

AGREEMENT

between

- 1) UK eUniversities Worldwide Limited**
- 2) [consortium]**
- 3) [professional association]**
- 4) [university 1]**
- 5) [university 2]**
- 6) [university 3]**

for the provision of learning modules

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	LICENCE AGREEMENT

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

- UK eUniversities Worldwide Limited of 14 Buckingham Gate London SW1E 6LB (“eUniversities”);
- [consortium] whose registered office is at [address] (the “Supplier”);
- [professional association] (“ASSOC”);
- [university 1] of [address] (“Univ1”)
- [university 2] of [address] (“Univ2”); and
- [university 3] of [address] (“Univ3”).

WHEREAS:

The Parties have agreed to co-operate with a view to offering various learning modules for [association’s] professionals 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 (i) any holding company or subsidiary company of such person or any company which is a subsidiary company of any holding company of such person, the expressions “holding company” and “subsidiary” having for these purposes the meanings respectively ascribed thereto by Section 736 of the Companies Act 1985, as amended by Section 144 of the Companies Act 1989, and (ii) in relation to the Supplier only, each Member;

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

“Distance Learning” means the delivery of an academically accredited programme which includes a substantial element of delivery by way of the Internet or interactive television or similar technology, to students who, for the majority of time during which they receive guided learning or instruction, are not physically present at premises occupied by the Supplier;

“EEA” means the European Economic Area;

“Enrolling Members” means Univ1, Univ2 and Univ3;

“Financial Schedule” means Schedule 3;

“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 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 January 2004;

“Learning Module” means any module of study counting for a minimum of 20 credits forming part of the Learning Programme or any assessed unit of study within any such module counting for a minimum of 5 credits or any non-assessed unit of study;

“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 and learner support materials 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;

“Marketing Plan” means the marketing plan referred to in clause 8.1;

“Members” means each of ASSOC, Univ1, Univ2 and Univ3;

“Parties” means the parties to this Agreement;

“Pilot Launch Month” means September 2003;

“Pilot Period” means the period commencing at the start of the Pilot Launch Month and ending at the start of the Launch Month;

“Platform” means the electronic delivery platform to be developed and provided by eUniversities in accordance with clause 4.1;

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

“Primary Parties” means each of eUniversities and the Supplier;

“Run Out Period” means the period after what would otherwise have been termination of this Agreement 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 nominated member (as defined in clause 1.3), eUniversities and/or the Supplier, subject to a maximum of five years;

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

“Supplier Logos” means the Supplier’s logos as set out at Annex D;

“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.
- 1.3 The parties acknowledge and agree that initially (pending certain changes being made to the Charters, Statutes and By-Laws of the Enrolling Members (“**the required constitutional changes**”) Univ1 (“**the nominated member**”) shall be the institution solely responsible for registration and enrolment of students, academic assurance and standards, student services, student academic appeals, student discipline and complaints (academic and non-academic), examinations, moderation and conferment of degrees and awards (“**the student services and awards**”). Accordingly, references in this Agreement to “Students” are to be construed for that initial period as references to students enrolled by the nominated member who pursue a Learning Programme delivered via the Platform.
- 1.4 Subject to the required constitutional changes being made, responsibility for the student services and awards shall pass (on terms agreed by the Supplier and the Members) from the nominated member to Univ1, Univ2, Univ3 and the Supplier jointly. Accordingly, references in this Agreement to “students” are to be construed thereafter as references to students enrolled by one of the Enrolling Members and the Supplier (or as otherwise agreed between them).
- 1.5 Where the Supplier considers appropriate, ASSOC shall be responsible for professional accreditation of the Learning Programme for [the members of the profession].
- 1.6 The provisions of clauses 1.3 to 1.5 (inclusive) shall prevail over any inconsistent or contrary provision in this Agreement.
- 1.7 Each of the Enrolling Members shall use its reasonable endeavours to ensure that the required constitutional changes are implemented as soon as possible and in any event by [date]. Provided that (subject to this requirement to use reasonable endeavours) no Enrolling Member shall be in breach of this Agreement simply by virtue of the fact that the required constitutional changes have not, in fact, been implemented by [same date as earlier in 1.7].
- 2 TERM
- 2.1 Subject to earlier termination pursuant to Clause 20 and subject also to clause 2.2, this Agreement shall continue for the period from its date until the end of the tenth full year following registration of the first students who go on to receive the first Learning Module, unless the Parties by agreement resolve to extend this period.
- 2.2 The Agreement shall remain in force as necessary during the Run Out Period as set out in clause 20.9.
- 2.3 The Supplier and eUniversities severally undertake, to the extent that they wish the Supplier to continue delivery of the Learning Programme beyond the initial term mentioned in clause 2.1, to negotiate terms in good faith for the extension of the initial term.

- 2.4 During the Pilot Period, the Primary Parties shall co-operate in the testing and piloting of the Learning Modules.
- 3 SUPPLIER'S OBLIGATIONS
- 3.1 The Supplier's primary obligations are:
- 3.1.1 to create, by arrangement with the Members and otherwise, [over a dozen] Learning Modules complying with the Learning Programme Specification in accordance with the Delivery and Refreshment Profile;
 - 3.1.2 to provide the Learning Programme with the appropriate academic awards and to provide (or procure that the ASSOC provides) professional accreditation where appropriate;
 - 3.1.3 to use all reasonable endeavours to begin enrolling students (initially by using its reasonable endeavours to procure that the nominated member (as defined in clause 1.3) begins to enrol students and then by enrolling students jointly with one or more of the Enrolling Members pursuant to the arrangements described in clause 1.4) for provision in the Launch Month;
 - 3.1.4 to enrol students to pursue Learning Modules (initially by using its reasonable endeavours to procure that the nominated member (as defined in clause 1.3) begins to enrol students and then by enrolling students jointly with one or more of the Enrolling Members pursuant to the arrangements described in clause 1.4) on enrolment criteria which are determined initially by the nominated member and then jointly by the Supplier and the Enrolling Members and which have regard to the nature of the relevant Learning Module and its mode of delivery but are broadly comparable overall with the criteria which (in the case of enrolment by the nominated member) apply to any other students enrolling with the nominated member to study an equivalent course and which (in the case of enrolment by the Supplier and one or other of the Enrolling Members) each relevant Enrolling Member applies to any other students enrolling with it to study an equivalent course (and where the enrolment criteria differ, are within the range of enrolment criteria represented by all the Enrolling Members);
 - 3.1.5 to provide the Learning Modules to students via the facilities for Distance Learning provided by eUniversities during the term of this Agreement and for a Run Out Period thereafter;
 - 3.1.6 to market the Learning Modules in the manner set out in the Marketing Plan, with the aim of achieving or exceeding the student numbers set out in the Business Plan until the end of this Agreement;
 - 3.1.7 to refresh and update the Learning Modules in accordance with the Delivery and Refreshment Profile; such updating may include the incorporation into the relevant Learning Module of any relevant new content developed by the Supplier; and
 - 3.1.8 to test and pilot certain agreed Learning Modules during the Pilot Period.

4 eUNIVERSITIES' OBLIGATIONS

4.1 eUniversities' primary obligations are:

- 4.1.1 to make available by the commencement of the Launch Month and thereafter to maintain a delivery platform for the Learning Programme conforming to the Platform Functional Specification. For the avoidance of doubt the look and feel and appearance of the Platform shall be as reasonably determined by eUniversities after bona fide consultation with the Supplier, but subject always to maintaining the quality of learner experience, subject to the requirements of the Business Plan, subject to compliance with the Platform Functional Specification and subject to ensuring the ongoing commercial competitiveness of the Platform (that is, ensuring that the Platform is of the highest standard and quality when compared with equivalent electronic delivery platforms which are available in the market at the time);
- 4.1.2 to make the Platform available to the Supplier in a state which is adequate for proper testing and piloting of certain Learning Modules, from a date which is no later than two months prior to the commencement of the Pilot Launch Month;
- 4.1.3 to make the Platform available to the Supplier in a state which is adequate for proper development of the Learning Modules, from the date of this Agreement;
- 4.1.4 to maintain and update the Platform as necessary to enable the quality of learner experience and to comply with the Business Plan and to keep the Platform commercially competitive (that is, of a very high standard and quality when compared with equivalent electronic delivery platforms which are available in the market at the time);
- 4.1.5 to provide the Supplier with the Support Services in accordance with Schedule 1; and
- 4.1.6 to comply with the Service Level Agreement.

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 of Supplier staff.
- 5.2 The content of the Learning Programme shall be structured by the Supplier into discrete Learning Modules incorporating appropriate Learning Objects.
- 5.3 The Learning Programme shall be of suitable quality so as to be approved by the nominated member or by the relevant Enrolling Members such that those students who satisfy the Supplier that they have successfully completed a Learning Module shall be entitled to receive the appropriate qualification initially from the nominated member and then jointly in accordance with arrangements agreed between the Supplier and the Members. No Learning Module will be offered to students until it has been so approved, although it may be marketed in advance of approval and may be tested and piloted during the Pilot Period.
- 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 shall be entitled for up to three years from the date of this Agreement to appoint one director to the Board of the Supplier (the identity of such director having been approved in advance by the Board of the Supplier (such approval not to be unreasonably withheld or delayed)) and to remove from office any person so appointed (and subject to removal and subject as aforesaid) to appoint another person in their place.
- 6.2 The Primary Parties will co-operate during the development of the Learning Programme and during the Pilot Period in particular with reference to quality issues in the manner set out in the Delivery and Refreshment Profile.
- 6.3 Without prejudice to the nominated member's, the Supplier's or the Members' respective responsibility for quality and quality assurance in respect of courses which it or they approve, and to the nominated member's, the Supplier's or the Members' own quality standards, the Learning Programme shall also be subject to the quality standards of the Committee for Academic Quality established by eUniversities and which shall have due regard, *inter alia*, to the need to protect academic freedom. eUniversities shall use its reasonable endeavours to procure that 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.
- 6.4 The Parties acknowledge that a Learning Programme may not satisfy the quality standards of the Committee for Academic Quality where those standards conflict with, or are inconsistent with, the quality standards of the nominated member, the Supplier or an individual Member (whose standards will prevail). It is further acknowledged that eUniversities will be unable and is not obliged to deliver or provide services in connection with a Learning Programme if the Learning Programme does not satisfy the quality standards of the Committee for Academic Quality.
- 6.5 In the event that:
- 6.5.1 the Learning Programme satisfies the quality standards of the nominated member, the Supplier and/or the Members (as appropriate) but does not satisfy the requirements of the Committee for Academic Quality; and
 - 6.5.2 as a consequence of the Learning Programme not satisfying the requirements of the Committee for Academic Quality, eUniversities ceases to deliver or provide services in connection with such Learning Programme

eUniversities shall indemnify and keep indemnified the Supplier and/or the Members from and against the direct costs incurred by the Supplier and/or the Members as a consequence of migrating the Learning Programme to an alternative third party provider including, (without limitation) the repayment or reimbursement of fees to students and costs associated with the redeployment or termination of labour.

7 BRANDING

- 7.1 The Parties hereby agree that the Learning Programme delivered by the eUniversities on behalf of the Supplier shall be co-branded as if it were supplied by the Supplier and eUniversities (and by any other persons agreed by all the Parties).

- 7.2 The Supplier hereby grants for the term of this Agreement a royalty-free licence to eUniversities to use Supplier Logos in connection with the marketing and/or delivery of the Learning Programme, such use to be approved in advance by the Supplier. eUniversities undertakes not to use the Supplier Logos in such a way as to damage the reputation of the Supplier or the value of such logos and/or any related trade marks and to comply with all reasonable requirements of the Supplier and the Members in relation to the use of their names and/or logos from time to time. All rights arising from use of the Supplier Logos by eUniversities shall enure to the Supplier and/or the relevant Member.
- 7.3 On signature of this Agreement eUniversities hereby grants a licence in the form set out in Annex E to the Supplier to use those 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.
- 7.4 The Primary Parties shall promptly following signature of this Agreement agree a style guide which shall provide for the agreed use of logos by both Primary Parties, and for the wording to be used to describe the relationship between the parties and the title of the Learning Programme and Learning Modules.
- 8 MARKETING
- 8.1 The Supplier acting in consultation with eUniversities shall determine the marketing strategy which the Supplier will follow in promoting the Learning Programme within the EEA (the 'Marketing Plan').
- 8.2 The Primary Parties may by agreement in advance in writing resolve that eUniversities should carry out certain defined marketing activities within the EEA in respect of the Learning Programme. In such a case, the Supplier shall pay eUniversities the sum agreed in advance in writing by the Primary Parties on satisfactory performance by eUniversities of the marketing activities in question. eUniversities shall in any event include reference to the Learning Programme and Learning Modules on its website (giving the same prominence as eUniversities' other learning programmes) and make available to the Supplier any marketing data collected by eUniversities in relation to the Learning Programme or Learning Modules.
- 8.3 A reasonable range for the price to be charged to customers for each Learning Module will be determined by the Supplier after consultation with eUniversities. The Supplier acting reasonably and in accordance with any applicable laws shall determine the price to be charged to customers within the EEA for each Learning Module within that range. Following negotiation, eUniversities acting with the prior written agreement of the Supplier and in accordance with any applicable laws shall determine the price to be charged to customers outside the EEA for each Learning Module within that range.
- 8.4 Subject to the other terms of this Agreement, eUniversities shall be entitled to market the Learning Programme to potential students outside the EEA (provided that eUniversities shall make clear in any marketing that the first intake for such students shall be in September 2004, with a limited pilot intake in April 2004). In the event that eUniversities successfully attracts a student from outside the EEA for the Learning Programme or any Learning Module and such student's residence is in a

territory for which eUniversities has appointed a local agent to market the Learning Programme, the Supplier agrees that the provisions of the final row of the table in paragraph 13 of the Financial Schedule shall apply. Any support activities to be carried out by any such agent shall be subject to the prior written consent of the Supplier.

9 ENROLMENT

9.1 eUniversities shall provide facilities and services in support of the delivery of the Learning Programme. An Enrolling Member shall enrol the students in accordance with an agreement to be reached between the Supplier and the Members. eUniversities shall provide those support services in relation to students as are detailed in Schedule 1 as instructed by the Supplier from time to time. eUniversities shall in particular comply with applicable data protection legislation, and shall ensure that all necessary consents are obtained from students to permit the processing of personal data by eUniversities and the Supplier which is necessary under this Agreement.

9.2 Each Party shall comply with the Data Protection Act 1998 (“**the Act**”) including any statutory amendments or re-enactments of it, and all the regulations made under it.

9.3 Where eUniversities is acting as a data processor (as defined by the Act) for the Supplier or any Member, eUniversities undertakes in respect of the personal data (as defined by the Act) processed by it (“Personal Data”):

9.3.1 to keep the Personal Data confidential and not to use or disclose the Personal Data other than as provided for under this Agreement save at the specific request of the Supplier or any Member (as appropriate) or as required by law;

9.3.2 to ensure that:

(a) only such of its employees who may be required during the course of their employment to perform tasks relating to services undertaken to be provided by eUniversities under this Agreement shall have access to the Personal Data; and

(b) such employees are aware of the data protection principles set out in Part I of Schedule 1 to the Act and eUniversities' obligation under this Agreement to comply with them in relation to all personal data processed by it on behalf of the Supplier or any Member;

9.3.3 to have in place appropriate technical and organisational measures to safeguard against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access to the Personal Data. Such measures shall (taking into account the state of technological development and the cost of implementing such measures) be appropriate to the nature of the Personal Data processed by eUniversities.

9.4 The Primary Parties shall discuss and agree appropriate security measures to be implemented in respect of the exchange of examination and assessment results, special circumstances of students and other data, including the Personal Data, between the parties.

9.5 Subject to clause 19, each Party shall indemnify and keep indemnified the other Parties from and against all costs, actions, claims, demands, liabilities, expenses, damages or losses (including all interest, penalties and legal and other professional costs and expenses) arising out of or in connection with any action or claim brought by a data subject (as defined by the Act) or any other

person relating to any failure by that Party duly and punctually to observe and perform the provisions of the Act.

- 9.6 All applications to enrol in the Learning Programme shall be submitted through eUniversities using an application form approved by the Supplier, unless otherwise agreed by the Parties.
- 9.7 The Supplier shall provide eUniversities with all necessary information to be supplied to the students (including details of the Learning Programme and the Supplier's Rules and Regulations as they relate to the delivery of the Learning Programme).
- 9.8 The Supplier shall provide eUniversities with relevant information and reasonable assistance to enable it to deal with queries from applicants on academic matters as far as is practicable.
- 9.9 eUniversities will be responsible for processing all applications and, subject to final and formal approval by the nominated member or by the Supplier and the relevant Enrolling Member for communicating offers of places on the Learning Programme to students. For the avoidance of doubt, Univ1, Univ2 and Univ3 (as appropriate) retain full control and discretion in respect to the acceptance of any student to be enrolled and their continuance as a student.

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 each Party shall have the right (at its own expense) to take (or require to be taken) any necessary steps in that regard.
- 10.2 The provisions of the Service Level Agreement shall have effect in relation to the delivery of the Learning Programme and shall be adhered to by eUniversities.
- 10.3 The Primary Parties will jointly review the delivery of the Learning Programme throughout the Pilot Period and then at least every six months (or, during the period from the commencement of the Launch Month up to the third anniversary of the date of this Agreement, at least every three months) in accordance with a process to be agreed by the Primary Parties. The Primary Parties will each use all reasonable endeavours within (and without prejudice to) their respective responsibilities detailed in this Agreement to adhere to the Business Plan and the budgets agreed for the Learning Programme and to maintain the educational and financial viability of the Learning Programme. If in the reasonable opinion of either Primary Party the delivery of the Learning Programme is deviating significantly from the Business Plan and the budgets agreed for the Learning Programme to the detriment of any Party, the Primary Parties will meet to agree revisions to this Agreement or the Business Plan as are reasonably 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 any Party; and/or
 - the amounts charged by eUniversities hereunder.

11 INTELLECTUAL PROPERTY RIGHTS

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

11.2 In this Clause “Use” means to do any act capable of being restrained or controlled by the owner of any Intellectual Property Right in respect of such Intellectual Property Right.

11.3 The Supplier licenses eUniversities:

11.3.1 to Use the Learning Programme for any purpose necessary or expedient for the delivery of the Learning Programme to students enrolled on the Learning Programme in accordance with this Agreement;

11.3.2 subject to the prior written consent of the Supplier (not to be unreasonably withheld or delayed):

(a) to Use the content (but not any underlying functionality or technology) of any Learning Module or Learning Object within the Learning Programme, for any purpose connected with the provision of education and as part of another learning programme; or

(b) to sublicense any other person to Use such content (but not any such underlying functionality or technology) of Learning Modules or Learning Objects for any purpose connected with the provision of education and as part of another learning programme provided that such sub-licence shall not permit further sub-licensing

Provided that the Supplier shall at its absolute discretion decide whether or not it wishes 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 after this Agreement has terminated. The Supplier may at its option make Learning Modules available via a credit transfer scheme agreed between the Supplier and a third party. For the avoidance of doubt (but without prejudice to the generality of the foregoing) it shall be reasonable for the Supplier to withhold its consent pursuant to this clause 11.3.2 where the proposed use by eUniversities (in the case of clause 11.3.2(a)) or by a sub-licence (in the case of clause 11.3.2(b)) would or is likely to be:

- directly competitive with the Learning Programme; or
- of poor quality or of materially inferior quality when compared with the Learning Programme.

11.4 The Supplier shall not be under any obligation to provide tutor support or other services in respect of any use pursuant to clause 11.3.2, or to update Learning Modules or Learning Objects so used after this Agreement has terminated.

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 to allow the use of the Learning Programme as contemplated by this Agreement.

11.6 The Supplier shall not grant licences equivalent to that in Clause 11.3.1 to any third party. The licence in clause 11.3.1 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 Schedule. The licences granted in Clause 11.3.2 shall be non-exclusive (subject to clause 13) and shall terminate five years after the termination of this Agreement and are subject to the financial provisions set out in Clause 12.2.

- 11.7 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 this Clause 11 without infringing any other person's Intellectual Property Rights. The Supplier further warrants that use of the Learning Programme by eUniversities within the scope of the licences granted in this Clause 11 will not infringe the Intellectual Property Rights of any third party.
- 11.8 The Supplier (in this clause 11.8 "the Indemnifying Party") shall indemnify and keep indemnified eUniversities (in this clause 11.8 "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 any claim that the use of the Learning Programme and the Learning Modules in accordance with the licences granted by the Indemnifying Party in this Agreement infringes the intellectual property rights of any third party, other than in circumstances where eUniversities is obliged to provide an indemnity under clause 11.9, provided that (i) the Indemnified Party shall provide prompt notice to the Indemnifying Party of any such claim, (ii) the Indemnified Party shall allow the Indemnifying Party (at the latter's own expense) to defend or settle any such claim; and (iii) the Indemnified Party shall provide all reasonable assistance to the Indemnifying Party (at the Indemnifying Party's request and expense) in that regard.
- 11.9 eUniversities (in this clause 11.9 "the Indemnifying Party") shall indemnify and keep indemnified each other Party (in this clause 11.9 "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 (a) any claim that the use of the Platform infringes or may infringe the intellectual property rights of any third party; or (b) any claim relating to information or other content available on the Platform which was not provided by the Supplier. The Indemnified Party shall provide prompt notice to the Indemnifying Party of any such claim and shall allow the Indemnifying Party (at the latter's 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.
- 11.10 If so requested by the Supplier, eUniversities shall use its reasonable endeavours to arrange a new learning programme comprising Learning Modules from the Supplier and learning modules created by other institutions which eUniversities is contractually entitled to use, the content and marketing of any such new learning programme to be agreed by the Primary Parties.
- 11.11 eUniversities shall assign to the Supplier any and all Intellectual Property Rights owned or acquired by eUniversities in the Learning Programme and/or Learning Modules. eUniversities hereby assigns to the Supplier by way of future assignment all copyright owned or acquired by eUniversities in the Learning Programme and/or Learning Modules. eUniversities shall execute and do all instruments and things required to give effect to the assignment of Intellectual Property Rights in this clause 11.11.

12 FINANCIAL PROVISIONS

- 12.1 The provisions of the Financial Schedule shall have effect.
- 12.2 If a Learning Module or Learning Object from the Learning Programme is to be incorporated by eUniversities into a product or service (other than the Learning Programme) pursuant to the licence granted in Clause 11.3.2, eUniversities acting reasonably shall first propose 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. Upon notification of eUniversities' proposal of the payment to be made, the Supplier may challenge the reasonableness of such proposal within 30 days, whereupon the Primary 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 16.4. Payment shall be made within 21 days of the Primary 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 and shall make its other records relating to students available to the Supplier (subject to data protection legislation). These records shall be available to the Supplier for inspection on reasonable notice during business hours (at the Supplier's own cost), provided that the Supplier 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).
- 12.4 The Supplier will keep sufficient records to enable eUniversities to verify the sums passed on to it and shall make its other records relating to students available to eUniversities (subject to data protection legislation). These records shall be available to eUniversities for inspection on reasonable notice during business hours (at eUniversities' own cost), provided that eUniversities 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).
- 12.5 The Parties will co-operate with a view to obtaining funding and/or educational, professional and business development support from [rich government agency]. Recognising the potential advantages to all Parties of an alliance with [agency], the Parties agree to review in good faith the financial and other terms of this Agreement in the light of any offer from [agency] to participate in the funding, design, delivery and/or marketing of the Learning Programme

13 COMPETITION

- 13.1 Save in circumstances where they would otherwise be entitled to terminate this Agreement under clause 20 (excluding clause 20.8), when this clause 13.1 shall not apply, neither the Supplier nor any Member shall offer the Learning Programme otherwise than by way of the Platform, or offer or accredit a Distance Learning programme which is directly competitive with the Learning Programme during the currency of this Agreement (but for the avoidance of doubt not including

any Run Out Period) without the prior written approval of eUniversities (such approval not to be unreasonably withheld or delayed).

13.2 For a period of two years after the date of the Launch Month (as defined in Clause 1), eUniversities shall not offer nor support the delivery of a Distance Learning programme or course which is directly competitive with the Learning Programme.

13.3 If any Member has offered any Distance Learning 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 such Member from continuing to offer such course provided that it is offered by substantially the same means of delivery as was employed immediately prior to entering into this Agreement.

13.4 For the purposes of this clause 13 a course shall only be deemed to be directly competitive with the Learning Programme if:

- the course enrolment criteria are not substantially different from those applying in relation to the Learning Programme; and
- the course is marketed to the same or a similar group of potential students; and
- the course includes at least two modules which are substantially the same as Learning Modules within the Learning Programme.

14 NON-DELIVERY BY THE SUPPLIER

14.1 If, having regard to the staged development process for the Learning Programme and following bona fide consultation with the Supplier, eUniversities reasonably concludes that the Supplier is at least two months late in meeting any delivery milestone set out in the Delivery and Refreshment Profile, then subject to eUniversities having complied with its own obligations under clause 4 above, it may obtain 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 approve a Learning Programme completed with Learning Modules or any other facilities or services from any other supplier, or to perform any of the obligations in Clause 3 in respect of such a Learning Programme. If any of the Learning Modules 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 The reasonable cost to eUniversities of obtaining Learning Modules or any other facilities or services from another supplier shall (subject to eUniversities having complied with its own obligations under clause 4 above) 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 NON-DELIVERY BY eUNIVERSITIES

15.1 If eUniversities is late in meeting any delivery date set out in this Agreement or fails to comply with any of its obligations set out in clause 4 above, the Supplier may obtain a Platform, any elements of a Platform, or any other facilities or services necessary to offer the Learning Programme by

Distance Learning from a third party supplier. For the avoidance of doubt this shall be without prejudice to the Supplier’s entitlement to use all or any of the elements of the Platform provided by eUniversities. If the Supplier is required to obtain a Platform, any elements of a Platform, or any other facilities or services from a third party pursuant to this clause, eUniversities shall indemnify and keep indemnified the Supplier and/or the Members from and against the direct costs incurred by the Supplier and/or the Members as a consequence of migrating the Learning Programme to an alternative third party provider or obtaining any other facilities or services from a third party pursuant to this clause including (without limitation) the repayment or reimbursement of fees to students and costs associated with the redeployment or termination of labour.

16 DISPUTES

16.1 In the event that there is a dispute between the Primary Parties, unless otherwise agreed it shall be put in writing and referred to their respective contract managers from time to time (or their authorised alternates) currently being:

eUniversities	Supplier
Name:	Chief Executive
Tel:	
Fax:	
Address: 14 Buckingham Gate	[association]
London SW1E 6LB	

16.2 If the contract managers cannot resolve the dispute within one month of it being referred to them pursuant to clause 16.1, or if the nature of the dispute exceeds the authority of either of them, then the dispute shall be referred in writing to such Primary Parties’ respective senior managers from time to time (or their authorised alternates) currently being:

eUniversities	Supplier
Name: Chief Executive	[chair]
Tel:	
Fax:	
Address: 14 Buckingham Gate	[consortium]
London SW1E 6LB	

16.3 If the senior managers cannot resolve the dispute within 14 days of it being referred to them pursuant to clause 16.2, the Primary Parties shall seek to agree a form of dispute resolution to resolve the dispute which shall be dealt with accordingly. If the Primary Parties cannot agree such

method within seven days of the expiry of the 14 day period referred to above, the dispute shall be referred to an expert pursuant to Clause 16.4.

- 16.4 Any dispute connected with Clauses 11.3, 12.2, 14.2, 20.7, Schedule 1 or referred pursuant to clause 16.3 shall be referred to an expert appointed by the Primary 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 upon the application of either Primary Party. The expert shall act as such and not as an arbitrator. The expert shall determine his or her own procedure and the Primary 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 all the Parties. Provided that both eUniversities and the Supplier have acted in good faith, the expert's costs shall be borne equally between them. Otherwise, the costs shall be borne as the expert shall direct. The Primary Parties shall be deemed to have acted in good faith unless the expert determines otherwise.

17 REPRESENTATIONS AND WARRANTIES

- 17.1 Each Party severally represents and warrants to each other Party that:

17.1.1 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;

17.1.2 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 misrepresentation or act;

17.1.3 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;

17.1.4 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;

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

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

18 FORCE MAJEURE

- 18.1 No 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 reasonable 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 and solely

involving the Party's own employees) or any other cause whether of a similar nature to the foregoing or not and provided that such Party has taken all reasonable steps within its control to avoid or mitigate such circumstances.

19 LIABILITY

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

19.2 With the exception of liabilities connected with death or personal injury, to which no limit shall apply, and subject to clause 19.3, for any twelve month period each Party's total liabilities to the others in connection with any breach of this Agreement and in connection with the guarantee in clause 21 shall be limited:

19.2.1 (in the case of the liabilities of the Supplier) to the sums paid by eUniversities to the Supplier in that twelve month period and (in the case of the liabilities of any of the Members individually) to the relevant proportion of the sums paid by eUniversities to the Supplier in that twelve month period - for this purpose the "relevant proportion" of such sums shall be that proportion which the nominal value of the shares in the Supplier beneficially owned by the relevant Member bears to the aggregate nominal value of the entire issued share capital of the Supplier; and

19.2.2 (in the case of the liabilities of eUniversities) to the sums paid to or retained by eUniversities in that twelve month period pursuant to the Financial Schedule.

19.3 The maximum liability of eUniversities under the indemnities in clauses 6.5 and 15.1 shall be limited to £1 million in respect of each claim or series of connected claims arising from the same set of circumstances.

19.4 No Party will in any event be liable for any special 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.

19.5 The Parties consider the limitation and exclusions of liability set out in this Agreement to be reasonable in the circumstances and acknowledge that eUniversities could not enter into its obligations under this Agreement without a corresponding increase in cost if it were to assume a greater degree of liability to the Supplier or the Members and vice versa.

20 TERMINATION

20.1 This Agreement may be terminated by eUniversities if any other Party (the 'defaulting party') commits any serious breach of any of its material 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. For the avoidance of doubt (but subject to clause 19.1) the following would constitute a serious breach of a material provision of this Agreement by the Supplier:

- 20.1.1 the failure of the Supplier to deliver at least three Modules of the Learning Programme (which conform with the Learning Programme Specification and are reasonably fit for their intended purpose within the Learning Programme) by [end of month 1] (including a Module to be tested and piloted during the Pilot Period); or
- 20.1.2 the failure of the Supplier to deliver at least three further Modules of the Learning Programme (which conform with the Learning Programme Specification and are reasonably fit for their intended purpose within the Learning Programme) by [end of month 9]; or
- 20.1.3 the failure of the Supplier to deliver at least two further Modules of the Learning Programme (which conform with the Learning Programme Specification and are reasonably fit for their intended purpose within the Learning Programme) by [end of month 13]; or
- 20.1.4 the failure of the Supplier to deliver at least two further Modules of the Learning Programme (which conform with the Learning Programme Specification and are reasonably fit for their intended purpose within the Learning Programme) by [month 21];
or
- 20.1.5 the failure of the Supplier to deliver at least two further Modules of the Learning Programme (which conform with the Learning Programme Specification and are reasonably fit for their intended purpose within the Learning Programme) by [month 25];
or
- 20.1.6 the failure of the Supplier to deliver at least two further Modules of the Learning Programme (which conform with the Learning Programme Specification and are reasonably fit for their intended purpose within the Learning Programme) by [end of month 33].
- 20.2 This Agreement may be terminated by the Supplier or a Member if eUniversities commits any serious breach of any of its material provisions (provided that, in the case of any breach which may be remedied, eUniversities 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 eUniversities is wound up or commits or is subject to any act of insolvency. For the avoidance of doubt the failure of eUniversities to comply with any of its obligations under clause 4.1 would constitute a serious breach of a material provision of this Agreement by eUniversities.
- 20.3 This agreement may be terminated by the Supplier if, after acting in accordance with the terms of this clause, the Supplier forecasts that it will incur a cumulative cash liability of [somewhat over £1 million] or more if it continues to enrol new students for more than six months from the date of such forecast (after allowing for exit costs). Such right of termination may only be exercised after the earlier of (a) 31 March 2006 and (b) the recruitment of four full intakes from outside the United Kingdom (not including any pilot intake).
- 20.3.1 In the event that the Supplier forecasts such liability, the Parties shall first seek to agree measures (such as those listed in clause 10.3) to reduce the forecast liability to a figure below [said figure]. Neither party shall unreasonably withhold its consent to any measure

- proposed by the other to reduce the forecast deficit, including modification of the terms of the Financial Schedule.
- 20.3.2 The Supplier shall act reasonably in producing such forecasts and shall be required to demonstrate the basis of its projections. eUniversities shall be entitled to challenge the reasonableness of the inclusion of any indirect costs, overheads or similar charges in the Supplier's calculations. Indirect costs, overheads or similar charges which have been unreasonably included shall be discounted.
- 20.3.3 If following discussions pursuant to the above the Parties have been unable to agree measures to reduce the forecast cash liability to a lesser sum than the above figure, the Supplier may terminate this agreement by giving six months written notice to eUniversities. The Supplier shall be entitled to take all reasonable steps to mitigate its losses from the date on which such notice is served on eUniversities.
- 20.3.4 For the avoidance of doubt, the cumulative cash liability shall include the [sum of around £0.5 million] already invested by the Members at the time of signing the contract and a further projected cash deficit of [rather larger sum] (including exit costs).
- 20.3.5 Nothing in this clause shall prevent the operation of clause 10.3 in circumstances where deviations from the Business Plan are of a lesser magnitude than those set out in 20.3.
- 20.4 In the event of termination by the Supplier in any of the circumstances referred to in clause 20.2, the Supplier shall have the right to use all or any part of the Learning Programme. Without prejudice to such right, the Primary Parties agree and undertake that, if the Supplier continues to use all or any part of the Learning Programme, they shall negotiate in good faith and seek to agree an appropriate royalty, having regard to the value contributed to the overall product or service by each Primary Party. If the Primary Parties do not agree a royalty within 30 days of the Supplier continuing to use all or part of the Learning Programme pursuant to this clause, the matter shall be dealt with in accordance with clause 20.7.
- 20.5 In the event of termination by eUniversities in any of the circumstances referred to in clause 20.1 above, eUniversities shall have the right to use all or any part of the Learning Programme. Any such use shall be subject to a payment agreed in advance (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 each Primary Party.
- 20.6 In the event of termination by any Party in any of the circumstances referred to in clause 20.3 above, each of the Primary Parties shall have the right to use all or any part of the Learning Programme. Any such use shall be subject to a payment agreed in advance (whether a lump sum, recurrent fixed fee or royalty) to the other Primary Party in respect of such use which shall have reference to the value contributed to the overall product or service by each Primary Party.
- 20.7 If agreement cannot be reached pursuant to clause 20.4, 20.5 or 20.6 (as the case may be) within six weeks, the matter shall be referred for determination to an expert in accordance with clause 16.4. In making his determination the expert shall have regard to the value contributed to the overall product or service by each relevant Party, any losses incurred by each relevant Party prior to termination, the extent to which the Parties have met their obligations under this Agreement and the damages suffered by each Party as a result of any failure by any other Party to meet such

obligations. Payment shall be made within 21 days of the Primary Parties reaching agreement or of notification of the expert's determination as appropriate.

- 20.8 In addition, any Party may terminate this Agreement by giving 12 months' written notice to each of the other Parties provided that such notice may only be given once the cumulative Additional Margin Payments (as defined in the Financial Schedule) equal £2.966 million.
- 20.9 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 during a Run Out Period to fulfil their respective obligations in respect of students enrolled to receive the Learning Programme before termination of this Agreement. In particular clauses 1.4, 1.5, 3.1.5, 3.1.7, 4, 7, 9, 10, 11 (other than 11.3.2), 12, 15, 16 to 19 inclusive, 20.4 to 20.7 inclusive and 21 to 24 inclusive of this Agreement shall remain in force during any Run-out Period.
- 20.10 If any students remain enrolled following termination of this Agreement (for whatever reason other than effluxion of time) the Parties shall negotiate in good faith with a view to arranging the transfer of such students to another electronic learning environment or continuation of the delivery of the Learning Programme via the Platform, until they have completed their respective programmes. The Parties shall use all reasonable endeavours during a Run-out Period to minimise any disruption experienced by students.

21 GUARANTEE

- 21.1 In consideration of the obligations of eUniversities under this Agreement, each of the Members hereby severally 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 for the avoidance of doubt include the Supplier's liabilities to pay damages agreed or otherwise under this Agreement.
- 21.2 As a separate and independent obligation, each of the Members shall be liable severally 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 hereunder but which may be irrecoverable against such Member 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.
- 21.3 eUniversities may at any time without prejudice to its rights and remedies under this guarantee or under this Agreement and without discharging or in any way affecting the liability of the Members to eUniversities under this guarantee:
- 21.3.1 grant to the Supplier or any other person time or other indulgence;
- 21.3.2 release, discharge, accept any composition or make any arrangement with the Supplier or any other person whatsoever.

- 21.4 Furthermore, neither the obligations of the Members herein contained nor the rights, powers and remedies conferred in respect of the Members upon eUniversities by this Agreement or by law shall be discharged, impaired or otherwise affected by:
- 21.4.1 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;
 - 21.4.2 any other act, event or omission which, but for this Clause 21.4 might operate to discharge, impair or otherwise affect any of the obligations of the Members herein contained or any of the rights, powers or remedies conferred upon eUniversities by this Agreement or by law. For the avoidance of doubt this is without prejudice to clause 20.
- 21.5 Any settlement or discharge between the Members and eUniversities shall be conditional upon no security or payment to eUniversities by the Members or any other person on behalf of any of the Members being avoided or reduced by virtue of any provisions or enactments relating to bankruptcy, insolvency or liquidation for the time being in force and, 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 Members subsequently as if such settlement or discharge had not occurred.
- 21.6 eUniversities shall not be obliged before exercising any of the rights, powers or remedies conferred upon it in respect of the Members by the guarantee herein contained or by law:
- 21.6.1 to make any demand of the Supplier or any other guarantor;
 - 21.6.2 to take any action or obtain judgment in any court against the Supplier or any other guarantor;
 - 21.6.3 to make or file any claim or proof in a winding-up or dissolution of the Supplier or any other guarantor; or
 - 21.6.4 to enforce or seek to enforce any other security taken in respect of any of the obligations of the Supplier under this Agreement.
- 21.7 The guarantee contained herein shall be a continuing guarantee binding on the Members and shall not be capable of termination without the written consent of eUniversities.
- 21.8 Any right which any Member may at any time have to be indemnified by the Supplier in respect of sums paid out by such Member in the performance of this or any other guarantee to which such Member 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 eUniversities hereunder or under this Agreement.
- 21.9 For the avoidance of doubt nothing in this Clause 21 creates any obligation on the Members to repay the payments for rights referred to in the Financial Schedule (except to the extent that the Supplier may become obliged to repay such amounts).

22 CONFIDENTIALITY

- 22.1 The terms and conditions of this Agreement and all information of a confidential nature provided by or on behalf of any Party to or on behalf of any other Party hereunder shall be treated as confidential and shall not be disclosed save as expressly provided hereunder without the prior

written consent of the non-disclosing Party, save that consent shall not be required for disclosure by any Party:

- 22.1.1 to that Party's Affiliates and to directors, officers 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;
 - 22.1.2 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;
 - 22.1.3 to any government department or agency or other judicial or regulatory body having jurisdiction over that Party;
 - 22.1.4 to any bank or other financial institution in relation to the financing of that Party's business activities or operations, 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;
 - 22.1.5 to the extent required by any applicable laws, judicial process or the rules and regulations of any recognised stock exchange;
 - 22.1.6 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;
 - 22.1.7 to any expert appointed pursuant to Clause 16.4 provided that expert is required by that Party to treat the information disclosed as confidential; or
 - 22.1.8 to the extent that either (i) such information is in or lawfully comes into the public domain other than by breach of any obligation of confidentiality owed to the disclosing Party; or (ii) the recipient can prove that such information was already in their possession on receipt from the disclosing Party.
- 22.2 Save as required by law or the rules of any relevant regulatory body, no Party will make any announcement in respect of any other Party or this Agreement without the prior written consent of each other Party.
- 22.3 The confidentiality obligations set out in this Clause 22 shall survive termination of this Agreement for five years.

23 NOTICES

- 23.1 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 Party at such address or facsimile number (as appropriate) as such other Party may respectively notify to the other Parties from time to time.
- 23.2 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 23.1 shall be deemed to have been received:
- 23.2.1 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;

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

23.2.2 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.

23.3 Without prejudice to Clause 23.1, 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.

24 MISCELLANEOUS

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

24.2 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 any Party and nothing in this Agreement shall create, or be deemed to create, a relationship of principal and agent or employer and employee between any of the Parties. No Party shall have any right, power or authority to enter into any agreement, commitment 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.

24.3 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 liable for the proper discharge of those obligations.

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

24.5 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 such breach whether of a like or different nature.

24.6 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.

24.7 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 (and nothing in this Clause 24.7 shall limit or exclude any liability for fraud).

24.8 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.

24.9 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 **[consortium]**

in the presence of:

Signature:

Name:

Address:

Occupation:

SIGNED by:(Signature) on:(Date)

for and on behalf of **[professional association]**

in the presence of:

Signature:

Name:

Address:

Occupation:

SIGNED by:(Signature) on:(Date)

for and on behalf of **Univ1**

in the presence of:

Signature:

Name:

Address:

Occupation:

SIGNED by:(Signature) on:(Date)

for and on behalf of **Univ2**

in the presence of:

Signature:

Name:

Address:

Occupation:

SIGNED by:(Signature) on:(Date)

for and on behalf of **Univ3**

in the presence of:

Signature:

Name:

Address:

Occupation:

SCHEDULE 1

SUPPORT SERVICES

INITIAL SERVICES (subject to confirmation by the Supplier)

- 1 eUniversities shall provide the following services to the Supplier at its request:
 - 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 in accordance with the Financial Schedule;
 - 1.6 ensuring that delivery of the Learning Programme by Distance Learning within each territory complies with all relevant legal requirements within that territory;
 - 1.7 following the Supplier'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 Primary Parties:
 - 2.1 Infrastructure
 - Hosting
 - Security
 - Testing
 - Networking
 - Software development
 - Hardware
 - 2.2 Customer Service
 - Induction module for new users of the Platform (both students and tutors)
 - Helpdesk and contact centre
 - Student admin support
 - Tutor admin support
 - Credit control (in relation to invoices issued by eUniversities)

- 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
- 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 Any additional charges for the Services shall only be payable if and to the extent agreed in writing in advance.

5 eUniversities shall use its best endeavours 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.

6 eUniversities shall provide the Services with reasonable care and skill and to the standard reasonably required from an experienced professional qualified in this field and expected under the QAA's Code of Practice.

SCHEDULE 2 PLATFORM FUNCTIONAL SPECIFICATION

Introduction

The UKeU Learning Environment (UKeU LE) is a web-based environment for end-to-end course creation, production, and online learning. The UKeU LE is a portal to the course development process, course production and offering, and to the creation of a flexible and collaborative learning environment. The UKeU LE is an environment that combines the hardware, software applications and services, and an eLearning platform. The UKeU LE design provides:

- An environment based on standards to ensure interoperability with existing and future applications (IMS and SCORM).
- Support for team based course specification and creation
- A high degree of scalability
- Connectivity with University information and administration systems

UKeU Learning Environment Logical Architecture

The UKeU LE is based on a client server architecture across a distributed infrastructure. The UKeU LE consists of a collection of service definitions that are independent from implementation. The services are interoperable and can be implemented as a complete collection or standalone.

The UKeU LE architecture can be represented in a series of layers, as shown in Figure 1. This layered framework enables the services that are common to all functions to be separated from the learning specific services. This arrangement removes redundancy and allows for increased flexibility.

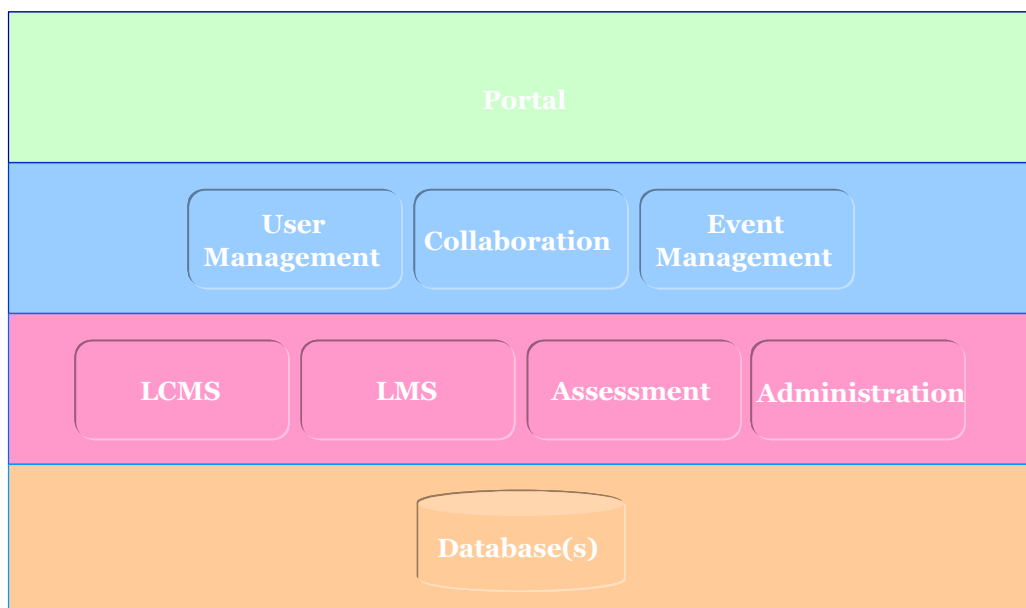


Figure 1 – UKeU LE Architecture

The *Portal* is the single point of entry for all users to the UKeU LE and will be accessible through a web browser. Each user will have a profile and this will dictate the services that the user will see in the portal. Once the user has signed in to the Learning Environment, they will be able to access the available services without the need to enter their sign on details again.

The portal will be capable of being customised to tailor for each Institution's guidelines and will easily integrate with an existing portal solution.

The common services are the services that all users require, regardless of their role. These services are not related to any particular pedagogic function.

The task of managing users and groups is controlled by a central function called the *User Management* service. The User Management Service will provide the backbone for user authentication and authorisation for all services in the learning environment.

The *Collaboration Environment* will provide the communication between all users of the learning environment. The Collaboration Environment will support multiple forms of interaction and be able to adopt new mechanisms with advances in technology. The main formats supported include:

- Email
- Threaded Discussions (known as forums)

All services will have access to a single *Event 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.

The Learning Content Management Service is the system for learning materials development and programme creation. The LCMS uses a workflow driven approach to the production of both online and traditional instructional material to support blended learning. The workflow model supports course specification and author peer review when constructing the learning programme.

Learning material is created as reusable learning objects. Learning objects 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 will support reusable learning objects and support both static and adaptive sequencing in learning programme definition.

The platform will include search facilities to locate relevant or reusable learning objects (provided that all elements within the learning programme will be (or have been) created with detailed metadata).

The learning material can be imported from other content systems using IMS interoperability standards and similarly exported to an external Learning Management System.

The Learning Management Service is the container for delivering and managing the learning programme. 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 programs or learning profiles for adaptive sequencing.

The Assessment System will support formative and summative assessment 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
- Submission of files in multiple formats

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

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 would include:

- Student Applications
- Student Records
- Student Personal Development Plan
- Tutor Records
- Learning Programs

Roadmap

An extensive roadmap is under development and is being rolled out during 2003. The current planned developments are shown below and will be adhered to unless changes are agreed by the Primary Parties.

Q2

- A basic help system on the Learning Environment
- Students and tutors will have the ability to set up and manage forums themselves
- Functionality for administrators to create groups and assign roles to users

Q3

- A registered User View to allow potential students and other users to view the programme before they are registered studentsA preview facility for Delivery managers to see the course
- Error Message Handling features to help support the operational and customer support teams
- The first part of allowing the viewing of offerings
- The addition of the required functionality for handling complex oblets, referencing other oblets
- Give tutors the ability to have deadline extensions Students and tutors will have the benefit of a multiple-choice question assessment functionality
- The ability to update and maintain drop down lists Allow Students to elect to do a certain module within their programme
- Provide the functionality for System users to be reminded of forgotten password and username
- The provision of pre-defined “canned” reports
- Web space and file space for users of the system
- Administration capabilities to address maintenance aspects of the system
- The ability for students to dynamically create a bespoke course from multiple offerings
- The ability for Students to apply and enrol on line
- Upgrade to the Jive collaborative environment
- The ability for students, tutors and administrators to maintain student records
- Students will be able to view programmes prior to registrationQ4
- The ability to hold collaborative assignments where students are assessed separately based on their contribution to the collaboration
- Enhancements to current user management by extending and improving flexibility addressing different user roles, groups and security issues
- Basic marking as part of the assessment functionality to be used by tutorsAdvanced marking functionality, for example, more viewing options for tutors, extra support for marking tutor
- The ability to monitor and maintain the software by operational staff
- The ability for administration staff to archive and restore content stored in the database
- Ad hoc reports

Standards

A mandatory requirement for aspects of the UKeU LE is adherence to open standards. The LE has been developed against the following standard specifications:

- IMS (Content Packaging, Metadata, Question and Test Interoperability, and Learning Architecture)
- SCORM 1.2 – All assets

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

FINANCIAL SCHEDULE

For the purposes of this Schedule:

'Additional Margin Payments' means the sums due to be paid to eUniversities by the Supplier in accordance with clauses 10 and 14 of this Financial Schedule

'Funded Students' means students who are eligible for funding from HEFCE (in whole or in part) up to the maximum allocation to the Supplier from time to time;

'Non-Funded Student' means a student who is not a Funded Student;

'Funded Student Income' means all fee income paid to the Supplier by Funded Students;

'HEFCE Funding' means all grant payments due to the Supplier from HEFCE in relation to Funded Students;

'Total Funded Income' means Funded Student Income plus HEFCE Funding; and

'Total Income' means the Total Funded Income plus the total fees (net of VAT and net of any refunds or credit notes) paid by Non-Funded Students to eUniversities.

Invoicing

1. The nominated member or the Supplier and the Members as appropriate and as agreed by them (but from hereon in this Schedule 3 referred to for convenience simply as the Supplier) will be responsible for invoicing and collecting fees from Funded Students and for collecting HEFCE Funding. The Supplier will pay a percentage of Total Funded Income to eUniversities in accordance with the following provisions. eUniversities will process and administer invoices (including collection) for all Non-Funded Students on the Supplier's behalf (together with VAT if appropriate) for the Learning Modules, will deduct a percentage of the fees actually collected from Non-Funded Students in respect of the services eUniversities provides under this Agreement and will pay the balance of such fees to the Supplier in accordance with the following provisions.
2. Non-Funded Students will be invoiced following the acceptance of the student by the Supplier. All Non-Funded Students will be invoiced in advance and will be required to pay fees (including any VAT) before commencing any Learning Module. Non-Funded Students shall only receive learning material once payment in full for that stage of learning has been received from the student by eUniversities (subject to paragraph 3 below). eUniversities will process and administer invoices (including collection) for Non-Funded Students in advance for all Learning Modules for which they apply (but will not invoice any Non-Funded Student for more than four Learning Modules in advance).
3. If an individual Non-Funded Student applying for one Learning Module indicates in their application that they wish to pay by instalments, eUniversities will process and administer invoices (including collection) in relation to the full fee for such Learning Module in advance (plus a premium of 10% for administrative costs, all of which premium shall be retained by eUniversities) but will accept payment of the fee (plus premium) in three instalments as follows:

- First instalment (60% of fee) to be paid not later than 14 days before the commencement of the Learning Module
- Second instalment (20% of fee, plus premium equal to 5% of fee) to be paid not later than 30 days after the commencement of the Learning Module
- Third instalment (20% of fee, plus premium equal to 5% of fee) to be paid not later than 60 days after the commencement of the Learning Module

The Parties agree that if a Non-Funded Student fails to comply with any such instalment arrangement eUniversities shall be entitled to terminate such student's access to the relevant Learning Module and to issue a credit note for any unpaid instalments.

4. eUniversities and the Supplier may agree to reduce the fee charged to any individual Non-Funded Student to reflect the student's inability to recover VAT.
5. If a Non-Funded Student changes their mind about any Learning Module after an invoice is issued and does not pay, the eUniversities on the Supplier's behalf will issue a credit note.
6. eUniversities will issue a monthly statement to the Supplier within 14 days of the end of each calendar month showing the amounts invoiced to Non-Funded Students in that month by module type, module commencement date and student name and unique identifier. The monthly statement should also show Non-Funded Student Income collected in that calendar month and outstanding as at the end of the month.
7. eUniversities will collect fees from Non-Funded Students after invoicing (and shall bear the costs associated with such collection). Payments will be received in pounds sterling only (or, if the United Kingdom adopts the Euro as its currency, in Euros, and during any dual circulation period provided for in the process of adoption of the Euro, both pounds sterling and Euros), and may be made by:
 - a cheque drawn on a bank incorporated in the United Kingdom
 - cash
 - debit card
 - Visa or MasterCard (via telephone, fax, letter or the Internet)
 - BACS and CHAPS
 - wire transfer
 - Bankers Draft

Additional payment methods or variations in the above methods or additional currencies shall be agreed in advance by eUniversities and the Supplier if necessary.

Fee split

8. Within 14 days after the end of each calendar month the Supplier will issue to eUniversities a monthly statement showing :
 - Funded Student Income invoiced in that month (by module type, module commencement date and student name and unique identifier);

- Funded Student Income collected in that calendar month;
 - outstanding Funded Student Income which has not yet been collected as at the end of that month; and
 - HEFCE Funding due to the Supplier in respect of Funded Students invoiced in that month (regardless of whether the Supplier or any Member has yet received funds from HEFCE in respect of those Funded Students).
9. The Supplier will pay eUniversities an amount equal to 20% of the Total Funded Income shown in each monthly statement issued by the Supplier pursuant to paragraph 8 (subject to a maximum amount of [around £500] plus VAT per Learning Module, which maximum shall be increased pro rata to any increase from time to time in the module price charged to WDC-funded students). Such payment shall be made by the Supplier within 30 days of the end of the calendar month in which the fees from the relevant Funded Students are received as cleared funds by the Supplier. For these purposes Total Funded Income shall be calculated after the deduction of any VAT on the Supplier's relevant supplies to students.
10. With effect from the anniversary dates of the Launch Date shown below, until the cumulative Additional Margin Payments equal [around £3 million] (but not thereafter), the percentage of Total Funded Income due to eUniversities, in addition to that set out in paragraph 9, shall be as shown below and the Supplier's percentage shall be proportionately reduced.
- | | |
|---|--------------|
| ➤ From the first anniversary of the Launch Date to the second anniversary | 5% plus VAT |
| ➤ From the second anniversary of the Launch Date to the third anniversary | 10% plus VAT |
| ➤ From the third anniversary of the Launch Date to the fourth anniversary | 15% plus VAT |
| ➤ From the fourth anniversary of the Launch Date onwards | 18% plus VAT |
11. The Primary Parties shall bear bad debts in relation to Funded Students in the same proportions as they divide the Funded Income.
12. eUniversities will issue to the Supplier a monthly statement of cash collected from Non-Funded Students in the preceding calendar month and amounts outstanding from Non-Funded Students which have not yet been collected. eUniversities shall retain by way of its own fee the percentage of the fee income from Non-Funded Students set out in paragraph 13. eUniversities will pay the Supplier the balance of the such income received in arrears within 30 days of the end of the calendar month in which payment is received as cleared funds by eUniversities from the Non-Funded Student. The Primary Parties shall bear bad debts in the same proportions as they divide such income.
13. Fee income from Non-Funded Students will be divided between the Supplier and eUniversities according to the following formula:

Percentage of fee income due to eUniversities	
For fees received by eUniversities up to the third anniversary of the date of delivery of the first Learning Module to a student	23.5% (being 20% fee plus VAT on that fee equal to 3.5% of the fee income)
For fees received by eUniversities after the third anniversary of the date of delivery to a student of the first Learning Module	29.375% (being 25% fee plus VAT on that fee equal to 4.375% of the fee income)
For fees received at any time by eUniversities from students whose residence is in a territory outside the EEA and these students have been recruited and supported by a local agent appointed by the eUniversities to market the Learning Programme	52.875% (being 45% fee plus VAT on that fee equal to 7.875% of the fee income)

14. With effect from the anniversary dates of the Launch Date shown below, until the cumulative Additional Margin Payments equal £2.966 million (but not thereafter), the percentage of fee income from Non-Funded Students due to eUniversities, in addition to that set out in paragraph 13, shall be as shown below and the Supplier’s percentage shall be proportionately reduced.

- From the first anniversary of the Launch Date to the second anniversary 5% plus VAT)
- From the second anniversary of the Launch Date to the third anniversary 10% plus VAT)
- From the third anniversary of the Launch Date to the fourth anniversary 15% plus VAT)
- From the fourth anniversary of the Launch Date onwards 18% plus VAT

15. If the Total Income in respect of the following years (commencing from the 1st October 2004) exceeds the forecast Total Income (as shown in the table below), eUniversities shall be entitled to a further payment equal to 5% of such excess revenue (plus VAT on such further payment).

Year (*)	Forecast Total Income £
1 st Year	[over 1 million]
2 nd Year	[over 2 million]
3 rd Year	[omitted]
4 th Year	[omitted]
5 th Year	[omitted]
6 th Year	[omitted]
7 th Year	[omitted]
8 th Year	[over 5 million]

(*) The first year, in the above table, relates to the first full year's forecast sales commencing from 1st October 2004 included in the Business Plan (shown as Year 2 in the Business Plan).

16. The student fee income referred to in paragraph 13 shall be such income after the deduction of any VAT on the Supplier's relevant supplies to students and eUniversities shall account to the Supplier for that VAT in full.
17. The Supplier shall pay VAT to eUniversities in addition to any payment made under paragraph 9 or 15 subject to eUniversities having issued an appropriate VAT invoice to the Supplier. eUniversities shall issue the Supplier confirmation VAT invoices for its fees in respect of Non-Funded Students at the time that it makes payments to it under paragraph 12.
18. Any changes in the VAT rates from 17.5% will require the percentages of fee income due to eUniversities to be adjusted such that the amount due to eUniversities excluding VAT remains unchanged.
19. In the event of any change in the HEFCE funding regime the Parties shall discuss in good faith any appropriate changes to this Schedule.

Payment for rights

20. In consideration of the creation of the first six Learning Modules and the grant of the various rights contained in this Agreement, eUniversities shall pay the Supplier a total of [quite large payment] (together with VAT if any) according to the payment profile set out below. The Supplier's right to retain such payments shall be conditional upon the Committee for Academic Quality of eUniversities certifying that such Learning Modules satisfy its quality standards and upon eUniversities being reasonably satisfied that such Learning Modules conform with the Learning Programme Specification and are fit for their intended purpose (together the 'Quality Conditions').

Date	Payment £
30 June 2003 (or as soon as the contract is signed (whichever is the sooner))	[around £200 K]
15 August 2003	[similar]
15 November 2003	[similar]
15 February 2004	[similar]
15 May 2004	[similar]
15 August 2004	[residue]

21. If the Quality Conditions have been met, eUniversities shall pay the Supplier a total of a further [not quite so large sum] (together with VAT if any) according to the payment profile set out below in consideration of the creation of a further eight Learning Modules (subject to eUniversities having given its consent to the proposed content of such modules, such consent not to be unreasonably withheld or delayed). The Supplier's right to retain such payments shall be conditional upon the Quality Conditions being satisfied in respect of such further Learning Modules.

22.

Date	Payment £
15 November 2004	[front-loaded series]
15 February 2005	[of smaller amounts]
15 May 2005	[same as previous]
15 August 2005	[bit less]
15 November 2005	[same as previous]
15 February 2006	[same as previous]
15 May 2006	[same as previous]

23. The payments referred to in paragraph 20 may only be used by the Supplier for the development of Learning Modules or for funding its working capital requirements. The payments referred to in paragraph 21 may only be used by the Supplier for the development of Learning Modules.
24. All payments referred to in paragraphs 20 and 21 are conditional upon the Supplier having first issued eUniversities a VAT invoice therefor (if applicable)
25. The Supplier shall prepare reports analysing how each payment under paragraphs 20 and 21 has been spent and shall keep adequate records to support each report. The Board of the Supplier shall monitor the progress of the development of the Learning Programme by reference to the Delivery and Refreshment Profile and shall report such progress to eUniversities. Reports shall be provided to eUniversities on a quarterly basis, on 31 March, 30 June, 30 September and 31 December each year and eUniversities shall be allowed access on reasonable notice and at reasonable times to the supporting records. If, following consultation with the Supplier, eUniversities reasonably concludes that the Supplier is at least two months late in meeting any delivery milestone set out in the Delivery and Refreshment Profile, eUniversities may suspend the making of payments under paragraphs 20 and 21 until such delay is rectified.
26. The costs of any withholding taxes which may be applicable in respect of student fees shall be shared by eUniversities and the Supplier in proportion to their share of fee income received from students.

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 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 purchase (and pay for) all hardware and software items including licences associated with running the Platform. eUniversities will also be responsible for (and will pay 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 by eUniversities in accordance with standards of best practice. This will include (but not be limited to) 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 by eUniversities to ensure sufficient bandwidth is available for the predicted traffic. Traffic routing will also be monitored by eUniversities to ensure that appropriate routing and peering agreements are in place wherever possible.

The Supplier will be able to 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 controllable by the student to be:

- accessible by all platform users; or
- accessible by all programme users; or
- accessible by all tutorial group users.

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. eUniversities shall ensure that the Platform is available 99% per cent of the time 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 and/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 Facility.

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 five Business Days notice of such events, and where possible will schedule such events so as to cause minimum impact to the Supplier and students. 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. Such maintenance shall not exceed a total of 8 hours in any calendar month.

eUniversities shall monitor the availability of the Platform and shall provide a report to the Supplier within 14 days of the end of each calendar month of any downtime and of the percentage availability of the Platform during such calendar month ("the Monthly Availability Percentage"). In the event that the Monthly Availability Percentage is less than 99% (the amount by which the Monthly Availability Percentage is less than 99% being referred to as the "Shortfall Percentage" so that, for example, if the Monthly Availability Percentage is 97.5% the Shortfall Percentage will be 1.5%) eUniversities shall pay the Supplier within seven days of the end of that month an amount (plus VAT at the applicable rate) calculated as follows:

$$SP \times AMF = \text{Payment}$$

where:

SP = the Shortfall Percentage; and

AMF = the aggregate Module fees paid or payable by students to the Supplier in respect of the month in question

provided that for the purposes of calculating such payment, the Shortfall Percentage shall not in any event exceed 9%.

In the event that the Monthly Availability Percentage is equal to or less than 90% this shall be regarded as a serious breach of a material provision of this Agreement by eUniversities and accordingly (without prejudice to its other rights and remedies hereunder including the right to payments under the formula set out in this paragraph C of Schedule 4) the Supplier or any Member shall be entitled to terminate the Agreement under clause 20.2.

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 Help Desk (including application support)	Nominated Supplier representatives Registered and enrolled students	From April 2003: 24 hours per day 7 days per week
Student administration	Nominated Supplier representatives	09:00 – 17:00 Mon-Fri UK time, excluding Bank Holidays

eUniversities shall ensure that the staffing levels at its telephone call centre are sufficient to allow 90% of all calls to each telephone support line to be answered by a staff member within 20 seconds.

eUniversities shall provide an initial response to all queries received within two hours during the relevant Call Window. For the purpose of this schedule, a response shall consist of a minimum of an acknowledgement of the query by a member of eUniversities staff with the ability to resolve the query.

eUniversities shall use reasonable endeavours to resolve all technical issues on the following basis:

All calls to eUniversities reporting incidents with the Platform shall be assigned a priority level in accordance with the following:

Priority Level	Incident Description
A	Incidents in which the Platform is totally unusable by the Supplier or students (e.g. the Platform is inaccessible, or components of the Platform fail to communicate)
B	Incidents in which the Platform is available only on a restricted basis (e.g. the data accessible by the Supplier or students is restricted, or the Platform operates with significant difficulty or delay)
C	Minor incidents (a) in which the Platform fails in a non-material way to meet the platform Functional Specification, (b) due to a one-off error which cannot be reproduced, or (c) relating to the "look and feel" (e.g. screen layouts, colours, spelling errors)
D	Incidents relating to the documentation for the Platform (e.g. documentation incomplete or containing technical errors, resulting in the Supplier having difficulty in using the Platform)
E	Requests for amendments/enhancements to the Platform or incidents falling outside priority levels A, B, C and D

Incident Resolution Targets

eUniversities shall use all reasonable endeavours to resolve incidents within the following timescales (measured from the time the Supplier incident report is received by eUniversities):

Priority Level	Target Incident Resolution Time
A	Fix within four hours, plus additional four hours, if hardware support required.
B	Fix within 16 working hours (within Mon-Fri, 9am-5pm)
C	Fix within three Business Days (within Mon-Fri, 9am-5pm)
D	Fix within 10 Business Days (within Mon-Fri, 9am-5pm)
E	To be determined on a case by case basis - plan issued within five Business Days (within Mon-Fri, 9am-5pm)

Where necessary, eUniversities may extend the above timescales due to the complexity of the incident or where eUniversities is dependent on a third party for resolution of the incident. In such circumstances, eUniversities shall endeavour to eliminate or reduce the impact of the incident by provision of a workaround, with permanent correction to follow. In the case of third party software, the provision of such a workaround will be on timescales dictated by the third party, and, should a workaround be unavailable, eUniversities may be unable to effect any degree of correction until the third party provides a permanent fix.

eUniversities shall provide the Supplier with regular progress updates for all incidents reported by the Supplier and, in particular, shall provide progress reports for calls of priority A no less frequently than once every two (2) hours and those of priority B no less frequently than once per day.

Escalation Process

In the event of a priority A or priority B incident report remaining unresolved for a period in excess of the relevant target incident resolution time specified above, the Supplier shall be entitled to escalate the matter by telephoning the nominated eUniversities Platform Delivery Manager.

eUniversities will escalate to the Supplier in line with the escalation routes defined by the Supplier.

eUniversities shall keep records of the time taken to answer calls, to respond to calls, and to resolve issues raised in calls, and shall make such records available to Supplier on request.

D ADMINISTRATION SERVICES

eUniversities will provide student administration services as listed below.

D.1 Student Contract

The contract will in all instances, be between the nominated member, or the Supplier and a Member, and the student.

D.2 Student Invoicing

This will be provided in accordance with the Financial Schedule.

D.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 the student having made payment (as confirmed in writing by the Supplier to eUniversities where the student has made payment directly to the Supplier). 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 access for individual students at any time in accordance with the terms and conditions published by eUniversities from time to time for the use of its website and platform. Such action will be communicated immediately to the Supplier and, wherever possible, in advance.

E CHANGE CONTROL PROCEDURE

Either of the Primary Parties 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 of the requesting Primary 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 this Schedule.
- ii) The other Primary 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 Primary Party, together with the reason(s) for rejection.

- iii) Written approval of a CR for investigation by both Primary Parties constitutes authorisation by the Supplier for 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 (conditionally or otherwise) or disapproved.
- iv) Approved changes will be incorporated into this Schedule through written modifications, which shall be signed by duly authorised representatives of all Parties in accordance with Clause 24.8 of the Agreement.

F 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 0800 634 4280). 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.

G 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, breach 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 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

ANNEX B
LEARNING PROGRAMME SPECIFICATION

ANNEX C
DELIVERY AND REFRESHMENT PROFILE

ANNEX D
SUPPLIER LOGOS

ANNEX E
LICENCE AGREEMENT