
Table of contents

Clause heading and number	Page number
1. INTERPRETATION	1
2. COMMENCEMENT AND DURATION	3
3. RESTRICTIONS	3
4. OBLIGATIONS	3
5. TERMINATING EVENTS	5
6. GENERAL PROVISIONS	5
SIGNATURE PAGE	7

DATED _____ 2001

(1) **HIGHER EDUCATION FUNDING COUNCIL FOR ENGLAND**

- and -

(2) **e LEARNING HOLDING COMPANY LIMITED**

DEED



100 Fetter Lane
London EC4A 1BN

Tel: 020-7242 1011 • Fax: 020-7894 6640

THIS DEED OF AGREEMENT is made the day of2001

BETWEEN:

- (1) **HIGHER EDUCATION FUNDING COUNCIL FOR ENGLAND** of Northavon House, Coldharbour Lane, Bristol BS16 1QD ("**HEFCE**")
- (2) **e LEARNING HOLDING COMPANY LIMITED** of 100 Fetter Lane, London EC4A 1BN ("**e Learning**")

WHEREAS:

- (A) HEFCE has provided funding to e Learning so that eUniversities (as hereinafter defined) may establish facilities to provide services to the Higher Education Sector (as hereinafter defined);
- (B) eUniversities has issued shares in eUniversities to e Learning, and e Learning has granted a licence of certain trademarks to eUniversities; and
- (C) HEFCE wishes to establish certain conditions for e Learning to observe in its dealings with eUniversities.

NOW IT IS HEREBY AGREED as follows:

1. INTERPRETATION

1.1 In this Deed the following terms shall have the meaning set out opposite them in the table below:

Business	the business of eUniversities providing services to the Higher Education Sector for which HEFCE has provided the Funding
Funding	all funds paid by HEFCE to e Learning
Higher Education Sector	as defined in section 91 of the Further and Higher Education Act 1992 (as regards England and Wales), section 56(2) of the Further and Higher Education (Scotland) Act 1992 (as regards

	Scotland) and including Queens University Belfast, the University of Ulster, Stranmillis College of Education and St Mary's College of Education
Joint Venture Agreements	agreements of even date entitled "Strategic Agreement" and "Shareholders Agreement" to which eUniversities is a party
Licence Agreement	the agreement of even date between e Learning and eUniversities licensing certain trade marks from e Learning to eUniversities
eUniversities	UK eUniversities Worldwide Limited, Company Number 4218275
eUniversities Shares	all shares in eUniversities owned or controlled by e Learning from time to time
Quality Standards Agreement	the agreement of even date between e Learning and eUniversities entitled Quality Standards Agreement
Subsidiary	as defined in s.736 of the Companies Act 1985
Terminating Event	as defined in clause 5

1.2 In this Deed, unless the context otherwise requires, any reference to:-

- 1.2.1 "writing" or any cognate expression, includes a reference to any communication effected by telex, facsimile transmission or similar means;
- 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
- 1.2.3 a word in the singular includes the word in the plural and vice versa;
- 1.2.4 a word implying one gender shall include all genders;
- 1.2.5 a party is a reference to a party to this Deed;

1.2.6 any party by name includes a reference to any successor or assignee of that party permitted by this Deed, and references to the parties collectively include references to any valid successor or assignee of any of the parties

1.2.7 a clause is a reference to a clause of this Deed and, unless otherwise indicated, includes all the sub-clauses of that clause.

1.3 The headings in this Deed are for convenience only and shall not affect its interpretation.

2. COMMENCEMENT AND DURATION

2.1 This Deed shall come into force upon execution and shall remain in force until the occurrence of any Terminating Event.

3. RESTRICTIONS

3.1 e Learning shall not:

3.1.1 deal with the eUniversities Shares in any way which has or may have the result that e Learning shall not remain the absolute and unencumbered owner of the eUniversities Shares in both law and equity, including but not limited to selling, assigning, transferring, charging, mortgaging, or granting any option lien or interest over the eUniversities Shares;

3.1.2 encourage, allow, or permit any event described in or similar to those set out in clause 3.1.1 to occur;

3.1.3 agree to any change in the Memorandum and Articles of Association of eUniversities;

3.2 e Learning may do any of the things referred to in clause 3.1 above with the prior written consent of HEFCE which may be given or withheld in HEFCE's absolute discretion

4. OBLIGATIONS

4.1 e Learning shall:

4.1.1 use its best endeavours to prevent eUniversities transferring all or a material part of the Business to any other person;

- 4.1.2 use its best endeavours to prevent eUniversities transferring all or a material part of the assets which it needs to conduct the Business to any other person;
 - 4.1.3 use its best endeavours to prevent eUniversities granting any form of charge, mortgage or debenture or other encumbrance over all or a material part of the assets which it needs to conduct the Business to any other person, other than as may be necessary or desirable in the normal course of business and on arms length commercially reasonable terms;
 - 4.1.4 use its best endeavours to ensure that the number of eUniversities Shares which it owns at any time represents not less than the same percentage of the total issued share capital of eUniversities as the eUniversities Shares which it owned at the date of this Deed represented of the total issued share capital of eUniversities at that time;
 - 4.1.5 enforce the terms of the Joint Venture Agreements the Quality Standards Agreement and the Licence Agreement and not cancel, terminate or agree to any amendment of any of those Agreements;
 - 4.1.6 use its best endeavours to ensure that eUniversities conducts and continues to conduct the Business;
 - 4.1.7 itself maintain and use its best endeavours to ensure that eUniversities shall also maintain an audit committee, and arrangements for internal audit, which shall comply with the guidance and requirements of HEFCE from time to time;
 - 4.1.8 use its best endeavours to ensure that eUniversities complies with the guidance issued by the Turnbull committee;
 - 4.1.9 Itself maintain and use its best endeavours to ensure that eUniversities shall also maintain adequate arrangements for ensuring and reporting on the economic, efficient and effective use of public funds.
- 4.2 e Learning may act in a way which would be inconsistent with clause 4.1 provided that it has prior written consent of HEFCE which may be given or withheld in HEFCE's absolute discretion.
- 4.3 Nothing in this clause shall oblige e Learning to prevent or hinder any transfer of all or a material part of the Business or the assets which eUniversities needs to conduct the

Business to, from, or between any Subsidiary of eUniversities provided that e Learning shall ensure that it is as able to enforce the requirements imposed upon it by this Deed against any such Subsidiary as it is against eUniversities.

5. TERMINATING EVENTS

5.1 The Terminating Events are:

5.1.1 written notice from HEFCE to e Learning terminating this Deed

5.1.2 termination of both of the Joint Venture Agreements and the Licence Agreement and transfer by e Learning to HEFCE of all of the Funding then remaining to e Learning (which term shall here include all assets acquired with any part of the Funding)

5.1.3 (with regard to the obligations in clause 3 only) e Learning ceasing to own any eUniversities Shares (provided that e Learning has not breached any of the provisions of this Deed in so doing)

5.2 Termination of this Deed however caused shall be without prejudice to any rights or liabilities arising in connection with it prior to termination.

6. GENERAL PROVISIONS

6.1 No failure or delay by either party to exercise any right, power or remedy shall operate as a waiver of that right, power or remedy nor shall any partial exercise preclude any further exercise of the same, or of any other right, power or remedy.

6.2 The parties are not and shall not hold themselves out to be agents or partners of each other, nor does this Deed create any trust.

6.3 Each party warrants and represents to the other that it has full authority power and capacity to enter into this Deed and that all necessary actions have been taken to enable it lawfully to enter into this Deed.

6.4 The respective addresses for service of notices under this Deed shall be as set out above and all notices and other communications under this Deed shall be made by first class pre-paid mail either recorded delivery or registered and, provide they are put into the post during normal business hours, will be deemed to have been communicated upon the next working day after posting.

- 6.5 Where the terms of this Deed provide for notices to be served by fax, the notice shall be deemed to have been communicated upon the date and at the time stated on the successful transmission receipt unless such date and time is outside the hours of 8:30am to 5:30pm Monday to Friday excluding bank holidays in which case the notice will be deemed to have been communicated at 8:30am on the next day excluding Saturdays, Sundays and bank holidays.
- 6.6 Any provision of this Deed which is held invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof.
- 6.7 This Deed shall be governed by and construed in accordance with the law of England and Wales and each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

SIGNATURE PAGE

SIGNED AS A DEED by [name omitted]
for and on behalf of **Higher Education Funding
Council For England**

.....
(Signature)
.....
(Date)

WITNESS:

Signature,
Name,
Address,
.....
.....
.....
Occupation

(PLEASE COMPLETE IN CAPITALS)

SIGNED AS A DEED by [name omitted]
for and on behalf of **e Learning**

.....
(Signature)
.....
(Date)

WITNESS:

Signature,
Name,
Address,
.....
.....
.....
Occupation

(PLEASE COMPLETE IN CAPITALS)