

LICENSE AGREEMENT BETWEEN E LEARNING AND UKeU
Annex 1 to Report 12

CO:803905.1

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DATED

2001

(1) e LEARNING HOLDING COMPANY LIMITED

- and -

(2) UK eUNIVERSITIES WORLDWIDE LIMITED

LICENCE AGREEMENT

DRAFT - NOT AVAILABLE FOR ACCEPTANCE



**Beachcroft
Wansbroughs**

SOLICITORS

100 Fetter Lane
London EC4A 1BN
United Kingdom

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THIS AGREEMENT is made the day of 2001

BETWEEN:

- (1) **E LEARNING HOLDING COMPANY LIMITED** whose registered office is at 100 Fetter Lane London EC4A 1BN ("e Learning")
- (2) **UK eUNIVERSITIES WORLDWIDE LIMITED** whose registered office is at 100 Fetter Lane London EC4A 1BN ("eUniversities").

WHEREAS:

- (A) e Learning, eUniversities and certain other parties have entered into agreements of even date intended to develop and promote the on-line provision of high quality Higher Education programmes and ancillary programmes and services and have incorporated eUniversities for that purpose.
- (B) e Learning and eUniversities have agreed to enter into a licence of the e Learning Marks on the terms of this Agreement.

NOW IT IS HEREBY AGREED as follows:

1. **INTERPRETATION**

- 1.1 In this Agreement:

"Commencement Date" means the date of this Agreement;

"Higher Education" means education provided by means of a programme of any description mentioned in Schedule 6 to the Education Reform Act 1988;

"e Learning Marks" means the registered trade marks and trade mark applications short particulars of which are set out in Schedule 1, and any future Trade Marks for any such marks;

“Higher Education Institution”	means a higher education institution directly in receipt of funding from the Higher Education Funding Council for England, the Scottish Higher Education Funding Council, the Higher Education Funding Council for Wales or the Department for Employment and Learning in Northern Ireland or their successor bodies;
“Joint Agreements”	Venture means the agreements referred to in Recital (A);
“Licensed Services”	means the provision of Higher Education programmes and such complementary and ancillary programmes and services as are within the powers of a Higher Education Institution to provide, of appropriate content, quality and level at least commensurate with the standing and reputation of the Universities to be delivered by the internet, world wide web, digital or other television broadcast and other distance learning technologies (including but not limited to the paper and/or CD-ROM provision of programme materials and documents), marketing of courses and market research in respect of current and proposed programmes and other e-learning research and development and promotional activities;
“Net Profit”	the annual profit remaining to eUniversities after deducting its trading expenses for that year and payment of all taxes due in respect of that year but before payment of any dividend to any shareholder of eUniversities, as certified by its auditors in eUniversities's

	annual accounts
“Quality Standards	has the same meaning as in the Quality Standards Agreement
“Quality Standards Agreement”	means the quality standards agreement of even date between e Learning and eUniversities as amended in accordance with its terms from time to time;
“Termination Date”	means the date upon which this Agreement is terminated under the provisions of this Agreement;
“Trade Marks”	means any registered trade marks and trade mark applications made from time to time in any part of the world for any goods or services;
“Universities”	means the various Higher Education Institutions who are from time to time members of e Learning, listed (as currently constituted) in Schedule 2;
“Year”	e Universities' financial year .

1.2 In this Agreement, a reference to:

- 1.2.1 a programme includes a reference to a course, subject, module or unit;
- 1.2.2 a person includes a reference to a body corporate, association or partnership;
- 1.2.3 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

- 1.2.4 a word importing the singular includes the plural and vice versa;
- 1.2.5 a person includes a reference to that person's legal personal representatives, successors and permitted assigns; and
- 1.2.6 a Recital, Clause or Schedule, unless the context otherwise requires, is a reference to a Recital or Clause of or Schedule to this Agreement.

1.3 The headings in this Agreement do not affect its interpretation.

2. **GRANT**

- 2.1 In consideration of the obligations of the parties to each other as set out in this Agreement, e Learning hereby grants to eUniversities with effect from the Commencement Date an exclusive worldwide licence of the e Learning Marks for any purpose in connection with the Licensed Services which licence shall include the right to grant such sub-licences to third parties as may reasonably be required to enable eUniversities to provide the Licensed Services.
- 2.2 e Learning agrees not to use any of the e Learning Marks in any way which would tend to allow any of them to become generic, lose their distinctiveness, become liable to mislead the public, or be materially detrimental to or inconsistent with the good name, goodwill, reputation, image and prestige of e Learning, the Universities or eUniversities.
- 2.3 e Learning agrees further that, insofar as such actions would compete with the provision of the Licensed Services by eUniversities, it will not itself nor otherwise permit any body or entity to:
 - 2.3.1 provide programmes; or
 - 2.3.2 confer or grant degrees, diplomas or other certificates of educational achievement

in collaboration or conjunction with e Learning or using any e Learning Marks. For the avoidance of doubt, nothing in this Agreement shall prevent or inhibit any member of e Learning, any university or higher education college providing programmes or services to eUniversities, or any group, consortium, collaboration or association comprising (with or without others) any such

members, universities or colleges, or any other person (other than e Learning itself) from providing programmes or conferring or granting degrees, diplomas or other certificates of educational achievement in their own right.

2.4 No other rights under the e Learning Marks are granted to eUniversities, and nothing in this Agreement shall, subject to Clauses 2.1, 2.2 and 2.3, prevent e Learning from using any of them in any manner and in connection with any goods or services (other than the Licensed Services) anywhere in the world.

3. TRADE MARKS

3.1 eUniversities agrees:

- 3.1.1 to use the e Learning Marks in connection with all the Licensed Services and only in the form and manner as approved or specified by e Learning at its absolute discretion from time to time and not to use any other trade mark or name or device in combination with any of the e Learning Marks without the prior written consent of e Learning, which consent may be given subject to such terms as e Learning shall think fit including (without limitation) terms as to the relative size of the e Learning Marks and any other trade marks and the manner of their disposition;
- 3.1.2 to use the e Learning Marks only in connection with the Licensed Services and not to provide Licensed Services other than in connection with the e Learning Marks;
- 3.1.3 whenever any of the e Learning Marks are used, such use shall be accompanied by wording and clear marking by the use of the ® or ™ signs (as appropriate and wherever possible) to show that these are Trade Marks used by eUniversities under licence. The terms of such wording and its placing shall be as agreed between e Learning and eUniversities, both parties acting reasonably;
- 3.1.4 only to use the e Learning Marks for the purposes authorised in this Agreement and, in particular, not to use any of the e Learning Marks in any way which would tend to allow any of them to become generic, lose their distinctiveness, become liable to mislead the

public, or be materially detrimental to or inconsistent with the good name, goodwill, reputation, image and prestige of e Learning or the Universities.

3.2 eUniversities acknowledges the ownership of the e Learning Marks by e Learning and agrees that:

- 3.2.1 eUniversities will do nothing inconsistent with such ownership;
- 3.2.2 all use of the e Learning Marks by eUniversities and all goodwill and reputation generated in them by eUniversities shall inure to the benefit and be on behalf of e Learning and that it will hold any such goodwill and reputation generated thereby as bare trustee for e Learning;
- 3.2.3 nothing in this Agreement shall give eUniversities any right, title or interest in the e Learning Marks or any of them, other than the right to use them in accordance with the terms and conditions of this Agreement.

4. QUALITY AND PERFORMANCE

4.1 eUniversities shall ensure that:

- 4.1.1 the Licensed Services at all times conform to and comply with the Quality Standards Agreement;
- 4.1.2 the Licensed Services are performed by appropriately experienced qualified and trained personnel with all due skill care and diligence; and
- 4.1.3 eUniversities shall discharge its obligations in relation to the Licensed Services with all due skill care and diligence.

4.2 Without prejudice to the generality of the foregoing, the Quality Standards Agreement shall include provision for:

- 4.2.1 eUniversities to establish a Committee for Academic Quality;

- 4.2.2 the membership and method of appointment of members of the Committee for Academic Quality, including the right of e Learning to approve such membership;
- 4.2.3 the role, responsibilities and activities of the Committee for Academic Quality and its relationship to any other applicable quality assurance requirements;
- 4.2.4 the Committee for Academic Quality to specify the standards to be met by programmes and services before they are offered by eUniversities, which standards shall be adopted by eUniversities and subject to the approval of e Learning;
- 4.2.5 ensuring that the Committee for Academic Quality can carry out its responsibilities efficiently and effectively and that no alternative means for assuring quality are established by eUniversities, and for the avoidance of doubt the Committee for Academic Quality shall provide quality assurance services whether or not any other quality standards imposed by any third party might apply but eUniversities may take account of any other such standards which may be relevant;
- 4.2.6 eUniversities to provide to e Learning an annual report on the discharge of its responsibilities, together with such supplementary information or other reports as e Learning may from time to time reasonably require.

- 4.3 Nothing in this Agreement shall affect eUniversities's ability to carry out activities other than the Licensed Services, but for the avoidance of doubt eUniversities may not carry out such activities under the e Learning Marks and eUniversities shall not associate such activities with the Licensed Services or carry out any such activity which does or is likely to reduce the goodwill associated with the e Learning Marks.

5. MAINTENANCE OF INTELLECTUAL PROPERTY

- 5.1 e Learning shall procure that all things necessary are done to prosecute, maintain and renew the e Learning Marks from time to time during the term of

this Agreement and shall be solely responsible for the costs and fees associated with the prosecution, maintenance and renewal of the e Learning Marks.

5.2 eUniversities shall execute any documents and do all such acts and things as may be reasonably necessary to assist e Learning to prosecute, maintain or renew the e Learning Marks or any of them in any country of the world provided that the reasonably incurred costs to eUniversities of performing such acts or executing such documents are paid by e Learning.

6. FORMAL LICENCES

The parties shall, if eUniversities reasonably requires, execute a short form of licence or several licences (as the case may require) in a form acceptable to the relevant national trade mark registry which eUniversities may register there at its own expense. Any such formal licence shall operate subject to the terms of this Agreement.

7. INFRINGEMENT AND VALIDITY

7.1 Each party shall promptly give notice in writing to the other if it becomes aware of:

7.1.1 any actual, threatened or suspected infringement of any of the e Learning Marks; and

7.1.2 any claim that the use, sale, supply, offer for sale or supply, or other provision of any Licensed Service under any of the e Learning Marks infringes the rights of any third party.

7.2 In the case of any matter falling within Clause 7.1 or if any challenge is made by any third party to the validity and/or ownership of any of the e Learning Marks, then:

7.2.1 e Learning shall in e Learning's absolute discretion determine what action if any shall be taken in respect of such matter and have sole control over and conduct of any such action as e Learning deems necessary provided that e Learning and eUniversities shall consult to decide what steps if any shall be taken to prevent or terminate

such infringement and the proportions in which they shall share the costs of such steps and any damages and other sums which may be paid or awarded as a result of any such steps;

- 7.2.2 If e Learning fails to take any decision pursuant to Clause 7.2.1 within a reasonable period after written notice from eUniversities to do so, eUniversities shall have the right (and is hereby authorised by e Learning) to take such steps at eUniversities's expense as eUniversities may deem necessary or appropriate in respect of such matter and shall be entitled and subject to all damages and other sums which may be recovered or awarded against it as a result thereof provided always that e Learning may at any time take independent and unilateral action on e Learning's own behalf.
- 7.3 Each party shall at the request and expense of the other provide all reasonable assistance to the other (including but not limited to the use of its name in or being joined as a party to proceedings) in connection with any action to be taken by the other party pursuant to this Clause 7.

8. **WARRANTIES**

- 8.1 eUniversities warrants and undertakes to e Learning that eUniversities shall:
 - 8.1.1 indemnify and hold e Learning harmless against any and all costs, claims, damages, expenses, losses and demands (including legal expenses) but excluding consequential loss or loss of profits incurred or suffered by e Learning arising out of the performance or non-performance by eUniversities of this Agreement or resulting from any and all liability claims arising from Licensed Services provided by eUniversities;
 - 8.1.2 obtain and maintain (notwithstanding the termination of this Agreement) liability insurance in a reasonable amount and on reasonable commercial terms. Such policy of liability insurance shall contain an endorsement of the interest of e Learning and eUniversities shall supply e Learning with a copy of its policy, if so requested.

8.2 e Learning warrants and undertakes to eUniversities that:

- 8.2.1 e Learning has the right to grant to eUniversities the rights and licences hereby granted or agreed to be granted;
- 8.2.2 the exercise of the rights licensed to eUniversities under Clause 2 of this Agreement will not infringe the rights of any third party;
- 8.2.3 e Learning shall indemnify and hold eUniversities harmless against any and all costs, claims, damages, expenses, losses and demands (including legal expenses) but excluding consequential loss or loss of profits incurred or suffered by eUniversities in respect of the exercise by eUniversities of the rights granted or to be granted to eUniversities under this Agreement;
- 8.2.4 e Learning shall obtain and maintain (notwithstanding the termination of this Agreement) liability insurance in a reasonable amount and on reasonable commercial terms. Such policy of liability insurance shall contain an endorsement of the interest of eUniversities and e Learning shall supply eUniversities with a copy of its policy, if so requested.

9. ROYALTIES

- 9.1 eUniversities shall pay to e Learning a royalty of 5% of the Net Profit payable from the Commencement Date in accordance with the terms of this Agreement. An advance on the royalty will be paid during the year in which the profits concerned arise, and the balance of the royalty shall be paid once the accounts for that year are audited, in accordance with the provisions of this clause.
- 9.2 eUniversities shall within the first 30 days of each Year make a reasonable estimate of the royalty which will be payable in respect of that Year, and shall promptly pay one quarter of the amount estimated to e Learning.
- 9.3 eUniversities' auditors shall be instructed to certify the amount of eUniversities's Net Profit for each Year or part of a Year in respect of which they prepare statutory accounts for eUniversities. The royalty paid on account

under this clause in respect of each Year shall be deducted from the total royalty due having regard to the Net Profit actually certified by the auditors and the balance of royalties due will be paid promptly (without interest) by eUniversities to e Learning.

- 9.4 If any payment due to e Learning is not made within thirty days of the due date, interest will accrue on the full amount outstanding at the rate of 2 per cent above the base rate of Barclays Bank Plc from time to time, from the due date until the date of actual payment (partial payments shall be applied first against interest accrued to the date of payment and any balance against the amount outstanding).
- 9.5 eUniversities shall keep proper records and books of account showing the quantity description and price of services sold or supplied and profits made and other records necessary to calculate the royalty and such records and books of accounts shall be open at all times to inspection by e Learning or by e Learning's duly authorised representatives or agents (who shall be entitled to take copies of such books and records) during normal office hours on giving not less than 48 hours written notice to eUniversities. Any such inspection shall be at e Learning's expense unless such inspection reveals a discrepancy of 5 per cent in any such figures in which event eUniversities shall bear the cost of such inspection.
- 9.6 All sums payable under this Agreement shall be calculated and paid in pounds sterling.
- 9.7 All sums payable by eUniversities under this Agreement shall be paid after deduction of any withholding or deduction required by law or regulation.

10. TERM AND TERMINATION

- 10.1 This Agreement shall come into force on the Commencement Date and shall remain in full force and effect until terminated pursuant to this Clause 10.
- 10.2 Subject to Clause 10.4 and 10.5, either party (the "**Initiating Party**") may terminate this Agreement with immediate effect by written notice to the other party (the "**Other Party**") on or at any time after the occurrence of an event specified in Clause 10.3 in relation to the Other Party.

10.3 The events are:

- 10.3.1 the Other Party being in material breach of any of its obligations under this Agreement and, if the breach is capable of remedy, failing to remedy the breach within 60 days starting on the day after receipt of written notice from the Initiating Party giving full details of the breach and requiring the Other Party to remedy or procure the remedy of the breach and stating that a failure to remedy the breach may give rise to a termination under this clause; for the purpose of this clause a breach is capable of remedy if time is not of the essence in performance of the obligation and if the party in breach can comply with the obligation within the 60 day period;
- 10.3.2 the Other Party passing a resolution for its winding-up or a court of competent jurisdiction making an order for the Other Party's winding-up or dissolution;
- 10.3.3 the making of an administration order in relation to the Other Party or the appointment of a receiver over, or an encumbrancer taking possession of or selling a material part of the asset of, the Other Party;
- 10.3.4 the Other Party making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally;
- 10.3.5 the occurrence of the event specified in the Joint Venture Agreement as causing the immediate termination of this Agreement.

10.4 Where the alleged breach under clause 10.3.1 is a failure to adhere to the Quality Standards, e Learning shall give eUniversities not less than six weeks notice in writing specifying the failure in question and requiring eUniversities to draw up an effective action plan to prevent such a failure in the future. If eUniversities fails to draw up such an action plan, or having drawn up such an action plan fails to implement it timeously and effectively, such a failure shall be a breach of this Agreement, but, without prejudice to any other remedy which may be available, a failure to adhere to the Quality Standards shall not otherwise give rise to a right to terminate this Agreement.

- 10.5 Clause 10.3 shall not apply if the event in Clauses 10.3.2, 10.3.3 or 10.3.4 arises for the purposes of or in connection with the re-organisation or merger or transfer of a party or its assets while solvent to a similar or successor body.
- 10.6 If eUniversities challenges the validity of any of the e Learning Marks, e Learning shall be entitled to terminate this Agreement with immediate effect on giving notice in writing to eUniversities.

11. CONSEQUENCES OF TERMINATION

- 11.1 All rights and obligations of the parties shall cease to have effect immediately upon termination of this Agreement except that termination shall not affect the accrued rights and obligations of the parties at the date of termination and any provisions of this Agreement necessary for the interpretation or enforcement of this Agreement.
- 11.2 Upon termination of this Agreement howsoever occasioned:
 - 11.2.1 eUniversities shall forthwith change its corporate and trading names and web site address to names which do not include any of the e Learning Marks or anything confusingly or deceptively similar thereto, shall register that change of name with the Registrar of Companies within 28 days, and shall not at any time thereafter adopt or use any such corporate or trading name or any of the e Learning Marks in any manner whatsoever;
 - 11.2.2 eUniversities shall, unless termination is as a result of an event occurring to eUniversities under Clauses 10.3.2 to 10.3.4 inclusive, be entitled:
 - 11.2.2.1 to continue to sell and provide the Licensed Services under the e Learning Marks in accordance with the provisions of this Agreement to students already enrolled at the time of termination only, for a period of five years from the date of termination; and
 - 11.2.2.2 during the period specified in Clause 11.2.2.1 and for that purpose only, exhaust any inventory or

other printed materials existing at the date of termination without deleting any of the e Learning Marks from such materials;

11.2.3 eUniversities shall forthwith at the end of the three year period referred to in Clause 11.2.2.1 or on termination if this period is not operative (as the case may be) cancel the registration of any licences executed and registered in accordance with Clause 6.

12. **GENERAL**

- 12.1 Save as permitted by Clause 10.5., the parties shall not be entitled to assign or transfer or purport to assign or transfer any of their rights or obligations under this Agreement.
- 12.2 A variation of this Agreement is valid only if it is in writing and signed by or on behalf of each party.
- 12.3 The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement or by law prevents further exercise of the right or remedy or the exercise of another right or remedy.
- 12.4 The rights and remedies contained in this Agreement are cumulative and not exclusive of rights or remedies provided by law.
- 12.5 If any term or provision in this Agreement shall be held to be invalid, illegal or unenforceable, in whole or in part, under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of this Agreement but the validity and enforceability of the remainder of this Agreement shall not be affected.
- 12.6 Each party shall from time to time upon the request of the other party execute any additional documents and do any other acts or things which may reasonably be required to give effect to the purposes of this Agreement.
- 12.7 The parties are independent contractors under this Agreement, and nothing contained in it is intended nor is to be construed as creating any kind of

partnership or joint venture or relationship of principal and agent or employer and employee between the parties in relation to this Agreement. Neither e Learning nor eUniversities shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other or to bind the other to any contract or agreement or undertaking whatsoever.

13. **NOTICES**

- 13.1 A notice or other communication under or in connection with this Agreement shall be in writing and may be delivered personally or sent by first class post pre-paid recorded delivery or by fax to the party due to receive the notice or communication at the address set out at the head of this Agreement or another address or fax number specified by that party by written notice to the other addressed to the Company Secretary.
- 13.2 In the absence of evidence of earlier receipt, any notice or other communication is deemed to have been duly given:
 - 13.2.1 if delivered personally, when left at the address referred to in Clause 13.1;
 - 13.2.2 if sent by post, two days after posting it;
 - 13.2.3 if sent by fax, on completion of its transmission.

- 13.3 In proving the giving of a notice it shall be sufficient to prove that the notice was left or that the envelope containing the notice was properly addressed and posted or that the fax was addressed and dispatched (and dispatch of the transmission confirmed) as the case may be.

14. **GOVERNING LAW AND JURISDICTION**

- 14.1 Except as provided in Clause 14.2, this Agreement is governed by, and shall be construed in accordance with English law and each party agrees to submit to the exclusive jurisdiction of the English courts.
- 14.2 Any question arising out of this Agreement as to the infringement, validity, construction or effect of any of the e Learning Marks shall be decided in

accordance with the laws of the country in which the e Learning Marks in question is infringed or has been granted or filed.

AS WITNESS the hands of the duly authorised representatives of the parties the day month and year first above written.

SCHEDULE 1

The e Learning Marks

Proprietor	Number	Country	Mark	Class	Specification
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SCHEDULE 2

The Universities

SIGNATURE PAGE

SIGNED by

for and on behalf of **e Learning Limited**

(Signature)

SIGNED by

for and on behalf of **eUniversities Limited**

(Signature)