

DATED 23 April 2007

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

and

THE HIGHER EDUCATION POLICY INSTITUTE (2)

AGREEMENT

CONTENTS

1. Definitions	4
2. Grant.....	5
3. Payment of Grant.....	6
4. Duration	7
5. Appointment of HEFCE nominee to the HEPI Advisory Board	7
6. Appointment of HEFCE secondee to HEPI.....	8
7. Other services.....	8
8. Obligations of HEPI	8
9. Freedom of Information Act	11
10. Force Majeure.....	12
11. Termination.....	12
12. Consequences of Termination	13
13. Assignment	14
14. General	14
15. Alternative Dispute Resolution.....	15
16. Notices.....	16
17. Third Party Rights	16
18. Law	16
19. Jurisdiction.....	17

THIS AGREEMENT is made on 23 April 2007 **BETWEEN**

- (1) **THE HIGHER EDUCATION FUNDING COUNCIL FOR ENGLAND** whose address for correspondence is at Northavon House, Coldharbour Lane, Bristol, BS16 1QD ("**HEFCE**"); and
- (2) **THE HIGHER EDUCATION POLICY INSTITUTE** (a registered charity No. 1099645 and a company limited by guarantee and not having a share capital, registered in England No. 4503712) whose registered office is at 116 St. Aldates, Oxford OX1 1HA ("**HEPI**").

WHEREAS:

- A. HEFCE is permitted by Section 65 of the Further and Higher Education Act 1992 to make grants, loans or other payments to any persons in respect of expenditure incurred or to be incurred by them for the purposes of the provision of services for the purposes of, or in connection with, the provision of education or the undertaking of research by institutions within the higher education sector, subject, in each case, to such terms and conditions as HEFCE think fit.
- B. HEPI was established to ensure that higher education policy-making is informed by evidence, particularly research and the experience of others. Its aims are:
 - to identify important policy issues in higher education – both immediate and long-term;
 - to identify research and experience relevant to these issues, both in this country and overseas;
 - to identify further research needed to illuminate those issues, and to facilitate that research or to or undertake research and policy analysis ourselves; and most importantly
 - by publishing reports, by arranging seminars and conferences and by other means, to alert policy makers, as well as those who influence policy and the wider public, to the issues, to current experience and to relevant research

- to be an authoritative and independent voice on policies that influence the delivery of equality of opportunity within the higher education sector.

These aims constitute services falling within Section 65 of the Further and Higher Education Act 1992.

- C. HEFCE has agreed to make grants to HEPI to enable it to meet expenditure, in connection with its aims, and the parties agree that the grants are true subsidies and are not consideration for supplies of any description.
- D. This Agreement sets out the terms and conditions subject to which HEFCE has agreed to make grants available to HEPI. This Agreement supersedes any previous agreement made between HEPI and HEFCE dated 29th October 2002.
- E. The Chief Executive of HEFCE is responsible and accountable to Parliament, as HEFCE's Accounting Officer, for payments made to HEPI and for satisfying himself that such payments are consistent with the purposes for which they were given to HEFCE and comply with the conditions attached to them. The Accounting Officer is also responsible for satisfying himself that the corporate governance, risk management and internal control system of HEPI is appropriate and sufficient to safeguard public funds and that HEPI observes the conditions of this Agreement. HEPI acknowledges these responsibilities of the HEFCE Chief Executive.

IT IS HEREBY AGREED as follows:

1. Definitions

1.1. In this Agreement unless the context otherwise requires:

"Annual" and "Year" means the year from 1 August in one year to 31 July in the following year

"Commencement Date" means 1 August 2007 or, if later, the date of this Agreement;

"Force Majeure" means any event outside the reasonable control of either party affecting its ability to perform any of its obligations (other than payment) under this Agreement including Act of God, fire, flood, lightning, war, revolution, act of terrorism, riot or civil commotion, strikes, lock-outs or other industrial action, whether of the

affected party's own employees or others, failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services;

“**HE**” means higher education.

“**Month**” means a calendar month.

- 1.2. The headings to clauses are inserted for convenience only and shall not affect the interpretation or construction of this Agreement.
- 1.3. Words importing the singular shall include the plural and vice versa. Words imparting a gender include every gender and references to persons include an individual, company, corporation, firm or partnership.
- 1.4. The words and phrases "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.
- 1.5. References to any statute or statutory provision shall include (i) any subordinate legislation made under it, (ii) any provision which it has modified or re-enacted (whether with or without modification), and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification).
- 1.6. References to clauses and the schedule are to clauses of, and the schedule to, this Agreement.
- 1.7. References to HEFCE shall include its permitted successors, assignees or sub-contractors.

2. Grant

- 2.1 HEFCE agrees to make annual grants, payable by agreed instalments and determined by agreement in advance, to HEPI subject to, and in accordance with, the terms and conditions of this Agreement. Both HEFCE and HEPI shall use their best endeavours to determine the annual grant payable by the 31 May preceding the start of the Year beginning the following 1 August.

- 2.2 HEPI shall, unless otherwise agreed in writing by HEFCE, use the proceeds of the grant made by HEFCE pursuant to clause 2.1 to meet its aims.
- 2.3 HEFCE shall be under no obligation to make any further payments or grants to HEPI, but if it agrees to make further payments or grants to HEPI, such payments or grants shall be subject to such other conditions and variations to this Agreement as may be agreed at the same time between HEFCE and HEPI.

3. Payment of Grant

- 3.1 HEFCE shall, subject as provided in this Agreement, make the agreed annual grant payment to HEPI by instalments on such dates as may be agreed between HEFCE and HEPI (save to the extent that any such payment has been made by HEFCE to HEPI in whole or in part prior to the Commencement Date).
- 3.2 HEFCE anticipates that HEPI will seek grants, contributions and income from other sources such that HEFCE's contribution towards HEPI's expenditure will fall as a proportion of HEPI's planned expenditure over the period of this Agreement. HEFCE shall not be obliged to increase its annual grant or its proportion of HEPI's expenditure during the period of this Agreement. Ad hoc payments may also be made by agreement by HEFCE to HEPI
- 3.3 HEFCE shall, if, in its reasonable opinion, HEPI has materially failed to perform its obligations under clause 8 or if any of the events referred to in clauses 11.1(c), (d), (e), and/or (f) has occurred, be entitled to withhold any part of the payments referred to in clause 3.1 until such time as HEFCE (in its sole discretion) is satisfied that HEPI has remedied any such failure.
- 3.4 HEFCE will normally pay grant so as not to be in advance of need. This will mainly be achieved through the agreement of an annual profile of payments of grants made by HEFCE to HEPI. Notwithstanding this, HEFCE recognises that it is likely that HEPI will have cash balances on which interest may be earned. Any such interest or other income derived from grant may be retained by HEPI up to a reasonable level, provided it is used for the same purposes as for the original grant. If there is a significant variation in the use of funds compared with the agreed profile HEFCE reserves the right to adjust the grant or profile or to seek repayment of any excess income of this nature by agreement with HEPI. HEFCE and HEPI will make arrangements for HEPI

to maintain an appropriate working capital balance during the year and at the year-end.

4. Duration

- 4.1 This Agreement shall come into force on the Commencement Date and (subject to the provisions for earlier termination in clause 11 shall last until 31 July 2011. There is no guarantee of funding beyond this date unless otherwise agreed between HEFCE and HEPI. If funding continues beyond 31 July 2011, then the provisions of this Agreement shall continue to apply unless otherwise agreed, unless and until either party gives to the other not less than three months' prior written notice of termination.
- 4.2 Either HEFCE or HEPI may seek variation to the terms of this Agreement. Any variations agreed will come into effect on the agreed date, or if no date is specified, three months after a written agreement is made.

5. Appointment of HEFCE nominee to the HEPI Advisory Board

- 5.1 Notwithstanding the provisions of Article 47 of HEPI's Articles of Association, HEFCE shall have the right to appoint a nominee to the HEPI Advisory Board, each such person appointed from time to time to be referred to in this Agreement as HEFCE's "**Nominated Advisor**". HEPI agrees as follows:

- (a) HEFCE's Nominated Adviser shall be at liberty to disclose to HEFCE any information about HEPI which he may acquire in the course of his duties as a member of HEPI's Advisory Board and to supply to HEFCE copies of any documents which he may acquire in the course of such duties notwithstanding (and as an exception to) his reasonable obligations of confidentiality to HEPI;
- (b) HEFCE shall have no liability to HEPI for any acts or omissions of a Nominated Advisor whether arising in contract, tort (including negligence) or otherwise; and
- (c) Neither HEFCE's Nominated Advisor nor any other HEFCE employee, Director or HEFCE Board member shall, unless otherwise agreed in writing

by HEFCE, become a trustee or an employee of HEPI. The HEFCE Nominated Advisor will normally be the HEFCE Chief Executive but can be otherwise be any HEFCE nominee, whether an employee of HEFCE or not.

- (d) HEFCE has the right to provide an 'alternate' to attend HEPI Advisory Board meetings when the HEFCE Nominated Advisor is unavailable.

6. Appointment of HEFCE secondee to HEPI

- 6.1 At HEFCE's sole discretion, it may provide HEPI with one or more HEFCE staff whose services may be provided by way of secondment through a secondment agreement to be entered into between the parties.

7. Other services

- 7.1 HEFCE shall provide HEPI with access to parts of HEFCE's IT systems and resources to assist HEPI in carrying out its work. HEPI shall respect the confidentiality of HEFCE's information in doing so. HEFCE may review the access provided at its own discretion at any time.

8. Obligations of HEPI

- 8.1 HEPI acknowledges to HEFCE that HEFCE has agreed to make the grant referred to in clause 2.1 in order that HEPI should meet its aims. It is a requirement of this Agreement that HEPI should satisfy HEFCE that HEPI has utilised the payments for that purpose. Accordingly, this clause 8 sets out various obligations which HEPI has agreed to undertake during the period of this Agreement.
- 8.2 HEPI shall promptly notify HEFCE in writing of any material failure by HEPI to properly, fully and effectively perform their obligations under this Agreement.
- 8.3 HEPI shall use the funds provided to it by HEFCE under this Agreement only for the expenditure specifically contemplated in the business plans referred to in clause 8.10 and, at the same time as the accounts referred to at clause 8.8 are provided to HEFCE, supply to HEFCE a certificate from its auditors that this has happened, which might be included in the auditors' opinion in the annual, audited, financial statements.

- 8.4 HEPI shall promptly notify HEFCE in writing of any significant variances of expenditure to the figures contained in the business plans referred to in clause 8.10.
- 8.5 Notwithstanding any administrative support HEFCE agrees to provide HEPI, HEPI shall establish and maintain adequate and effective accounting and other systems that cover all aspects of its business, assets, personnel and premises.
- 8.6 HEPI shall promptly provide to HEFCE (or shall provide HEFCE with access to) such of HEPI's accounting and other information, records, personnel and assets as HEFCE (or any person appointed by HEFCE including the HEFCE internal audit service) shall reasonably require from time to time in order to discharge HEFCE's functions in respect of public funds or for any other reasonable purpose.
- 8.7 HEPI shall provide HEFCE within 120 days after the end of each of its financial years with a copy of the auditor's management letter and two copies of its annual audited financial statements, including profit and loss account and balance sheet together with the associated director's and auditor's reports, as approved by the trustees of HEPI and signed by the Chairman, another trustee, and the Chief Executive of HEPI.
- 8.8 Within 28 days after the end of each quarter in each financial year of HEPI, HEPI will provide to HEFCE a copy of its management accounts (including an income and expenditure statement and statement of cash balances) and a comparison with budget and including such other information as may from time to time reasonably be specified by HEFCE. A representative of HEFCE may during business hours and upon reasonable notice inspect the financial information supporting such management information and a senior member of the management of HEPI will be available upon reasonable notice to answer reasonable questions that may arise as a result of such access by HEFCE.
- 8.9 HEPI will produce and submit to HEFCE a draft business plan no later than 31 March in each year during the continuation of this Agreement. This plan shall be finalised and approved by the trustees of HEPI (and submitted as so finalised and approved to HEFCE) no later than 31 May. The business plan will include information and projections for the following financial year of HEPI as well as an early indication of the likely work plan and costs for the subsequent financial year. The plan shall also include a risk assessment of the significant risks facing HEPI and such other information and projections as HEFCE shall reasonably request and HEFCE shall be

entitled to make representations to HEPI in respect of such business plans and such representations shall be considered by the trustees of HEPI.

- 8.10 If in HEFCE's reasonable opinion there has been a material breakdown of internal financial control within HEPI and/or a substantial non-performance of this Agreement then HEFCE shall have the right to make representations to the trustees of HEPI and HEPI shall use its best endeavours to comply with any reasonable directions of HEFCE relating to the efficient and effective discharge by HEPI of its obligations under this Agreement.
- 8.11 HEFCE reserves the right to appoint an independent third party to report (at the cost of HEPI if HEFCE so determines) on areas of performance of this Agreement by HEPI which cause HEFCE concern. Before exercising this right, HEFCE shall consult HEPI.
- 8.12 HEFCE shall be entitled to inform any of the members of HEPI for the time being and the National Audit Office of any material matters which come to HEFCE's attention as a result of the monitoring referred to in this clause 8.
- 8.13 The books and records of HEPI relating to the discharge of its responsibilities to HEFCE under this Agreement shall be open to inspection by the Comptroller and Auditor General as and when he requires in order to discharge his statutory duties as auditor of HEFCE.
- 8.14 HEPI shall adopt good practice standards in corporate governance and risk management and shall make an appropriate corporate governance statement in its annual financial statements.
- 8.15 HEPI shall maintain a register of interests operating to good practice standards for Advisory Board members, senior management and those with a significant interest in the procurement of large contracts. HEPI will maintain a register of gifts given and received, operating to good practice standards.
- 8.16 HEPI may charge for services provided to third parties. When doing so, HEPI shall have regard to the recovery of the full economic cost of providing those services when determining the charge made, and to any Value Added Tax and Corporation Tax implications for the transaction.
- 8.17 HEPI shall not borrow on the security of the grant payments provided pursuant to this Agreement but may borrow against its other assets. Where the servicing of debt is

likely to involve the use of HEFCE funds, HEPI shall seek appropriate prior consent, such consent not to be unreasonably withheld or delayed.

- 8.18 HEPI may not, without the prior consent of HEFCE (such consent not to be unreasonably withheld or delayed) other than in the normal course of business, give any guarantees, financial indemnities or letters of comfort, or incur any contingent liabilities (whether or not in legally binding form) where such guarantees, financial incentives or letters of comfort or contingent liabilities will be given or incurred using grant payments provided pursuant to this Agreement as security or collateral. In this context, HEFCE specifically acknowledges that HEPI works in an area where the ownership of, or taking acceptable risks with, intellectual property rights (IPR) is a frequently encountered issue.
- 8.19 HEPI must advise the HEFCE Assurance Service without delay of the removal or resignation of HEPI's external auditors, for whatever reason.
- 8.20 The pay and conditions of HEPI's staff should be determined by the Trustees having regard for the Treasury guidelines on pay in the Civil Service and analogue bodies. Severance arrangements for staff should be consistent with current HEFCE guidance. Future appointments to the post of Chief Executive shall be conducted openly in accordance with public sector principles.
- 8.21 HEPI may only establish a subsidiary undertaking with the prior consent of HEFCE.
- 8.22 Where HEPI has used information or data derived from HEFCE or HESA in its publications, HEPI should disclose the source of that information or data, except where specifically agreed otherwise.

9. Freedom of Information Act

- 9.1 As a public body, HEFCE is obliged to conform to the Freedom of Information Act 2000. As a result, HEFCE may be required to disclose information held by HEFCE in connection with HEPI in the event of a relevant request to HEFCE. HEFCE will consult with HEPI should a relevant disclosure request be received. The HEFCE's obligations and how it responds to these are described on its [web-site](#).

10. Force Majeure

- 10.1 If either party is affected by Force Majeure it shall immediately notify the other party in writing of the matters constituting the Force Majeure and shall keep that party fully informed of their continuance and of any relevant change of circumstances whilst such Force Majeure continues.
- 10.2 The party affected by Force Majeure shall take all reasonable steps available to it to minimise the effects of Force Majeure on the performance of its obligations under this Agreement.
- 10.3 Save as provided in clause 10.5, Force Majeure shall not entitle either party to terminate this Agreement and neither party shall be in breach of this Agreement, or otherwise liable to the other, by reason of any delay in performance, or non-performance of any of its obligations due to Force Majeure.
- 10.4 If the party affected by Force Majeure fails to comply with its obligations under clauses 10.1 and 10.2 then no relief for Force Majeure, including from the provisions of clause 10.3, shall be available to it and the obligations of each party shall continue in force.
- 10.5 If the Force Majeure continues for longer than three months either party may at any time whilst such Force Majeure continues by notice in writing to the other terminate this Agreement.

11. Termination

- 11.1 HEFCE may immediately terminate this Agreement without payment of compensation or other damages caused to HEPI solely by such termination by giving notice in writing to HEPI if any one or more of the following events happens:
- (a) HEPI commits a material breach of any of its obligations under this Agreement or under clause 8 which is incapable of remedy;
 - (b) HEPI fails to remedy, where it is capable of remedy, or persists in any breach of any of its obligations under this Agreement (save as to payment) after having been required in writing to remedy or desist from such breach within a period of 60 days;

- (c) any steps are taken or negotiations commenced by HEPI or any of its creditors with a view to proposing any kind of composition, compromise or arrangement involving HEPI and any of its creditors;
- (d) HEPI has any distress or execution levied on its assets which is not paid out within seven days of its being levied;
- (e) HEPI is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or calls a meeting for the purpose of passing a resolution to wind it up, or such a resolution is passed, or a resolution is passed by the Board of HEPI to seek a winding up or administration order, or HEPI presents, or has presented, a petition for a winding up order, or presents, or has presented, a petition to appoint an administrator, or has an administrative receiver, or receiver appointed over all or any part of its business, undertaking, property or assets;
- (f) HEPI stops or suspends making payments (whether of principal or interest) with respect to all or any class of its debts or announces an intention to do so or HEPI suspends or ceases or threatens to suspend or cease to carry on its business;
- (g) A secured lender to HEPI takes any steps to obtain possession of the property on which it has security or otherwise to enforce its security.

11.2 The termination of this Agreement shall be without prejudice to the rights and remedies of either party which may have accrued up to the date of termination.

12. Consequences of Termination

12.1 Upon termination of this Agreement for any reason whatsoever:

- (a) (subject to clause 11.2) the relationship of the parties shall cease save as (and to the extent) expressly provided for in this clause 12;
- (b) the provisions of clauses 12, 15, 18, and 19 and any provision which expressly or by implication is intended to come into or remain in force on or

after termination shall continue in full force and effect;

- (c) each of the parties shall immediately return to the other party, if so requested by the other party in writing (or, if the other party so requests by notice in writing, destroy) all of the other party's property (except, for the avoidance of doubt, the sums properly paid by HEFCE to HEPI pursuant to clause 3) in its possession at the date of termination.

13. Assignment

- 13.1 This Agreement is personal to both parties. Neither party shall assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under this Agreement.

14. General

- 14.1 HEPI shall not pledge the credit of HEFCE nor represent itself as being any Funding Body nor an agent, partner, employee or representative of HEFCE and HEPI shall not hold itself out as such nor as having any power or authority to incur any obligation of any nature, express or implied on behalf of HEFCE and nothing in this Agreement shall create, or be deemed to create, a partnership or joint venture or relationship of employer and employee or principal and agent between the parties and no employee of HEPI shall be deemed to be or have become an employee of HEFCE.
- 14.2 This Agreement contains the entire agreement between the parties in relation to its subject-matter. Each of the parties irrevocably and unconditionally waives any right it may have to claim damages for, and/or to rescind this Agreement because of breach of any warranty not contained in this Agreement, or any misrepresentation whether or not contained in this Agreement, unless such misrepresentation was made fraudulently.
- 14.3 No purported alteration or variation of this Agreement shall be effective unless it is in writing, refers specifically to this Agreement and is signed by a director or the Chief Executive of each of the parties to this Agreement.
- 14.4 The rights and remedies of either party in respect of this Agreement shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or

extension of time granted by such party to the other nor by any failure of, or delay by the said party in ascertaining or exercising any such rights or remedies. The waiver by either party of any breach of this Agreement shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

- 14.5 If at any time any part of this Agreement (including any one or more of the clauses of this Agreement or any sub-clause or paragraph or any part of one or more of these clauses) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from this Agreement and the validity and/or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired as a result of that omission.
- 14.6 This Agreement may be entered into in the form of two counterparts, each executed by one of the parties but, taken together, executed by all, and, provided that both the parties shall so enter into the Agreement, each of the executed counterparts, when duly exchanged or delivered, shall be deemed to be an original but, taken together, they shall constitute one instrument.
- 14.7 Each of the parties shall, and shall use their reasonable endeavours to procure that any necessary third parties shall, execute and deliver to HEPI such other instruments and documents and take such other action as is necessary to fulfil the provisions of this Agreement in accordance with its terms.

15. Alternative Dispute Resolution

- 15.1 In the event of any dispute arising out of or in connection with this Agreement the parties will in good faith seek to resolve that dispute by using an alternative dispute resolution ("**ADR**") method acceptable to both parties before pursuing any other remedies available to them.
- 15.2 If the matter has not been resolved by mediation within 60 days after the date of the ADR Notice, the parties will be free to pursue their remedies without further reference to this clause 15.
- 15.3 Nothing in this clause 15 should prevent any party seeking a preliminary injunction or other judicial relief at any time if in its judgement such action is necessary to prevent irreparable damage.

16. Notices

16.1 Any notices sent under this Agreement must be in writing and may be served by personal delivery or by sending the notice by first class post, facsimile or electronic data transmission at the address given above or at such other address as the relevant party may give for the purpose of service of notices under this Agreement and every such notice shall be deemed to have been served upon delivery if served by hand or at the expiration of 2 business days after despatch of the same if delivered by post or at ten hours am local time of the recipient on the next Business Day following despatch if sent by facsimile or electronic data transmission.

16.2 To prove service of any notice it shall be sufficient to show in the case of a notice delivered by hand that the same was duly addressed and delivered by hand and in the case of a notice served by post that the same was duly addressed prepaid and posted in the manner set out above. In the case of a notice given by facsimile or electronic data transmission, it shall be sufficient to show that it was despatched in a legible and complete form to the correct telephone number, electronic data number or address without any error message provided that a confirmation copy of the transmission is sent to the recipient by post in the manner set out above. Failure to send a confirmation copy will invalidate the service of any facsimile or electronic data transmission.

17. Third Party Rights

17.1 For the purpose of section 1(2) of the Contracts (Rights of Third Parties) Act 1999 the parties state that they do not intend any terms of this Agreement to be enforced by any third parties but any third party right which exists or is available independently of that Act is preserved.

18. Law

18.1 This Agreement shall be governed by, and construed in accordance with, the laws of England.

19. Jurisdiction

19.1 All disputes arising out of or relating to this Agreement and not settled under the procedures referred to in clause 15 shall be subject to the exclusive jurisdiction of the English Courts to which the parties irrevocably submit.

IN WITNESS OF THE ABOVE the parties have signed this Agreement on the date written at the head of this Agreement.

SIGNED by)
)
duly authorised by and) Authorised Signatory
for and on behalf of HEFCE)

Name: Steve Egan
Position: Deputy Chief Executive, HEFCE

SIGNED by)
)
duly authorised by and) Authorised Signatory
for and on behalf of HEPI)

Name: Bahram Bekhradnia
Position: Director and Chief Executive, HEPI