

AGREEMENT

between

UK eUniversities Worldwide Limited

and

[College]

for the provision of learning programmes

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This Agreement is made on the of 2004 between:

- UK eUniversities Worldwide Limited of 14 Buckingham Gate London SW1E 6LB ("eUniversities"); and
- [College] of [address] (the "Supplier").

WHEREAS:

The Parties have agreed to co-operate with a view to offering a learning programme entitled "Foundation Degree in [subject]" as described in the Business Plan.

NOW IT IS AGREED AS FOLLOWS:

1 DEFINITIONS

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

"Affiliate" shall mean any holding company or subsidiary company of such person or any company which is a subsidiary company of any holding company of such person, 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;

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

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

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

"eLearning" means the delivery of an academic programme which includes a substantial element of delivery by way of the Internet or similar technology, to Students who, for the 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;

"External Providers" means third party organisations who are authorised to provide elements of the Learning Programme;

"External Providers Plan" means Schedule 5;

"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 (but not limited to) any renewals, reversions and extensions created or provided by the laws of any country from time to time, either registered or unregistered;

"Launch Month" means May 2004;

"Learning Module" means any module of study counting for a minimum of 15 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 the Learning Programme;

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

“Learning Programme Specification” means the learning programme specification set out in Annex B;

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

“Offline Elements” means all Learning Modules of the Learning Programme other than the Online Elements;

“Online Elements” means such Learning Modules of the Learning Programme as are capable of delivery to Students wholly through eLearning;

“Parties” means the parties to this Agreement;

“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;

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

“Student” means a person enrolled on the Learning Programme;

“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 Schedule 1.

1.2 Except where otherwise expressly stated:

1.2.1 any reference in this Agreement to any agreement (including this Agreement) is to the same as amended, novated, modified or replaced from time to time in accordance with its terms;

1.2.2 any reference to a Clause, Schedule or Annex is a reference to a clause in or schedule or annex to this Agreement;

1.2.3 words in the singular may be interpreted as including the plural and vice versa;

1.2.4 any reference in this Agreement to a statute or statutory instrument or order is a reference to that statute, statutory instrument or order as from time to time amended, re-enacted or supplemented;

1.2.5 the Clause headings in this Agreement are for convenience only and shall not affect the validity or construction of this Agreement; and

1.2.6 the word "including" shall be construed as being by way of illustration only and not by way of limitation.

2 TERM

2.1 Subject to earlier termination pursuant to Clause 19, this Agreement shall be for the period from signature until the end of the tenth full year from registration of the first Students to receive the first Learning Module, unless eUniversities and the Supplier by agreement resolve to extend this period.

2.2 The Agreement shall remain in force as necessary during the Run Out Period.

2.3 The Supplier undertakes, to the extent that it wishes to continue delivery of the Learning Programme beyond the initial term, to negotiate terms in good faith for the extension of the initial term.

3 SUPPLIER'S OBLIGATIONS

3.1 The Supplier shall create the Learning Programme complying with the Learning Programme Specification in accordance with the Delivery and Refreshment Profile.

3.2 Subject to eUniversities fulfilling its obligations in clause 4, the Supplier shall:

3.2.1 provide the Learning Programme with the appropriate academic awards for successful Students and to provide professional accreditation as appropriate;

3.2.2 begin enrolling Students for commencement of study in the Launch Month;

3.2.3 enrol Students to pursue the Learning Programme who meet the admission criteria determined by the Supplier for the Learning Programme;

3.2.4 provide the Online Elements of the Learning Programme to Students via the facilities for eLearning provided by eUniversities during the currency of this Agreement and for a Run Out Period thereafter;

3.2.5 procure provision for Students in the UK for tuition and assessment of the Offline Elements of the Learning Programme in accordance with the External Providers Plan;

3.2.6 market the Learning Programme as set out in the Marketing Plan and commencing from the date of this Agreement, with the aim of achieving or exceeding the Student numbers set out in the Business Plan until the end of this Agreement; and

3.2.7 refresh and update the Learning Programme in accordance with the Delivery and Refreshment Profile; such updating may include the incorporation of any relevant new content developed by the Supplier.

4 eUNIVERSITIES' OBLIGATIONS

4.1 eUniversities shall:

4.1.1 provide a delivery platform for the Online Elements of the Learning Programme conforming to the Platform Functional Specification in accordance with the timescale set out in Schedule 2. For the avoidance of doubt the look and feel and appearance of the Platform shall be as reasonably determined by eUniversities after consultation with the

Supplier subject to maintaining the quality of learner experience implicit in the Learning Programme Specification and the commercial competitiveness of the Platform;

- 4.1.2 make the Platform available to the Supplier for testing and piloting the Online Elements of the Learning Programme from the date of this Agreement;
- 4.1.3 update the Platform as reasonably necessary to maintain the quality of learner experience implicit in the Learning Programme Specification and to maintain a high level of functionality and performance compared to competitors;
- 4.1.4 provide the Supplier with the Support Services in accordance with Schedule 1;
- 4.1.5 comply with the Service Level Agreement; and
- 4.1.6 procure provision for Students outside the UK for tuition and assessment of the Offline Elements of the Learning Programme in accordance with the External Providers Plan and subject to the agreement in writing of the Supplier (such agreement not to be unreasonably withheld or delayed).

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 a project team nominated by the Supplier.
- 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 Supplier such that those Students who satisfy the Supplier that they have successfully completed a Learning Module shall be entitled to receive the appropriate credit or award from the Supplier. No Learning Module will be offered to Students until it has been so approved, although it may be marketed in advance of approval. The award for Students who successfully complete the Learning Programme shall be the Foundation Degree in [subject].
- 5.4 The Supplier does not warrant that any Learning Module or Learning Object in the Learning Programme is fit for any purpose other than its role within the Learning Programme.

6 QUALITY CONTROL

- 6.1 eUniversities and the Supplier will co-operate during the development of the Learning Programme in particular with reference to quality issues in the manner set out in the Delivery and Refreshment Profile.
- 6.2 Without prejudice to the Supplier's responsibility for quality and quality assurance in respect of courses which it approves, or to the Supplier's own quality standards, the Learning Programme shall meet the quality standards of the Committee for Academic Quality established by eUniversities as provided to the Supplier in advance of the date of this Agreement and which have due regard, *inter alia*, to the need to protect academic freedom. The Committee for Academic Quality shall act reasonably and promptly in confirming that such quality standards are met and shall carry out its work on a module by module basis.
- 6.3 The Parties acknowledge that eUniversities will be unable and is not obliged to deliver or provide services in connection with a Learning Programme if the Learning Programme does not satisfy the

quality standards of the Committee for Academic Quality as provided to the Supplier in advance of the date of this Agreement.

7 BRANDING

- 7.1 The Parties hereby agree that Online Elements of the Learning Programme delivered by eUniversities on behalf of the Supplier shall be co-branded in a manner agreed between the Parties as if they were supplied by the Supplier and eUniversities.
- 7.2 The Supplier hereby grants for the term of this Agreement a non-exclusive royalty-free licence to eUniversities to use the Supplier Logos in connection with the marketing and/or delivery of the Learning Programme. 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 in relation to the use of its name and/or logos from time to time. All rights arising from the use of the Supplier Logos by eUniversities shall enure to the Supplier.
- 7.3 On signature of this Agreement eUniversities will grant a licence in the form set out in Annex E to the Supplier to use those of its logos and/or trade marks referred to in that licence in connection with the marketing and/or delivery of the Learning Programme.

8 MARKETING

- 8.1 The Supplier acting in consultation with eUniversities shall determine the marketing strategy which it will follow in promoting the Learning Programme within the EEA (the 'Marketing Plan').
- 8.2 eUniversities shall include reference to the Learning Programme and Learning Modules on its website (giving the same prominence as the other learning programmes offered by eUniversities) and shall make available to the Supplier any marketing data collected by eUniversities in relation to the Learning Programme or Learning Modules. The Parties may by agreement in advance in writing resolve that eUniversities should carry out other 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 Parties on satisfactory performance by eUniversities of the marketing activities in question.
- 8.3 The Supplier acting reasonably and in accordance with any applicable laws shall determine the price to be charged to Students within the EEA for each Learning Module, and eUniversities shall agree with the Supplier the price to be charged to customers outside the EEA in accordance with any applicable laws for each Learning Module.
- 8.4 Subject to the Parties agreeing in advance appropriate local providers for the Offline Elements of the Learning Programme in accordance with the External Providers Plan, eUniversities shall be entitled to market the Learning Programme to potential Students outside the EEA (provided that the first intake for such Students shall be in September 2004). In the event that eUniversities successfully recruits any Students for the Learning Programme or any Learning Module from outside the EEA and such Students' 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 in respect of such Students. 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 Whilst eUniversities shall provide the Platform and associated services in support of the delivery of the Online Elements of the Learning Programme, the Supplier shall remain responsible for all academic matters in relation to the Learning Programme and the Supplier shall enrol the Students accordingly. eUniversities will act on behalf of the Supplier in accordance with Schedule 1 with regard to enrolment of Students and to the Supplier's relationship with the Students, and shall comply with the Supplier's instructions in that regard. eUniversities shall in particular comply with applicable data protection legislation.
- 9.2 All applications to enrol in the Learning Programme must be made through eUniversities using an application form approved by the Supplier.
- 9.3 The Supplier shall provide eUniversities with all necessary information to be supplied to the Students (including details of the Learning Programme and the Supplier's Rules and Regulations).
- 9.4 The Supplier shall provide eUniversities with relevant information and requisite assistance to enable it to deal with queries from applicants on academic matters as far as is practicable.
- 9.5 eUniversities will be responsible for processing all applications and, subject to final approval by the Supplier in accordance with a fast track approval system to be agreed, for offering places on the Learning Programme. The Supplier shall formally approve applicants in accordance with procedures to be agreed between the Parties.
- 9.6 The Supplier reserves the right to refuse to enrol Students, or to terminate the enrolment of Students on the Learning Programme where such Students will not or are not, in the reasonable opinion of the Supplier, complying fully with any relevant requirements or regulations relating to the Learning Programme.
- 9.7 Both Parties 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.
- 9.8 Where eUniversities is acting as a data processor (as defined by the Act) for the Supplier, eUniversities undertakes in respect of the personal data (as defined by the Act) processed by it ("Personal Data"):
 - 9.8.1 to keep the Personal Data confidential and not to use to disclose the Personal Data other than as provided for under this Agreement save at the specific request of the Supplier (as appropriate) or as required by law;
 - 9.8.2 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;
 - 9.8.3 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.

9.9 The Parties shall discuss and agree appropriate security measures to be implemented in respect of the exchange of examination and test results, special circumstances of Students and other data, including the Personal Data, between the Parties.

9.10 Each Party shall indemnify and keep indemnified the other Party from and against all costs, actions, claims, demands, liabilities, expenses, damages or losses (including without limitation consequential losses and loss of profit, and all interest, penalties and legal and other professional costs and expenses) arising out of or in connection with that Party's negligence, default or breach of the terms of this Agreement or 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.

10 DELIVERY OF THE LEARNING PROGRAMME

10.1 eUniversities shall take all reasonable steps to ensure that material which is offensive or illegal within certain territories should, so far as is technically possible, be rendered inaccessible from within those territories.

10.2 The provisions of the Service Level Agreement shall have effect in relation to the delivery of the Learning Programme.

10.3 The Parties will jointly review the delivery of the Learning Programme at least every six months (or, during the period from 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 Parties. The Parties will each use all reasonable endeavours, within their respective responsibilities detailed in this Agreement to adhere to the Business Plan and the budgets agreed for the Learning Programme and to maintain the educational and financial viability of the Learning Programme. If the delivery of the Learning Programme deviates significantly from the Business Plan and the budgets agreed for the Learning Programme to the detriment of any Party, the Parties will meet to agree revisions to this Agreement or the Business Plan necessary to attempt to correct such deviations. 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 any Intellectual Property Right.

11.3 The Supplier licenses eUniversities:

- 11.3.1 to use the Online Elements of the Learning Programme for any purpose necessary or expedient in connection with the delivery of the Online Elements of the Learning Programme to Students;
- 11.3.2 subject to the consent of the Supplier (not to be unreasonably withheld or delayed) to make any development to the Online Elements of the Learning Programme necessary or expedient in order that the Online Elements of the Learning Programme may be delivered to Students by means of the distance learning facilities offered by eUniversities (provided that the content of the Learning Programme is not altered without the consent of the Supplier); and
- 11.3.3 subject to the consent of the Supplier (not to be unreasonably withheld or delayed):
 - (a) to use up to three complete Learning Modules or up to ten Learning Objects, or
 - (b) to sublicense any other person to Use such Learning Modules or Learning Objects in each case for any purpose connected with the provision of education via eLearning and as part of another learning programme.

11.4 The following conditions shall apply to any proposed Use under clause 11.3.3:

- 11.4.1 eUniversities shall notify the Supplier in advance of any proposed Use pursuant to clause 11.3.3 and request its consent to the proposed Use;
- 11.4.2 if consent is given to the proposed Use, within 30 days of receipt of such notification the Supplier shall notify eUniversities whether it wishes to provide tutor support or other services in respect of such Use, and its proposed charge for so doing. The Supplier shall be entitled to provide such support or services provided that its proposed charges for so doing are not substantially higher than of the price at which such support or services are otherwise available to eUniversities;
- 11.4.3 within 30 days of receipt of such notification the Supplier shall notify eUniversities whether it wishes to accredit such Use and/or whether it wishes its name to be included or referred to in relation to such Use; and
- 11.4.4 for the avoidance of doubt the Supplier shall be entitled to refuse its consent to any such Use in the following circumstances:
 - (a) where the Use is pedagogically unsound, as might be evidenced by the fact that the material is directed to an inappropriate audience or is delivered with inadequate tutorial support or is used in a manner which is inimical to its intended purpose or in any other circumstances where the Supplier can show that the Use is pedagogically unsound;
 - (b) where the Use is in direct competition with any product or course offered by the Supplier;
 - (c) where the Use is not accompanied by adequate quality assurance;
 - (d) where the Use would result in a breach of copyright; and/or

- (e) where the Use might otherwise be detrimental or harmful to the reputation of the Supplier.

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

11.6 The licences granted in Clauses 11.3.1 and 11.3.2 above shall be non-exclusive (subject to clause 13) and 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 11.3.3 shall be non-exclusive (subject to clause 13) and shall terminate on 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 (i) the Platform; or (ii) the Learning Programme and the Learning Modules on the Platform where use of the Learning Programme and the Learning Modules other than in combination with the Platform does not so infringe, 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 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 and/or Learning Objects. 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 incorporated by eUniversities into a product or service (other than the Learning Programme) pursuant to the licence granted in Clause 11.3.3, eUniversities acting reasonably shall 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 a proposal, whereupon the Parties will meet and negotiate in good faith to agree an appropriate payment. If agreement cannot be reached within six weeks, the matter shall be referred for determination to an expert in accordance with Clause 15.4. Payment shall be made within 21 days of the Parties reaching agreement or of notification of the expert's determination as appropriate.
- 12.3 eUniversities will keep sufficient records to enable the Supplier to verify the sums passed on to it 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 [sponsor]. Recognising the potential advantages to both Parties of an alliance with [sponsor], the Parties agree to review in good faith the financial and other terms of this Agreement in the light of any offer from [sponsor] to participate in the funding, design, delivery and/or marketing of the Learning Programme.

13 COMPETITION

- 13.1 Subject to clauses 13.2 and 14 the Supplier shall not offer the Online Elements of the Learning Programme otherwise than by way of the facilities for eLearning provided by eUniversities, or offer or accredit an eLearning programme which is directly competitive with the Learning Programme 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 If the Supplier has offered any eLearning course which is or would be directly competitive with the Learning Programme in the three years immediately prior to entering into this Agreement, nothing in this Agreement shall prevent the Supplier from continuing to offer such course provided that it is offered by substantially the same means of delivery as was employed immediately prior to entering into this Agreement.
- 13.3 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 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 THIRD PARTY USE

- 14.1 The Supplier shall be entitled to deliver all or any part of the Learning Programme via [sponsor] and/or to deliver up to three modules within the Learning Programme as part of any further education programme. In the event of any such delivery the Supplier acting reasonably shall propose a payment (whether a lump sum, recurrent fixed fee or royalty) to eUniversities in respect of such use, taking into account the value contributed to the overall product or service by eUniversities' contributions to the Learning Module or Learning Object. Upon notification of the Supplier's proposal of the payment to be made, eUniversities may challenge the reasonableness of such a proposal, whereupon the Parties will meet and negotiate in good faith to agree an appropriate payment. If agreement cannot be reached within six weeks, the matter shall be referred for determination to an expert in accordance with Clause 15.4. Payment shall be made within 21 days of the Parties reaching agreement or of notification of the expert's determination as appropriate.

15 DISPUTES

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

	eUniversities	Supplier
Name:	Director of Learning Programmes	
Tel:	[as usual]	
Fax:	[as usual]	
Address:	14 Buckingham Gate	
	London SW1E 6LB	

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

	eUniversities	Supplier
Name:	Chief Executive	The Principal
Tel:	[as usual]	
Fax:	[as usual]	
Address:	14 Buckingham Gate	
	London SW1E 6LB	

15.3 If the senior managers cannot resolve the dispute within 14 days, the Parties shall seek to agree a form of dispute resolution to resolve the dispute which shall be dealt with accordingly. If the Parties cannot agree such method within seven days, the dispute shall be referred to an expert pursuant to Clause 15.4.

15.4 Any dispute connected with Clause 12.2 or 14.1 shall be referred to an expert appointed by the Parties, or in default of agreement on the identity of the expert appointed by the president for the time being of the Institute of Chartered Accountants in England and Wales. The expert shall act as such and not as an arbitrator. The expert shall determine his or her own procedure and the Parties shall co-operate with the expert and offer him or her all reasonable assistance in connection with the resolution of the dispute. The expert's determination on the matter in dispute shall be final and binding on both of the Parties. Provided that both eUniversities and the Supplier have acted in good faith, the expert's costs shall be borne equally between them.

16 REPRESENTATIONS AND WARRANTIES

16.1 Each Party represents and warrants to the other Party that:

- 16.1.1 it has obtained, and will use all reasonable endeavours to renew, preserve, comply with and maintain (as applicable) at all times during the currency of this Agreement and any Run-Out Period all licences, authorisations, permits, consents and approvals (or exemptions) necessary to enable it to fulfil its obligations hereunder;
- 16.1.2 it is not relying upon any representations (whether written or oral) of the other Party other than the representations expressly set forth herein provided always that nothing in this Agreement shall prevent either Party from taking action for any fraudulent representation or act;

- 16.1.3 it has consulted with its own legal, regulatory, tax, business, investment, financial and accounting advisors to the extent it has deemed necessary, and it has made its own investment decisions based upon its own judgment and upon any advice from such advisors as it has deemed necessary and not upon any view expressed by the other Party;
- 16.1.4 it understands the terms, conditions and risks (economic and otherwise) of this agreement and is capable of assuming and willing to assume (financially and otherwise) those risks;
- 16.1.5 it is entering into this transaction as principal, and not as agent, fiduciary or any other capacity; and
- 16.1.6 the other Party is not acting as a fiduciary or financial, investment or legal advisor for it.

17 FORCE MAJEURE

- 17.1 Neither Party shall be in breach of this Agreement if it fails to discharge any obligation imposed on it hereunder, if the sole reason for the failure is any cause or event outside the control of the Party in question, including, but not limited to, war, riot, act of God, terrorism, extreme weather, interruption of water, power or any essential supply, arson or any criminal act by any third party not connected with the Party affected, trade disputes (other than trade disputes directly involving the Party's own employees) or any other cause whether of a similar nature to the foregoing or not and provided that such Party has taken all reasonable steps within its control to avoid or mitigate such circumstances.

18 LIABILITY

- 18.1 Neither Party shall be responsible for any delay or failure to deliver caused by the other Party failing to meet any of its commitments under this Agreement.
- 18.2 With the exception of liabilities connected with death or personal injury, to which no limit shall apply, for any twelve month period each Party's total liabilities to the other in connection with any breach of this Agreement shall be limited to the greater of the sum due to the Supplier from eUniversities for the period in question or £250,000.
- 18.3 Neither Party will in any event be liable for any special, consequential or indirect damages, loss of profits, loss of business, loss of revenue, loss of goodwill or loss of anticipated savings arising out of or in connection with this Agreement.
- 18.4 The Parties consider the limitation and exclusions of liability set out in this Agreement to be reasonable in the circumstances and acknowledge that eUniversities could not enter into its obligations under this Agreement without a corresponding increase in cost if it were to assume a greater degree of liability to the Supplier and vice versa.

19 TERMINATION

- 19.1 This Agreement may be terminated by either Party if the other Party (the 'defaulting party') commits any serious breach of any of its provisions (provided that, in the case of any breach which may be remedied, the defaulting party shall be given written notice of the breach requiring it to be remedied and shall have 30 days in which to remedy the breach and if remedied this Agreement

shall not be terminated), or if the defaulting party is wound up or commits or is subject to any act of insolvency.

19.2 For the avoidance of doubt the following would constitute a serious breach of this Agreement by the Supplier:

- 19.2.1 the failure of the Supplier to deliver at least four Learning Modules of the Learning Programme (which conform with the Learning Programme Specification and are fit for their intended purpose) by [month 1]; or
- 19.2.2 the failure of the Supplier to deliver at least four further Learning Modules of the Learning Programme (which conform with the Learning Programme Specification and are fit for their intended purpose) by [month 3]; or
- 19.2.3 the failure of the Supplier to deliver at least four further Learning Modules of the Learning Programme (which conform with the Learning Programme Specification and are fit for their intended purpose) by [month 6]; or
- 19.2.4 the failure of the Supplier to deliver at least two further Learning Modules of the Learning Programme (which conform with the Learning Programme Specification and are fit for their intended purpose) by [month 9].

19.3 For the avoidance of doubt the failure of eUniversities to comply with its obligations under clause 4.1.1 or 4.1.2, or a material breach by eUniversities of its obligations under Schedule 1, would constitute a serious breach of this Agreement by eUniversities.

19.4 Either of the Parties may terminate this Agreement if at any date shown in the table below the number of full time equivalent Students enrolled up to such date are less than the target shown below (subject to such Party having complied with clause 10.3):

At 31 July	2006	2007	2008	2009 etc
Target number of full time equivalent Students	100	225	225	225

In the event of such termination no further payment shall be due from [College] to eUniversities (other than in respect of Students enrolled prior to such termination) whether or not the threshold in clause 19.5 has been reached.

19.5 Either Party may terminate this Agreement after 31st July 2008 by giving 12 months' written notice to each of the other Parties provided that such notice may only be given once the cumulative Total Income (as defined in the Financial Schedule) has exceeded £3.8 million.

19.6 Termination of this Agreement shall be without prejudice to the rights and obligations of the Parties subsisting prior to termination, and in particular the Parties shall remain obliged during the Run Out Period to fulfil their respective obligations towards Students enrolled to receive the Learning Programme before termination of this Agreement.

20 CONFIDENTIALITY

20.1 The terms and conditions of this Agreement and all information provided by or on behalf of either Party to or on behalf of the other Party hereunder shall be treated as confidential and shall not be

disclosed without the prior written consent of the non-disclosing Party, save that consent shall not be required for disclosure by either Party:

- 20.1.1 as expressly provided elsewhere in this Agreement;
- 20.1.2 to that Party's Affiliates and to directors or employees of that Party or that Party's Affiliates, provided that they in turn are required by that Party to treat the information disclosed as confidential;
- 20.1.3 in the case of the Supplier, to [College's host University] or to any External Provider;
- 20.1.4 to persons professionally engaged by that Party or that Party's Affiliates, provided that they in turn are required by that Party to treat the information disclosed as confidential;
- 20.1.5 to any government department or agency or other judicial or regulatory body having jurisdiction over that Party;
- 20.1.6 to any bank or other financial institution in relation to the financing of that Party's business activities, provided that the bank or other financial institution, as the case may be, is required by that Party to treat the information disclosed as confidential;
- 20.1.7 to the extent required by any applicable laws, judicial process or the rules and regulations of any recognised stock exchange;
- 20.1.8 to any intending assignee of the rights and interest of that Party provided that such intending assignee in turn is required by that Party to treat the information disclosed as confidential;
- 20.1.9 to any expert appointed pursuant to Clause 15.4; or
- 20.1.10 to the extent that such information is in or lawfully comes into the public domain other than by breach of this Clause 20.

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

21 NOTICES

- 21.1 Any notice or other communication to be given or made under this Agreement by one Party to the other Party shall be given or made in writing to the other Party at such address or facsimile number (as appropriate) as the other Party may notify from time to time.
- 21.2 If in legible form (but not otherwise) and in the absence of evidence of earlier receipt, any notice or notification served in accordance with Clause 21.1 shall be deemed to have been received:

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

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

- 21.2.1 if sent by facsimile, on receipt by the sending Party of confirmation of successful transmission to the recipient Party's facsimile receiving equipment;
- 21.2.2 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.
- 21.3 Without prejudice to Clause 21.1, where a notice or notification is sent by facsimile but it is not legible upon receipt, the recipient Party shall use all reasonable endeavours to notify the sending Party of that fact without delay.

22 MISCELLANEOUS

- 22.1 The Parties agree to act reasonably and in good faith with regard to this Agreement and the rights and obligations created under it.
- 22.2 This Agreement shall not be interpreted or construed as creating any association, joint venture or partnership between the Parties or imposing any partnership obligation or liability upon either Party. Except as otherwise expressly provided herein, neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or to act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.
- 22.3 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 either Party, subject to that Party giving a satisfactory guarantee for its subsidiary's obligations, and on terms that the benefit of the Agreement shall immediately revert to the original Party if the subsidiary to which it was assigned ceases to be wholly owned by that Party). Either Party may use subcontractors to discharge some or all of its obligations under this Agreement, but shall itself remain liable for the proper discharge of those obligations.
- 22.4 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.
- 22.5 No waiver, failure, or delay by either Party in respect of any breach by the other of this Agreement or acceptance of payment or performance shall preclude any right, relief or remedy of the other Party under this Agreement, nor shall the same be relied upon as a consent or waiver in respect of such breach whether of a like or different nature.
- 22.6 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.
- 22.7 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 22.7 shall limit or exclude any liability for fraud).

22.8 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.

22.9 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 **[College]**

in the presence of:

Signature:

Name:

Address:

Occupation:

SCHEDULE 1

SUPPORT SERVICES

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

QUALITY ASSURANCE

8. The Supplier shall be responsible for the academic quality of the Learning Programmes. The Supplier shall appoint a Programme Leader (the "Programme Leader") for the Learning Programme who will be responsible for:
 - 8.1 liaison with eUniversities;
 - 8.2 monitoring the quality of the operation of the Learning Programme;
 - 8.3 monitoring the effectiveness of eUniversities and its subsidiaries and agents in carrying out the terms of the Agreement; and
 - 8.4 preparing quality monitoring reports to meet internal and external requirements.

9. eUniversities shall assist the Programme Leader in the collection of Student feedback, as reasonably determined by the Programme Leader.

STUDENT RECRUITMENT, MARKETING AND PROMOTION

10. The Supplier shall provide to eUniversities the current electronic course information for its information.
11. The Supplier shall consider in advance of publication by eUniversities all material relevant to promotional materials, or other materials intended for publication, which include the Supplier's name or logo, and approve, or otherwise, as it reasonably sees fit. The Supplier shall give written notice of approval or rejection of the material within 10 working days of receipt of the material by the Supplier from eUniversities.
12. eUniversities shall:
 - 12.1 recruit Students to the Learning Programme (other than Funded Students (as defined in Schedule 3));
 - 12.2 promote the Learning Programme outside the United Kingdom in accordance with the Marketing Plan;
 - 12.3 follow the Supplier's relevant published policies in relation to the recruitment of Students, including equal opportunities; and
 - 12.4 comply with such timescales as may be agreed for notifying the Supplier of the number of Students applying for each cohort.

ADMISSION

13. Students shall be admitted to the Learning Programme in accordance with the Supplier's approved admissions policy and regulations and any additional criteria specified in writing by the Supplier.
14. The Supplier shall be ultimately responsible for determining admission to the Learning Programme and, in order to determine suitability of applicants shall:
 - 14.1 specify what information an applicant must provide for consideration for admission, and what evidence is or may be required in support of that information (which may change from time to time); and
 - 14.2 respond with two working days where practical (and within seven working days in any event) to any query from eUniversities concerning any proposed offer of a place on the Learning Programme; (it being acknowledged that both Parties expect eUniversities to be able to deal with the majority of applications without further reference to the Supplier).
15. eUniversities shall provide the following services to the Supplier in respect of Students who are not potentially eligible for funded places:
 - 15.1 dealing with all queries from prospective applicants;
 - 15.2 providing support and advice to prospective applicants;
 - 15.3 receiving application information from applicants;
 - 15.4 keeping a record of all application information received;

- 15.5 processing all applications in accordance with an agreed procedure including authenticating the qualifications of applicants; and
- 15.6 sending copies of the application information and any supporting evidence to the Supplier by e mail or other appropriate means.

Both Parties acknowledge that queries, support and advice relating to academic matters will be dealt with by the Supplier rather than eUniversities.

ENROLMENT

16. Students who are admitted to the Learning Programme shall enrol with the Supplier on commencing their studies.
17. The Supplier shall be responsible for creating and maintaining Student and applicant records.
18. In relation to Students recruited by eUniversities, eUniversities shall:
 - 18.1 forward confirmation communications from the Supplier to the applicant; and
 - 18.2 ensure that Students provide the necessary enrolment information and forward such information to the Supplier prior to the commencement of the Learning Programme.
19. eUniversities shall provide appropriate induction for each new Student in relation to the Platform.

STATUS OF STUDENTS

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

PROGRAMME DELIVERY

21. eUniversities is responsible for:
 - 21.1 supporting the delivery of eLearning materials to Students and providing the Platform more specifically referred to elsewhere in the Agreement; and
 - 21.2 ensuring that delivery of the Online Elements of the Learning Programme by eLearning within each territory complies with all relevant legal requirements within that territory.

ASSESSMENT

22. Students enrolled on the Learning Programmes will be assessed in accordance with the Learning Programme Specification as amended from time to time.
23. The Supplier shall devise programmes of continuous assessment, examinations and marking schemes for the Learning Programme which will be prepared and moderated in accordance with the approved assessment schedule and strategy set out in the Learning Programme Specification. Such programmes shall be updated from time to time at the discretion of the Supplier.
24. In preparing formal unseen examinations all Parties will take all steps necessary to maintain the security of the papers prior to the scheduled examination. The Supplier shall ensure that examination procedures are in accordance with the Supplier's procedures for examinations and invigilation currently applying.

25. In carrying out its assessment responsibilities, the Supplier shall ensure that Student assignments are marked and the marks are moderated in accordance with the Supplier's regulations currently applying. eUniversities shall support the assessment process as reasonably required by the Supplier.
26. The Supplier is solely responsible for the operation of the Supplier's assessment boards, including notification via eUniversities to Students of the decisions of such assessment boards.
27. The Supplier and eUniversities shall comply with all applicable data protection legislation.

STAFFING

28. The Supplier is responsible for ensuring appropriate academic staffing including tutors for the Learning Programme. For the avoidance of doubt the Supplier shall have absolute discretion over the appointment of tutors and shall have the right to remove and/or substitute any tutor at any time for any reason.

CONFERMENT

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

STUDENT COMPLAINTS AND APPEALS

30. The Supplier is responsible for receiving and considering any complaints or academic appeals made by Students enrolled within the scope of this Agreement pursuant to the Supplier's applicable regulations from time to time. In the event of a Student making a complaint or appeal to the Supplier, eUniversities shall provide full co-operation to the Supplier in investigating the matter and shall take any action reasonably required by the Supplier to remedy, or in connection with the remedying of, such complaint.

SCHEDULE 2

PLATFORM FUNCTIONAL SPECIFICATION

The delivery platform provided for the Learning Programme by eUniversities shall be the UKeU Learning Environment ("UKeU LE"), which shall conform fully with this Platform Functional Specification, including without limitation the Portal, User Management and Collaboration Environment, Event Management System and Learning Content Management Service elements set out below.

Introduction

The 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 (subject to the system type)

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.

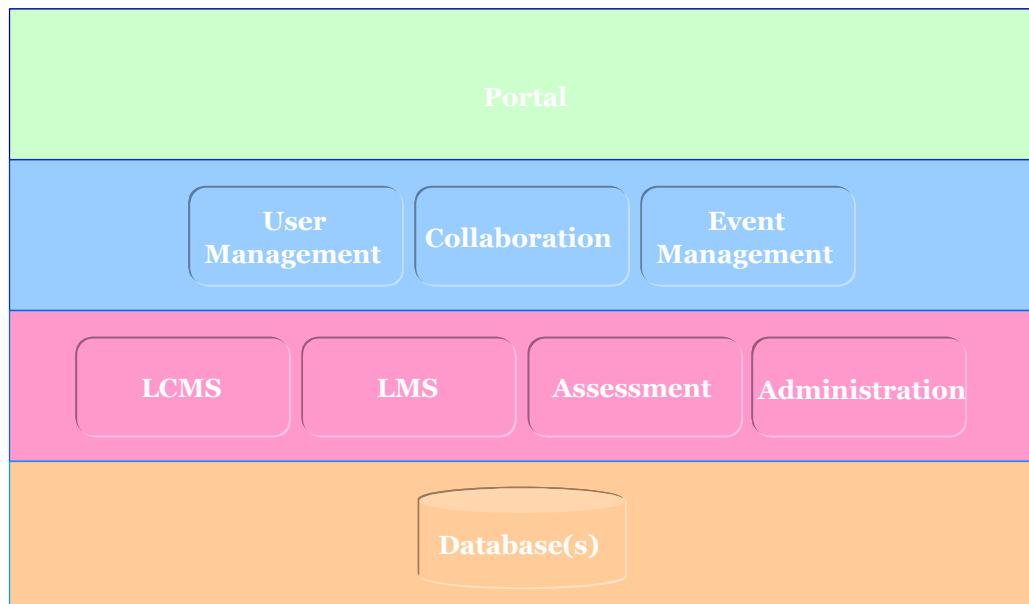


Figure 1 – UKeU LE Architecture

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

The portal can be customised to tailor for each Institution's guidelines and can 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 provides the backbone for user authentication and authorisation for all services in the learning environment.

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

- Email
- Threaded Discussions (known as forums)

All services 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 ('LCMS') 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 is designed to inherently support reusable learning objects and to support both static and adaptive sequencing in learning programme definition.

All elements within the learning programme are created with detailed metadata, which can be used by search facilities to locate relevant or reusable learning objects.

The learning material can be imported from other content systems using the interoperability standards established by IMS Global Learning Consortium, Inc and similarly exported to an external Learning Management System.

The Learning Management Service ('LMS') 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 supports 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 might include:

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

Roadmap

The UKeU LE will be developed and made available as shown below.

Available from the date of this Agreement for the term of this Agreement and any Run Out Period:

- 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

Available from 30 September 2003 for the remainder of the term of this Agreement and any Run Out Period:

- A registered User View to allow potential Students and other users to view the programme before they are registered Students.
- A 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 objects, referencing other objects
- 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 online
- 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 registration Available from 1 January 2004 for the remainder of the term of this Agreement and any Run Out Period:
 - 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 tutors Advanced 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

The UKeU LE will adhere to open standards. The UKeU LE will comply fully with 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 Supplier's own MIS and Student administration systems.

SCHEDULE 3

FINANCIAL SCHEDULE

For the purposes of this Schedule:

‘Funded Students’ means all Students who are eligible for funding from HEFCE (in whole or in part) up to the maximum allocation of the Supplier from time to time plus all Students who are covered by block contracts with their employer or agency on behalf of their employer;

‘Non-Funded Student’ means a Student who is not a Funded Student;

‘Funded Student Income’ means all fee income paid to the Supplier from Funded Students (net of any VAT, refunds, bad debts or credit notes);

‘HEFCE Funding’ means all grant payments paid to the Supplier from HEFCE in relation to Funded Students less any payments which the Supplier is required to repay to HEFCE;

‘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, bad debts or credit notes) paid by Non-Funded Students to eUniversities.

Invoicing

1. The Supplier will be responsible for invoicing and collecting fees from Funded Students and for collecting HEFCE Funding. Subject to the terms of the HEFCE funding, the Supplier will pay a percentage of Total Funded Income to eUniversities in accordance with the following provisions.
2. eUniversities will invoice 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.
3. 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 the relevant 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 4 below). eUniversities will invoice 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).
4. If an individual Non-Funded Student applying for one Learning Module indicates in their application that they wish to pay by instalments, eUniversities will invoice the full fee for such Learning Module in advance (plus an additional premium of 10% for administrative costs, which 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.

5. 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.
6. If a Non-Funded Student changes their mind about any Learning Module after an invoice is issued and does not pay, eUniversities on the Supplier's behalf will issue a credit note.
7. eUniversities will issue a monthly statement to the Supplier within 30 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.
8. 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

9. Within 30 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;
 - one-twelfth of the grant awarded by HEFCE to the supplier for Students enrolled on the

Learning Programme ; and

- Total Funded Income received in that calendar month.

10. 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 9 (calculated by reference to a deemed price of [approx £500] plus VAT per Learning Module, which maximum shall be changed pro rata to any change from time to time in the Band C HEFCE funding level). 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.

11. Until the cumulative Total Income equals £3.8 million, the percentage of Total Funded Income due to eUniversities set out in paragraph 10 shall be increased as follows and the Supplier's percentage shall be proportionately reduced:

Period	Additional percentage (excluding VAT)
First year following the date of delivery of the first Learning Module to a Student	0%
All subsequent years	10%

12. The Parties shall bear bad debts in relation to Funded Students in the same proportions as they divide the Funded Income.

13. eUniversities will issue to the Supplier a monthly statement of funds received 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 14. 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 Parties shall bear bad debts in the same proportions as they divide such income.

14. 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	58.75% (being 50% fee plus VAT on that fee equal to 8.75% of the fee income)

15. Until the cumulative Total Income equals [approx £4 million], the percentage of fee income from Non-Funded Students due to eUniversities set out in paragraph 14 shall be increased by the percentage shown in the table in paragraph 11 above and the Supplier's percentage shall be proportionately reduced.
16. The Non-Funded Student fee income referred to in paragraph 14 shall be that 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 10 or 14 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 13.
18. eUniversities acknowledges that HEFCE Funding may be required to be returned to HEFCE. In the event HEFCE clawback or require repayment by the Supplier for any reason of any HEFCE Funding which has been paid by Supplier to eUniversities, eUniversities agrees unconditionally to repay its proportion of such clawback or repayment to the Supplier within 14 days of written notice of such clawback or repayment being provided by Supplier to eUniversities.
19. eUniversities shall repay to Supplier a pro-rata proportion of any sum previously paid to eUniversities relating to a Student where any refund of fees is payable to such Student by the Supplier upon the relevant Student's early withdrawal from the Learning Programme pursuant to the Supplier's regulations in force from time to time.
20. In the event of any change in the HEFCE funding regime or any financial conditions imposed on the Supplier by HEFCE the Parties shall discuss in good faith any appropriate changes to this Schedule.

Payment for rights

21. In consideration of the creation of the Learning Programme and the grant of the various rights contained in this Agreement, eUniversities will pay the Supplier a total of £300,000 (together with VAT if any) according to the payment profile set out below. Such payments shall not be made in the event that the Supplier's work on the Learning Programme does not satisfy the quality standards of the Committee for Academic Quality as notified to Supplier prior to the date of this

Agreement and/or if eUniversities is not reasonably satisfied that the Learning Programme conforms with the Learning Programme Specification (the 'Quality Conditions') and in such event the Supplier shall be obliged to reimburse any such payments already made to it by eUniversities.

By the end of	Payment £
December 2003	150,000
February 2004	150,000

22. The payments referred to in paragraph 21 may only be used by the Supplier for the development of Learning Modules or for funding its working capital requirements.
23. All payments referred to in paragraph 21 are conditional upon the Supplier having first issued eUniversities a VAT invoice therefor (if applicable).
24. The Supplier shall prepare reports analysing how each payment under paragraph 21 has been spent and shall keep adequate records to support each report. 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 prior to the Launch Date 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 paragraph 21 until such delay is rectified.
25. 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 the relevant 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 Online Elements of 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 Online Elements of the Learning Programme.

B.1 Hosting

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

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

B.2 Equipment, Operation and Maintenance

eUniversities will be responsible for the purchase of (and payment 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 in accordance with standards of good 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 to ensure sufficient bandwidth is available for the predicted traffic. Traffic routing will also be monitored to ensure that appropriate routing and peering agreements are in place wherever possible.

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

B.5 Security

eUniversities will operate intrusion detection software on a real-time basis and may, if necessary, shut down access to part or all of the Platform for such period as it reasonably 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 and Students a minimum of five working 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. In the event that the availability is less than 99 percent in any calendar month eUniversities shall pay the Supplier £5,000 plus VAT within seven days after the end of that month. In the event that the availability is less than 98 percent in any calendar month eUniversities shall pay the Supplier £10,000 plus VAT within seven days after the end of that month. In the event that either the availability is less than 90 percent in any calendar month or the availability is less than 98 percent in three consecutive months this shall be regarded as a serious and irremediable breach of a material provision of this Agreement by eUniversities and accordingly (without prejudice to its other rights and remedies hereunder) the Supplier shall be entitled to terminate the Agreement under clause 20.2.

D SUPPORT SERVICES

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

Service	Available to:	Call Window
eUniversities Help Desk (including application support)	Nominated Supplier representatives and Students	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 aim 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 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

eUniversities shall use all reasonable endeavours to resolve incidents within the following timescales

(measured from the time the incident report is received by eUniversities):

Priority Level	Incident Resolution Time
A	Fix within four (4) hours, plus additional 4 hours, if hardware support required.
B	Fix within sixteen (16) working hours (within Mon-Fri, 9am-5pm)
C	Fix within three (3) working days (within Mon-Fri, 9am-5pm)
D	Fix within ten (10) working days (within Mon-Fri, 9am-5pm)
E	To be determined on a case by case basis - plan issued within five (5) working days (within Mon-Fri, 9am-5pm)

It may be necessary to 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 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.

E ADMINISTRATION SERVICES

eUniversities will provide Student administration services as listed below.

E.1 Student Contract

The contract will in all instances, be between the Supplier and the Student.

E.2 Student Invoicing

This will be provided in accordance with the Financial Schedule.

E.3 Registration and password administration

eUniversities will provide all registration information and log-in procedures to the Student and will be responsible for ongoing password maintenance. Access to the Platform will be dependant upon 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 fees have 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 and notified to the Students for the use of its website and platform. Such action will be communicated immediately to the Supplier.

F CHANGE CONTROL PROCEDURE

Either of the 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 CR procedure is as follows:

- i) The nominated representative for the requesting Party will submit a CR in writing. The CR will describe the change and include the rationale and/or estimated effect the change will have on this Schedule.
- ii) The other Party's nominated representative will review each CR. The nominated representative will weigh the merits of the proposed change and any proposed fees and either approve it for investigation or reject it. If rejected, the nominated representative will return the CR to the requesting Party, together with the reason(s) for rejection.
- iii) Written approval of a CR for investigation by both Parties constitutes authorisation by the Supplier 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 by both Parties.
- iv) Approved changes will be incorporated into this Schedule through written modifications, which shall be signed by duly authorised representatives of the Parties in accordance with Clause 23.8 of the Agreement.

G EVENT NOTIFICATION

eUniversities will provide initial notice to a designated Supplier representative by telephone, e-mail, pager or comparable notification service within one hour of eUniversities becoming aware of an event that has caused or may cause an unscheduled outage. In the event that the Supplier first becomes aware of such event or of any failure of the Platform, the Supplier shall promptly provide initial notice to eUniversities via its support number (currently 0845 345 6565). Status reports about the event will be provided by eUniversities as information is available and pertinent until either the event has been resolved or both eUniversities and the Supplier have determined a course of action that does not require continued notification.

H GENERAL

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

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 will use its reasonable endeavours to ensure 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.

SCHEDULE 5

EXTERNAL PROVIDERS PLAN

The Supplier shall select a number of third party organisations distributed around the UK ("External Providers") who shall be authorised by the Supplier to provide the tuition and assessment associated with the Offline Elements of the Learning Programme. Such External Providers may include, without limitation, [certain local agencies] and Further Education Colleges.

The Supplier shall notify eUniversities of the details of all External Providers.

Where necessary, eUniversities shall nominate a number of third party organisations outside the UK to provide the tuition and assessment associated with Offline Elements of the Learning Programme. Such External Providers shall be subject to the approval of the Supplier, in accordance with the Supplier's validation requirements and the Supplier's regulations.

The Supplier shall be responsible for monitoring the quality and performance of all External Providers and ensuring the standard of tuition by such External Providers. If the relevant External Provider fails to satisfy the requirements of the ongoing quality assessments, the Supplier may in its sole discretion, terminate the relationship with, and authority of the External Provider in respect of Offline Elements of the Learning Programme.

ANNEX A

BUSINESS PLAN

ANNEX B

LEARNING PROGRAMME SPECIFICATION

ANNEX C

DELIVERY AND REFRESHMENT PROFILE

ANNEX D

SUPPLIER LOGOS

ANNEX E

LICENCE AGREEMENT