

A Value Added Reseller

Agreement

between

and

E-Learning wmb Ltd.

**Revision 3
May 2010**

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VALUE ADDED RESELLER

THIS AGREEMENT is made on _____ (The Commencement Date)
BETWEEN the parties **E-LEARNING WMB LTD.**, Asmec Centre, Eagle House, The Ring,
Bracknell, Berkshire, (hereafter referred to as 'ELWMB') on the one part and of the other part the
Value Added Reseller

whose principal office is situated at

and trading as hereafter referred to as VAR)

RECITALS

- (a) ELWMB holds the Licensing rights for the Learning Management System, Content Creator Tool and courses known collectively as OPEN ELMS.
- (b) The VAR desires to sell and distribute software products to commerce and industry via its direct marketing activities.
- (c) ELWMB desires to expand its sales and distribution outlets and the VAR wishes to act as ELWMB's representative in the Territory for the Products as shown on Schedule 5.
- (d) The VAR's representatives to maintain an Account Management role with the Client after the order for ELWMB's software has been taken.
- (e) The VAR's representatives wish to provide additional Consultancy and Training Services, to the Client.

WHEREBY IT IS AGREED as follows :-

1. Interpretation

- 1.1. In this Agreement, unless the context otherwise requires the following expressions shall have the following meanings:

“Commencement Date” shall mean the date this agreement is signed by the VAR.

“Intellectual Property” shall mean any patent, copyright, registered design, trade mark or other industrial or intellectual property right subsisting in the Territory in respect of the Products, and applications for any of the foregoing.

“Products” shall mean the software licensed products known as OPEN ELMS and together with such other software products as may be agreed between the parties from time to time (as listed in the attached Schedule 5)

“Territory” shall mean the UK.

“Trade Marks” shall mean

- (a) the trade marks registered in the name of ELWMB of which particulars are given in Schedule 2.

and

- (b) such other trade marks as are used by ELWMB on or in relation to the Products at any time during this Agreement.

“Year Of This Agreement” shall mean the period of 12 months from the date this agreement is made (the Commencement Date) and each subsequent consecutive period of 12 months during the period of this Agreement.

- 1.2. Any reference in this Agreement to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3. The headings in this Agreement are for convenience only and shall not affect its interpretation.

2. Appointment

- 2.1. ELWMB hereby appoints the VAR as the non-exclusive VAR of ELWMB for the resale of the Products in the Territory from the sales and distribution outlet described in Schedule 1 from the Commencement Date, and the VAR agrees to act in that capacity, subject to the terms and conditions of this Agreement and the Schedules attached hereto.

Any exclusive rights to a Territory would be made clear in writing by ELWMB in an letter which would supersede this agreement.

- 2.2. ELWMB will only supply the Product to organisations in the Territory as advised by the VAR.
- 2.3. The VAR shall be entitled to describe itself as “Open Elms’ Official Representative” for the Products, but shall not hold itself out as ELWMB’s agent for the sales of the Products or as being entitled to bind ELWMB in any way, without prior written agreement by ELWMB beforehand.
- 2.4. The VAR shall not in selling the Products make any representation or give any warranty other than those duly authorised by ELWMB in writing from time to time. The VAR shall indemnify ELWMB against any liability arising from any unauthorised warranty or representation that may have been made by the VAR.
- 2.5. The VAR may sell any of the Products which it purchases from ELWMB, through a Distributor appointed by the VAR.
- 2.6. Nothing in this agreement shall entitle the VAR to:
 - 2.6.1. any priority of supply in relation to the Products against ELWMB’s other Resellers or VARs;
 - or
 - 2.6.2. any right or remedy against ELWMB if any of the Products are sold in the Territory by any person, firm or company outside the Territory.
- 2.7. If in any Year of this Agreement the VAR does not achieve end-user sales order value of the Products of at least £50,000 then ELWMB shall be entitled by giving not less than 3 months notice to the VAR, to terminate this Agreement, subject to review at the end of each 3-month period. (based on prevailing recommended user price – as per the attached Schedule 3)
- 2.8. The VAR shall not, unless otherwise agreed in writing with ELWMB in advance:
 - 2.8.1. obtain the Products (or any goods which compete with the Products) for resale from any person, firm or company other than ELWMB;
 - 2.8.2. be concerned or interested, either directly or indirectly, in the production or distribution in the Territory of any goods which compete with the Products;
 - 2.8.3. the VAR shall not place any advertisement directed wholly or substantially only at an area outside the Territory.

3. **Commencement and Termination**

- 3.1. This Agreement shall come into force on the Commencement Date and shall continue for an initial period of six-months. If not terminated at the end of the initial period by either party giving to the other previous notice in writing of not less than 1 month notice, this Agreement

shall continue in force after expiry of the initial period until terminated by either party giving to the other at any time previous notice in writing of no less than 3 months.

- 3.2. Without prejudice to any remedies which ELWMB may have against the VAR for breach or non-performance of this Agreement, this Agreement may also be terminated by ELWMB forthwith if at any time:-
 - 3.2.1. the VAR fails to make any payment to ELWMB after the same shall have become due and such failure shall continue for a period of fifteen days after written demand by ELWMB;
 - or
 - 3.2.2. the VAR commits any other breach of this Agreement which breach (if remediable) shall not be remedied within thirty days of the receipt of a notice specifying the breach and calling upon the VAR to remedy it; or
 - 3.2.3. the VAR shall go into liquidation (not being a voluntary liquidation, for the purpose only of a bona fide reconstruction or amalgamation) or shall enter into any composition or arrangement with its creditors or a receiver of its assets shall be appointed; or
 - 3.2.4. there is a material change in the management, ownership or control of the VAR; or
 - 3.2.5. the VAR at any time challenges the validity of any Intellectual Property of ELWMB; or
 - 3.2.6. the VAR ceases, or threatens in writing to cease, to carry on business.
- 3.3. Any waiver by either party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision thereof.
- 3.4. Termination of this Agreement shall not be construed as a waiver in respect of either party of its rights, claims (including claims for damages) or obligations that have accrued up to and including the date of termination.
- 3.5. It is expressly agreed that ELWMB shall not be liable to pay any compensation to the VAR for loss of profits or loss of goodwill or for any loss or damage howsoever arising as a result of the termination of this Agreement for any cause whatsoever.

4. **Consequences of Termination**

- 4.1. Upon the termination of this Agreement for any reason:
 - 4.1.1. the VAR shall at its own expense within 30 days send to ELWMB, or otherwise dispose of in accordance with the directions of ELWMB, all samples of the Products and any advertising, promotional or sales material supplied by ELWMB relating to the Products then in the possession of the VAR;

- 4.1.2. outstanding unpaid invoices rendered by ELWMB in respect of the Products shall become immediately payable by the VAR and invoices in respect of Products ordered prior to termination but for which an invoice has not been submitted shall be payable immediately upon submission of the invoice;
- 4.1.3. the VAR shall cease to promote, market or advertise the Products or to make any use of the Trade Marks other than for the purpose of selling stock under clause 4.1.1 above.
- 4.2. On termination of this agreement ELWMB will assume full responsibility for the clients who have installed ELWMB's software. The VAR will receive commission for any orders taken by the VAR prior to the termination date and installed after the termination date. The VAR will not be entitled to any further commission, unless otherwise agreed before the termination date in writing between the VAR and ELWMB.
- 4.3. Any leads passed to the VAR by ELWMB which have not been converted to an order for ELWMB's software will revert back to ELWMB. In such circumstances ELWMB will agree compensation to the VAR in the event of a future order.

5. **Supply of the Products**

- 5.1. Subject as provided in clauses 2.6 and 5.2, ELWMB shall use its reasonable endeavours, if requested, to supply the Products to the VAR's client in accordance with the VAR's written instructions.
- 5.2. ELWMB shall not be under any obligation to continue the production of all or any of the Products, and shall be entitled to make such alterations to the Products as it may think fit, subject to three months advance notice.
- 5.3. Each order for the Products shall constitute a separate contract, and any default by ELWMB in relation to any one order shall not entitle the VAR to treat this Agreement as terminated.
- 5.4. The VAR shall, in respect of each order for the Products to be supplied hereunder, be responsible for:
 - 5.4.1. ensuring the accuracy of the order; by liaising with ELWMB.
 - 5.4.2. ensuring that the contract between the VAR and their Client is on not less in terms of the conditions as ELWMB's standard terms and conditions of supply for products and services.
 - 5.4.3. for OPEN ELMS sales that do not follow the pricing structure supplied, the VAR must ensure that the quotation/proposal is approved by ELWMB and that the contract is between the Client and ELWMB, unless otherwise agreed beforehand.
 - 5.4.4. the provision of post sale Consultancy and Training Services.

- 5.5. ELWMB shall use all reasonable endeavours to meet any delivery date, but time shall not be of the essence and accordingly ELWMB shall have no liability to the VAR if, notwithstanding such endeavours, there is any delay in delivery.
- 5.6. The VAR is responsible for selling the Product either via a 'down load' off a Web site.
- 5.8. ELWMB is responsible for providing a technical 'help desk' to the VAR's clients.
- 5.9. ELWMB will make available to the VAR's Clients updates to the Product in accordance with the system's technical and design improvements or to comply with current legislation normally within 3 months, but not later than 12 months of such legislation becoming law within the territory, subject to the appropriate fee having been paid.
- 5.10. ELWMB cannot be held responsible for the quality of services provided by the VAR to their Client and the VAR must take all reasonable endeavours to ensure that the Client is satisfied with the services provided.
- 5.11. In the event that the Client is not satisfied with the VAR's services on receipt of the Client's written request ELWMB reserves the right to provide additional services to the Client, the cost of which will be charged to the VAR, subject to prior notification to the VAR in writing.

6. **Audit**

- 6.1. THE VAR shall throughout the duration of this Agreement keep complete true and accurate books of accounts and records of all matters relevant to this Agreement. At the request of ELWMB, the VAR shall permit an employee of ELWMB or an independent accountant no more than once in any calendar year at any reasonable time during normal business hours to inspect and take copies (and hereby permits such person to enter any building for such purpose) of such books and records and accounts for the purpose of verifying the accuracy of the relevant accounts relating to the payment of licence fees to ELWMB.

7. **Marketing**

- 7.1. The VAR shall use its best endeavours to promote this Agreement and the sale of the Products to local or targeted organisations in the Territory.
- 7.2. The VAR shall submit all promotional material (except price lists comprising ELWMB titles number and price) and other statements intended for publication relating to the sale of the Products or relating to ELWMB in any way for ELWMB's express prior approval in writing. Such approval to be given within 7 calendar days by the Managing Director of ELWMB.
- 7.3. In connection with the promotion and marketing of the Products the VAR shall make clear, in all dealings with customers and prospective customers, that it is acting as a VAR of the Products and not as agent of ELWMB, unless approved by ELWMB beforehand in writing.

- 7.4. ELWMB shall from time to time at its own discretion support specific promotions which may be jointly funded by ELWMB and the VAR with the VAR's prior consent.
 - 7.5. ELWMB shall provide a flow of information to the VAR to enable appropriate marketing to take place. The VAR shall provide sales forecast figures on a quarterly basis as required by ELWMB, on or before the first Monday of each quarter outlining the next 3 months in a form prescribed by ELWMB.
 - 7.6. The VAR does not have exclusive rights over organisations located in the territory. However, if the VAR registers a list of key accounts that the VAR wishes to target with ELWMB, ELWMB will give the VAR a 180 day hold on the named account, subject to no other VAR having submitted the same name. During the 180-day hold period the VAR is required to either obtain an order or demonstrate significant progress towards obtaining an order. ELWMB will make the 180-day hold list available to the other VARs on request. No protection can be given to an VAR for sales in the territory by other Resellers, other than for OPEN ELMS sales that have been listed on a Sales Forecast, and accepted by ELWMB.
 - 7.7. From time to time ELWMB may pass sales leads to the VAR. In such circumstances, if the lead is accepted by the VAR, the VAR's commission may be reduced. The commission percentage may also reduce if ELWMB's involvement is more than what ELWMB would normally provide. This is subject to agreement in writing with the VAR when a lead is provided or before an order is accepted by ELWMB, for OPEN ELMS sales.
 - 7.8. If an 'Introducer' passes a lead direct to the VAR or is passed to the VAR by ELWMB from an Introducer any commission due to the Introducer will be paid by ELWMB direct to the Introducer. In such circumstances the VAR's commission will be reduced in proportion to the commission payable to the VAR. e.g. if the VAR commission is 30% and the Introducer is to receive 10% then the VAR's commission will be reduced to 20%.
 - 7.9. Where a VAR makes an arrangement with an 'Introducer', for the purpose of selling the software products then the VAR must register the introduction with ELWMB by informing ELWMB in writing.
 - 7.10. Upon approval by ELWMB of the Introducer Registration Forms received for the VAR a letter confirming the registration will be sent to the Introducer. The Introductory Commission will be paid by ELWMB to the Introducer on receipt of payment from the Client.
 - 7.11. Under no circumstances will an Introductory Commission be paid by ELWMB to an Introducer which has not been registered with ELWMB.
- 8. Training and Technical Support**
- 8.1. ELWMB will provide from time to time Product training days and reserve the right to levy charges on a basis to be agreed between the parties for nominated staff of the VAR, to enable the VAR to manage the sale to their customers at ELWMB's prevailing man-day rate plus travel expenses. (applies to off-site training only)

9. **Terms of Trade**

- 9.1 The VAR to supply ELWMB Products as per the user price list, Schedule 3, unless otherwise agreed with ELWMB in advance in writing.
- 9.2 Where ELWMB supplies Products to the VAR at ELWMB's prevailing user price list, Schedule 3, ELWMB will invoice the VAR less any commission due at the appropriate rate.
- 9.3 Where it is agreed beforehand with the VAR that ELWMB will invoice and collect payment from the VAR's Client direct, then the VAR will invoice ELWMB for the commission due at the appropriate rate.
- 9.4 ELWMB will provide the VAR with credit facilities for settlement of all payments for products supplied during the month by the 10th day of the following month. (subject to approval) The VAR to provide ELWMB with a list of all sales at the end of each month, if the VAR is invoicing for the Products and collecting payment, (subject to agreement with ELWMB) from their customers.
- 9.5 If the VAR fails to pay the price for any Products within these terms of trade, ELWMB shall be entitled (without prejudice to any other right or remedy it may have) to:
- 9.5.1 cancel or suspend any further delivery to the VAR under any outstanding order;
- 9.5.2 charge the VAR interest on the overdue amount of 2% above LIBOR from the date payment became due until actual payment is made (irrespective of whether the date of payment is before or after any judgement or award in respect of the same).
- 9.6 Returns of Products will not be acceptable once an order has been fulfilled subject only to provisions for stockholding detailed in clause 10.
- 9.7 ELWMB reserves the right to change the user price list without prior notice. However the VAR will be given 180 days to close outstanding quotations, from the date the new prices come into effect. (Such quotations must have previously been reported on a sales forecast to ELWMB)
- 9.8 Where Term Licence Products are proposed by the VAR to an organisation, the contract will normally be between ELWMB and the VAR's Client, based on ELWMB's standard terms and conditions. This clause may be varied by agreement between ELWMB and the VAR in advance in writing.
- 9.9 VAT at the prevailing rate to be added to all prices as applicable
- 9.10 The VAR is responsible for invoicing and collecting payment from the Client for any added value services provided by the VAR to the Client.

10 **Stockholdings**

- 10.1 ELWMB will provide the VAR with adequate stocks of brochures and materials for creating professional CDs for marketing purposes. The VAR is responsible for the costs of any over branding or individual branding to meet its own requirements.

11 **Intellectual Property**

- 11.1 ELWMB hereby authorises the VAR to use the Trade Marks in the Territory in relation to the Products for the purposes only of exercising its rights and performing its obligations under this Agreement.
- 11.2 The VAR shall ensure that each reference to and use of any of the Trade Marks by the VAR is in a manner from time to time approved by ELWMB and accompanied by an acknowledgement, in a form approved by ELWMB, that the same is a trade mark (or registered trade mark) of ELWMB.
- 11.3 The VAR shall not:
- 11.3.1 make any modifications to the Products, other than in the course of customising the product for the Client's use.
 - 11.3.2 alter, remove or tamper with any Trade Marks, numbers, or other means of identification used on or in relation to the Products;
 - 11.3.3 use any of the Trade Marks in any way which might prejudice their distinctiveness or validity or the goodwill of ELWMB therein;
 - 11.3.4 use in relation to the Products any trade marks other than the Trade Marks without first obtaining the prior written consent of ELWMB;
 - 11.3.5 use in the Territory any trade marks or trade names so resembling any trade mark or trade names of ELWMB as to be likely to cause confusion or deception;
 - 11.3.6 copy by any method of duplication the Products.
- 11.4 Except as provided in clause 11.1 the VAR shall have no rights in respect of any trade names or Trade Marks used by ELWMB in relation to the Products or the goodwill associated therewith, and the VAR hereby acknowledges that, except as expressly provided in this Agreement, it shall not acquire any rights in respect thereof and that all such rights and goodwill are, and shall remain, vested in ELWMB.
- 11.5 The VAR shall, at the expense of ELWMB, take all such steps as ELWMB may reasonably require to assist ELWMB in maintaining the validity and enforceability of the Intellectual Property of ELWMB during the term of this Agreement.

- 11.6 Without prejudice to the right of the VAR or any third party to challenge the validity of any Intellectual Property of ELWMB, the VAR shall not do or authorise any third party to do any act which would or might invalidate or be inconsistent with any Intellectual Property of ELWMB and shall not omit or authorise any third party to omit to do any act which, by its omission, would have that effect or character.
- 11.7 The VAR shall promptly and fully notify ELWMB of any actual, threatened or suspected infringement in the Territory of any Intellectual Property of ELWMB which comes to the VAR's notice, and of any claim by any third party so coming to its notice that the importation of the Products into the Territory, or their sale therein, infringes any rights of any other person, and the VAR shall at the request and expense of ELWMB do all such things as may be reasonably required to assist ELWMB in taking or resisting any proceedings in relation to any such infringement or claim.
- 11.8 The VAR may not have any claim to IPR in the products unless agreed beforehand in writing with ELWMB

12 **Nature of Agreement**

- 12.1 ELWMB shall be entitled to perform any of the obligations undertaken by it and to exercise any of the rights granted to it under this Agreement through any other company which at the relevant time is its holding company or subsidiary (as defined by s.736 of the Companies Act 1975) or the subsidiary of any such holding company and any act or omission of any such company shall for the purposes of this Agreement be deemed to be the act or omission of ELWMB.
- 12.2 ELWMB may assign this Agreement and the rights and obligations hereunder. In such circumstances the VAR will have the option to terminate this agreement.
- 12.3 This Agreement is personal to the VAR, which may not without the written consent of ELWMB, assign, mortgage, charge (otherwise than by floating charge) or dispose of any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder.
- 12.4 Nothing in this Agreement shall create, or be deemed to create, a partnership or the relationship of principal and agent or employer and employee between the parties.
- 12.5 This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, supersedes all previous agreements and understandings between the parties with respect thereto, and may not be modified except by an instrument in writing signed by the duly authorised representatives of the parties.
- 12.6 Each party acknowledges that, in entering into this Agreement, it does not do so on the basis of, and does not rely on, any representation, warranty or other provision except as expressly provided herein, and all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.

12.7 If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or in part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.

13 **Proper Law**

13.1 This Agreement shall be governed by and construed in all respects in accordance with the Laws of England, and each party hereby submits to the non-exclusive jurisdiction of the English Courts.

14 **Notices and Service**

14.1 Any notice or other information required or authorised by this Agreement to be given by either party to the other may be given by hand or sent (by first class pre-paid registered post, telex, cable, facsimile transmission or comparable means of communication) to the other party at the address referred to in schedule 1.

14.2 Any notice or other information given by post pursuant to clause 15.1 which is not returned to the sender as undelivered shall be deemed to have been given on the second business day after the envelope containing the same was so posted; and proof that the envelope containing any such notice or information was properly addressed, pre-paid, registered and posted, and that it has not been so returned to the sender, shall be sufficient evidence that such notice or information has been duly given.

14.3 Any notice or other information sent by telex, cable, facsimile transmission or comparable means of communication shall be deemed to have been duly sent on the date of transmission, provided that a confirming copy thereof is sent by first class pre-paid registered post to the other party at the address referred to in schedule 1 within 24 hours after transmission.

14.4 Service of any legal proceedings concerning or arising out of this Agreement shall be effected by causing the same to be delivered to the party to be served at its principal place of business (in the case of ELWMB) or its registered office (in the case of the VAR), or to such other address as may from time to time be notified in writing by the party concerned.

Agreement approved

BY: SIGNED:

POSITION: DATE:

**For and on behalf of
VALUE ADDED RESELLER**

BY: SIGNED:

POSITION: DATE:

**For and on behalf of
e-learning wmb limited**

List of Schedules Applicable to the Agreement

Schedule 1 – Outlet Address

This agreement is for the sale and distribution of the Products from the address below:

Schedule 2 – Trade Marks

Below is the official ELWMB, OPEN ELMS, e-Start, e-Learning Security and e-Office Safety Trade Mark logos. They (and any derivations of those below) must not be used without prior written permission by ELWMB

Open Elms:



e-Learning WMB :



e-Start :



e-Office Safety :



e-Learning Security:



Schedule 3 - User Price Lists

Complete pricing schedule can be found on the e-learning wmb Google webs pace using the Quotation System.

Schedule 4 – Commission Scales

- i) The discount on OPEN ELMS sales whilst this VAR Agreement is in force is
 - 40% discount on selling support, hosting and courses.

- 20% discount on selling course development and training.
Additional commission will be given when sales per month exceed number of units per month, agreed between ELWMB and the VAR.
(Man-day fees excluded whether provided by ELWMB or other party)

ii) Commission where ELWMB is passed the lead:

All commission is based on licence fees.

a)	Lead passed to ELWMB	10%
b)	VAR attends first meeting	15%
c)	VAR attends all pre-sales meetings	20%
d)	VAR manages the sale with ELWMB providing support	40%

Based on achieving agreed quarterly targets the commission can increase to 60%

Please note:

- 1) Sales Revenue does not include man-days charged to the VAR's client other than for training or bespoke development, either direct or via the VAR, by ELWMB.
- 2) Payment to the VAR for OPEN ELMS will be due when payment has been received by ELWMB.

Schedule 5 – Products Available for Sale

OPEN ELMS, bespoke development and e-Learning courses (including e-Office Safety, e-start and e-Learning Security courses)

Schedule 6 – Pre Sales Charges

Applicable to OPEN ELMS

i) Charged to VAR

Charged at ELWMB's prevailing man-day scale of charges to Client less 20% plus travel expenses. (see End User Price List)

ii) Charged to the client by ELWMB

Charged at ELWMB's prevailing man-day scale of charges, plus travel expenses. (see End User Price List)

Schedule 7 – Training

i) On-Site

Training provided to the VAR's staff at the VAR's premises will be charged at the prevailing man-day rate scale of charges for up to 6 persons per session, plus travel/accommodation expenses.

ii) Off-Site

Normally charged on a man-day basis for one-to-one. A price can be arranged with a third-party venue company.

For Workshops charges will be made on a per delegate basis prior to attendance.