in this Agreement infringe 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.

8. COMPETITION

8.1 During the currency of this Agreement (but for the avoidance of doubt not including any Run Out Period) the Supplier will not offer the Learning Programme otherwise than by way of the facilities for eLearning provided by eUniversities, or offer or accredit an eLearning programme which is directly competitive with the Learning Programme, without the prior written approval of eUniversities, provided that such approval shall not be required if eUniversities has itself commenced offering an eLearning programme which is directly competitive with the Learning Programme. If the Supplier offered any eLearning course which is or would be directly competitive with the Learning Programme in the three years immediately prior to entering into this Agreement, nothing in this Agreement shall prevent the Supplier from continuing to offer those courses provided they are offered by substantially the same means of delivery as were employed immediately prior to entering into this Agreement.

8.2 For the purposes of clause 8.1 a course shall not be deemed to be directly competitive with the Learning Programme unless:

- it is a [masters-level] eLearning course
- [it is aimed primarily at students outside the United Kingdom]
- it comprises at least three modules which mainly relate to [description];
- the course enrolment criteria are not substantially different from those applying in relation to the Learning Programme; and
- the course is intended to have a selling price per module which is not more than 15% above or below that applicable to modules within the Learning Programme.

[these criteria will need tailoring for each programme]

9. TERMINATION

9.1 This Agreement may be terminated by one party if the 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. This Agreement shall otherwise only terminate by effluxion of

time.

- 9.2 For the avoidance of doubt the failure of eUniversities to deliver the Platform (including the majority of its intended functionality) by [May] 2003 would constitute a serious breach of this Agreement by eUniversities.
- 9.3 For the avoidance of doubt the failure of the Supplier to deliver the Learning Programme in accordance with clause 3.1.1 by [May] 2003 would constitute a serious breach of this Agreement by the Supplier.
- 9.4 Either Party may terminate this Agreement by giving the other Party 30 days' prior written notice if the actual revenues received from students during the 12 months commencing on the second anniversary of the Launch Date are less than 50% of the revenues for such period envisaged by the Business Plan (subject to the terminating Party having complied with clause 6.5).
- 9.5 In the event of termination by the Supplier in any of the circumstances referred to in clause 9.2 or 9.4 above, the Supplier shall have the right to use all or any part of the Learning Programme. Any such use shall be subject to a payment (whether a lump sum, recurrent fixed fee, or royalty) to eUniversities in respect of such use which shall have reference to the value contributed to the overall product or service by the relevant part(s) of the Learning Programme. Promptly upon notification of the Supplier's determination of the payment to be made, eUniversities 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 12. Payment shall be made within 21 days of the parties reaching agreement or of notification of the expert's determination as appropriate.
- 9.6 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 enrolled to receive the Learning Programme before termination of this Agreement.

10. FAILURE TO DELIVER

- 10.1 If the Supplier does not deliver a materially complete Learning Programme in accordance with the Business Plan and that failure is due to the fault of the Supplier, it will not be eligible to receive fees under the Financial Annex. However, if any of the Learning Modules which it has delivered are used by eUniversities pursuant to the licences granted under this Agreement, it shall be entitled to a payment determined under clause 7.5.
- 10.2 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 [January] 2003, it may obtain those Learning Modules or any other facilities or services necessary to complete the Learning Programme from another supplier. 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 shall not be obliged to accredit a Learning Programme completed with Learning Modules or any other facilities or services from any other supplier, and shall not

be obliged to perform any of the obligations in clauses 3.1.1 to 3.1.5 above in respect of such a Learning Programme.

- 10.3 The 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 under clause 7.5 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 either party in respect of any failure to deliver a complete Learning Programme.

11. DISPUTES

- 11.1 In the event that there is a dispute between the parties, unless otherwise agreed it shall be dealt with as follows:

- 11.1.1 the dispute 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
Name:	[usual name]	[full name was here]
Tel:	[usual details]	[full details were here]
Fax:	[usual details]	[full details were here]
Email:	[usual details]	[full details were here]
Address:	14 Buckingham Gate	[full details were here]
	London SW1E 6LB	[full details were here]

- 11.1.2 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:

Name:	[usual details]	[full details were here]
Tel:	[etc]	[etc]
Fax:		
Email:		
Address:	as above	as above

- 11.1.3 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 12.

12. EXPERT

- 12.1 Any dispute connected with this Agreement which is not resolved pursuant to clause 11 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.

13. LIMITATION OF LIABILITY

- 13.1 No party shall be responsible for any delay or failure to deliver caused by the other party failing to meet any of its commitment under this Agreement.
- 13.2 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 the other in connection with any breach of this Agreement shall be limited to the sums paid by eUniversities to the Supplier in that twelve month period (in the case of the liabilities of the Supplier) or the sums retained by eUniversities in that twelve month period from the fees actually received from students pursuing the Learning Programme (in the case of the liabilities of eUniversities).
- 13.3 Neither party will in any event be liable for any special, consequential or indirect damages, loss of profits, loss of business, loss of revenue, loss of goodwill or loss of anticipated savings arising out of or in connection with this Agreement.
- 13.4 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.
- 13.5 Neither party shall be in breach of this Agreement if it fails to discharge any obligation imposed on it hereunder, if the sole reason for the failure is any cause or event outside the control of the party in question, including, 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.

14. CONFIDENTIALITY

- 14.1 The terms of this Agreement and the documents referred to in it shall be confidential and shall not be disclosed to any other person, save as may be required by any authority with the power to compel disclosure, as may be necessary for the proper implementation of this Agreement or for obtaining professional advice upon this Agreement, or if this Agreement comes into the public domain otherwise than through the breach of this or any other obligation of confidentiality. Either party may disclose the terms of this Agreement and/or the documents referred to in it to such of their employees as reasonably need to know the same for the purposes of enabling that party to discharge its obligations hereunder but shall take all reasonable endeavours to ensure

that such employees treat the terms of this Agreement and/or such documents as confidential.

14.2 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.

15. REPRESENTATIONS AND WARRANTIES

15.1 Each party represents and warrants to the other that:

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

15.1.2 it is not relying upon any representations (whether written or oral) of the other party other than the representations expressly set forth herein (and, in the case of the Supplier, the agreement by eUniversities to enter into contracts relating to four other learning programmes) provided always that nothing in this Agreement shall prevent any party from taking action for any fraudulent representation or act;

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

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

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

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

16. NOTICES

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

16.2 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 16.1 shall be deemed to have been received:

16.2.1 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;

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

16.2.3 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.

16.3 Without prejudice to Clause 16.1, 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.

17. GENERAL

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

17.2 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 either 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). Either party may use subcontractors to discharge some or all of their obligations under this Agreement, but shall themselves remain liable for the proper discharge of those obligations.

17.3 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.

17.4 This Agreement shall not be interpreted or construed as creating any association, joint venture or partnership between the parties or imposing any partnership obligation or liability upon either party. Neither party shall have any right, power or authority to enter into any agreement or undertaking for, or to act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other party.

17.5 No amendment to this Agreement shall be effective unless it is in writing and signed by a duly authorised representative of each of the parties.

17.6 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 to be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provision of this Agreement.

17.7 No waiver, failure, or delay by either party in respect of any breach by the other of this Agreement or acceptance of payment or performance shall preclude any right, relief or remedy

of the other party, nor shall the same be relied upon as a consent or waiver in respect of such breach whether of a like or different nature.

17.8 This Agreement (including the Annexes hereto) constitutes the entire agreement between the parties in relation to the subject matter to which it relates and supersedes and extinguishes any documents, drafts, minutes of meetings, letters or notes, or any statements, communications, representations, warranties, understandings, arrangements or agreements (in any such case, whether oral, express or implied) previously given or made other than those included in this Agreement, and those, if any, made fraudulently (and nothing in this Clause 17.8 shall limit or exclude any liability for fraud).

17.9 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
for and on behalf of **UK eUniversities Worldwide Limited** (Signature)

WITNESS: (Date)

Signature

Name

Address

.....

.....

Occupation

(PLEASE COMPLETE IN CAPITALS)

SIGNED by
for and on behalf of **The University Of [name]** (Signature)

WITNESS: (Date)

Signature

Name

Address

.....

.....

Occupation

(PLEASE COMPLETE IN CAPITALS)

SCHEDULE 1

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. UK 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 personalised 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.

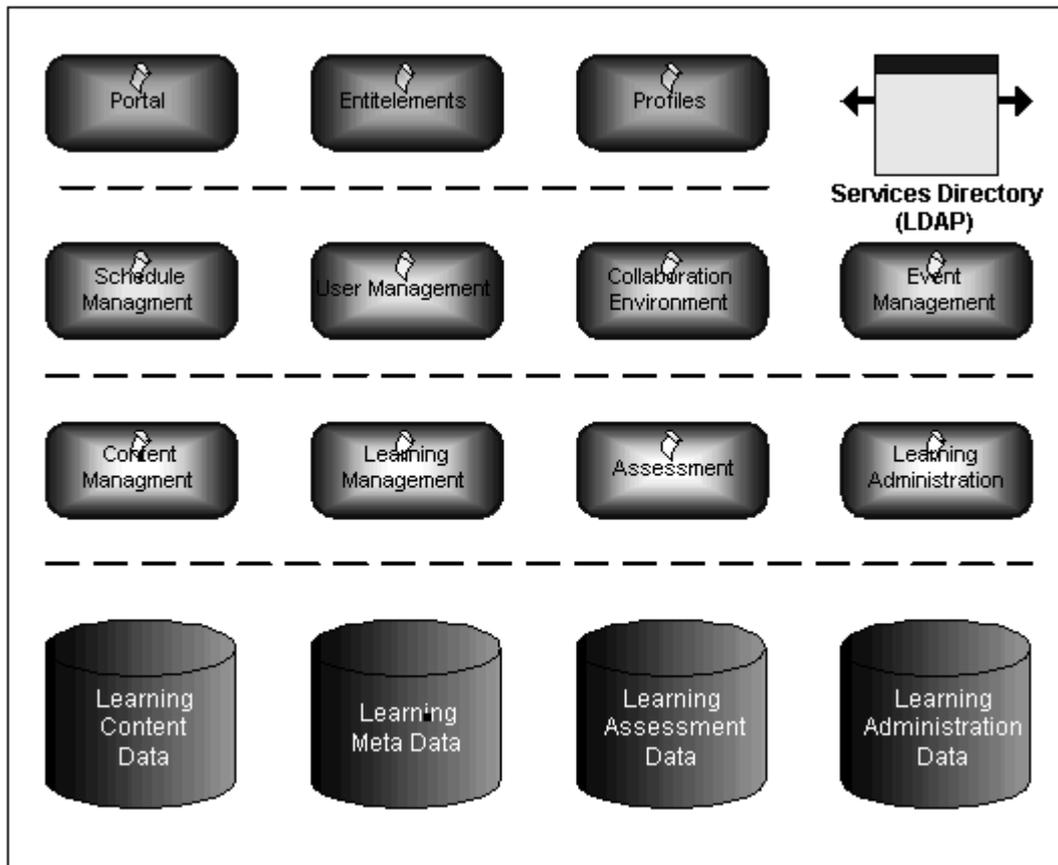
The framework is designed to inherently support RLOs and to support both static and adaptive sequencing in learning programme definition.

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 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 programme management and research into the pedagogy of eLearning. This warehouse of events then allows for both canned and dynamic reporting.

An examples of dynamic reporting might include the ability to ask 'How long does it take for a tutor to respond to a students 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' by 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 programmes 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 Programmes

- 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 2

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 Schedule 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 to maximise the success of the 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 customers.

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.

Philosophy and approach

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

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

1. Programme

The programme, 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 programme by association with other organisations/institutes is to be researched and noted for marketing development. Additional value from the Supplier's accrediting body plus value added by eUniversities is to be acknowledged and included in the marketing promotion.

eUniversities will investigate with the Supplier the possibility of a digest of the learning programme as a Director's briefing/refreshers.

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 the 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 Supplier 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. Programme 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.

Channel	Action	Action Date before:
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	Two 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	Two months after signing contract
	Identify with Supplier a small learning chunk as a demo for free evaluation and make available to prospective customers	One 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.	Two 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: <ol style="list-style-type: none"> 1) overview of programme, 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 	Three months after signing contract
	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.	Four 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>Four months from signing contract</p>
	<p>Third party agents will be provided with appropriate promotional materials to ensure they can provide prospects with adequate information. eUniversities intends to establish its own representation in selected major markets to replace non-exclusive services.</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 Sales Staff	<p>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>Four months after signing contract</p>

SCHEDULE 3
ANCILLARY SERVICES AGREEMENT

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 which shall itself enrol the students accordingly. eUniversities will act as agent on behalf of the Supplier in accordance with this Schedule with regard to enrolment of students and to the Supplier's relationship with the students, and shall comply with the Supplier's instructions in that regard.
2. The Supplier shall have ultimate responsibility for the oversight and maintenance of academic quality for the Learning Programme. The Learning Programme will be subject to the Supplier's agreed procedures for approval, monitoring and review of its validated provision. The Supplier shall provide relevant guidance, including documentation, to inform eUniversities on the manner in which its responsibilities shall be carried out.
3. eUniversities will be responsible to the Supplier for administering the services and facilities outlined below. It shall report on these matters to the Supplier as required by the Supplier from time to time. The Supplier shall have the right on an annual basis at its own expense to inspect and review systems and facilities being operated by eUniversities.
4. eUniversities shall retain detailed supporting documentation related to the operation of the Learning Programme within the scope of the Agreement as specified below and shall promptly make it available from time to time to the Supplier's staff when required and especially as part of the monitoring and quality assurance processes. The documentation shall be retained for the period of the Agreement (including the Run Out Period) and for a further six years thereafter.
5. 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 the services specified in this Schedule except to the extent that the same arises as a result of a breach by eUniversities of its obligations hereunder.
6. eUniversities agrees to indemnify the Supplier and keep it 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 Schedule.
7. Any additional charges for the Services shall only be payable if and to the extent agreed in writing in advance.
8. eUniversities shall take reasonable care to ensure that the information it generates itself and provides to the Supplier is accurate in all material respects. Where forwarding third party information, including from students, eUniversities shall not be obliged to check for or notify the Supplier of errors.

9. eUniversities shall provide the Services with reasonable care and skill and to the standard reasonably required from an experienced professional qualified in this field.

QUALITY ASSURANCE

10. The Supplier shall be responsible for the academic quality of the Learning Programmes. The Supplier shall appoint a Programme Leader (the "Programme Leader") for the Learning Programme who will be responsible for:
 - 10.1 liaison with eUniversities;
 - 10.2 monitoring the quality of the operation of the Learning Programme;
 - 10.3 monitoring the effectiveness of eUniversities and its subsidiaries and agents in carrying out the terms of the Agreement; and
 - 10.4 preparing quality monitoring reports to meet internal and external requirements.
11. eUniversities shall assist the Programme Leader in the collection of student feedback, as reasonably determined by the Programme Leader.

STUDENT RECRUITMENT, MARKETING AND PROMOTION

12. The Supplier shall:
 - 12.1 provide to eUniversities the current electronic course information for its information;
 - 12.2 consider in advance of publication by the eUniversities, all material relevant to promotional materials, or other materials intended for publication, which include the Supplier's name or logo, and approve, or otherwise, as it reasonably sees fit. The Supplier shall give written notice of approval or rejection of the material within 10 working days of receipt of the material by the Supplier.
13. eUniversities shall:
 - 13.1 recruit students to the Learning Programme; and
 - 13.2 promote the Learning Programmes in accordance with the Marketing Plan.
 - 13.3 following the Supplier's relevant published policies in relation to the recruitment of students, including equal opportunities; and
 - 13.4 complying with such timescales as may be agreed for notifying the Supplier of the number of students applying for each cohort.

ADMISSION

14. Students shall be admitted to the Learning Programme in accordance with the approved Admissions policy and regulations as set out in the Learning Programme specification and any additional criteria specified in writing by the Programme Leader.
15. The Supplier shall be ultimately responsible for determining admission to the Learning Programme and, in order to determine suitability of applicants shall:

- 15.1 specify what information an applicant must provide for consideration for admission, and what evidence is or may be required in support of that information (which may change from time to time); and
 - 15.2 confirm with two working days any proposed offer of a place on the Learning Programme made by eUniversities to students satisfying those criteria (it being acknowledged that both parties expect eUniversities to be able to deal with at least 75% of applications without further reference to the Supplier).
16. eUniversities shall provide the following services to the Supplier:
- 16.1 dealing with all queries from prospective applicants;
 - 16.2 providing support and advice to prospective applicants;
 - 16.3 receiving application information from applicants;
 - 16.4 keeping a record of all application information received;
 - 16.5 processing all applications in accordance with an agreed procedure including authenticating the qualifications of applicants;
 - 16.6 administering where necessary English language proficiency tests (British Council's IELTS, the computer based American TOEFL Test); and
 - 16.7 dispatching copies of the application information and any supporting evidence to the Supplier by e mail or other appropriate means.

ENROLMENT

17. Students who are admitted to the Learning Programme shall enroll with the Supplier on commencing their studies.
18. The Supplier shall be responsible for creating and maintaining the student enrolment records.
19. eUniversities shall:
 - 19.1 forward confirmation communications from the Supplier to the applicant;
 - 19.2 collect fees from the students and after the deduction of the agreed commission remit the balance to the Supplier in accordance with the Financial Annex;
 - 19.3 ensure that students provide the necessary enrolment information and forward such information to the Supplier within four weeks of the commencement of the Learning Programmes; and
 - 19.4 provide appropriate induction for each new student in relation to the platform.

STATUS OF STUDENTS

20. Students admitted to the Programmes shall be enrolled with the Supplier and, as such they will be students of the Supplier and subject to standard regulations and contractual terms and conditions specified by the Supplier and varied from time to time.

PROGRAMME DELIVERY

21. The Supplier is responsible for creation of distance learning materials, and support arrangements for students whilst they are studying the distance learning materials, in accordance with the specifications in the Learning Programme Specification.
22. eUniversities is responsible for:
 - 22.1 supporting the delivery of distance learning materials and taught elements to students and providing the facilities for eLearning more specifically referred to elsewhere in the Agreement; and
 - 22.2 ensuring that delivery of the Learning Programme by eLearning within each territory complies with all relevant legal requirements within that territory.

ASSESSMENT

23. Students enrolled on the Learning Programmes will be assessed in accordance with the Learning Programme Specification.
24. The Supplier shall devise programmes of continuous assessment, examinations and marking schemes for the Learning Programme which will be prepared and moderated in accordance with the approved assessment schedule and strategy set out in the Learning Programme Specification.
25. In preparing formal unseen examinations both parties will take all steps necessary to maintain the security of the papers prior to the scheduled examination. The Supplier shall ensure that examination procedures are in accordance with the Supplier's procedures for examinations and invigilation currently applying.
26. In carrying out its assessment responsibilities, the Supplier shall:
 - 26.1 ensure that student assignments are marked and the marks are moderated in accordance with the Supplier regulations currently applying;
 - 26.2 provide written feedback and provisional marks to students; and
 - 26.3 provide eUniversities with a copy of the provisional marks for each unit of the Learning Programmes.
27. eUniversities shall support the assessment process as reasonably required by the Supplier.
28. The Supplier is solely responsible for the operation of Assessment Boards, including notification via eUniversities to students of the decisions of Assessment Boards.
29. The Supplier and eUniversities shall comply with all applicable data protection legislation.

STAFFING

30. The Supplier is responsible for ensuring appropriate academic staffing including tutors for the Learning Programme.

CONFERMENT

31. The Supplier is solely responsible for communication with students concerning eligibility for awards and for arranging the production and issue of all award certificates.

STUDENT COMPLAINTS AND APPEALS

32. The Supplier is responsible for receiving and considering any complaints or academic appeals made by students enrolled within the scope of this Agreement. In the event of a student making a complaint or appeal to the Supplier, eUniversities shall provide full co-operation to the Supplier in investigating the matter.

OTHER SERVICES

33. eUniversities shall in addition be responsible for the following areas, subject to the exact nature of its responsibilities being agreed between the Parties:

- Security
- Testing
- Platform software development
- Hardware
- Password administration
- Registry liaison
- Generic training for e-tutors – course specific training to be provided by the Supplier
- Customer service
- Helpdesk and contact centre
 - Student admin support
 - Tutor admin support
- Invoicing
- Credit control

SERVICES FOR CONSIDERATION

34. 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

35. The parties will discuss the following areas in relation to local support:

- Student administration and customer service
- Creating options for the Supplier's appointment of tutors, exam centres and local student support

- Local assessment/exam administration
- Development of regional centres in selected countries in due course.

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 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 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 its 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 clause 13.1 and/or 13.5 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 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 Registered students	From 2/1/03 to 27/6/03 09:00 to 17:30 Mon-Fri UK time. Thereafter 24 hours per day 7 days per week
Application Support	Nominated Supplier representatives	09:00 – 17:00 Mon-Fri UK time, excluding Bank Holidays
Student administration	Nominated Supplier 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. An electronic copy of the executed contract will be made available to the Supplier.

E.2 Student Invoicing

This will be provided in accordance with Annex D.

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 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 at any time (“CR”). Since a change could affect the fees, schedules or other terms related to this Schedule, both the Supplier and eUniversities must approve each change, and this Schedule 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

the Schedule.

- 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 either approve it for investigation or reject it. If rejected, the nominated representative will 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 of any fee proposed by eUniversities to investigate the CR. During such investigation, the effect on the terms of this Agreement will be determined. Following completion of such investigation, the requested change will then be approved or disapproved.
- iv) Approved changes will be incorporated into the Agreement through written modifications, which shall be signed by duly authorised representatives of both parties in accordance with clause 38 of the Agreement.

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 0845 345 6565). 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 gross 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

[University to provide]

ANNEX B

LEARNING PROGRAMME SPECIFICATION

[University to provide]

ANNEX C

DELIVERY AND REFRESHMENT PROFILE

[University to provide]

ANNEX D

FINANCIAL ANNEX

[being redrafted by UKeU]

ANNEX E

TRADEMARK LICENCE AGREEMENT

[UKeU draft already provided]

ANNEX F

SUPPLIER STYLE GUIDE

[University to provide]