

GUIDELINES FOR DEVELOPING AGREEMENTS RELATING TO COOPERATIVE ARRANGEMENTS BETWEEN FLINDERS UNIVERSITY AND TAFE-SA

The following Guidelines have been designed to assist staff seeking to develop specific cooperative arrangements between the University and programs offered by the Minister through TAFE SA.

The Guidelines are intended to operate as a helpful guide to the drafting of agreements. Not all of the issues identified in the Guidelines will necessarily be relevant in all situations. Staff who are drafting agreements should include only those matters which are relevant to meet the requirements of the cooperative venture or service that is the subject of the agreement. A basic template, which can be edited to form the skeleton of the agreement is attached here.

The Guidelines do not replace professional advice. University staff should consult with staff in Faculty offices and the Policy and Secretariat about the drafting of contractual agreements. TAFE-SA Officers negotiating on behalf of the Minister must seek assistance from the Legislative and Delegations Unit within DFEEST.

0. TITLE

Set out the title as follows, including a brief description of the purpose of the agreement. Please note that the Agreement is between the University and the Minister for Employment, Training and Further Education ('the Minister').

AGREEMENT

BETWEEN THE MINISTER FOR EMPLOYMENT, TRAINING AND FURTHER EDUCATION ("the Minister")

AND

THE FLINDERS UNIVERSITY OF SOUTH AUSTRALIA (the University)

FOR [INSERT PURPOSE OF THE AGREEMENT]

This Agreement is made on (day) of (month) of (year)

1. INTERPRETATION AND DEFINITIONS

Include an appropriate "interpretation" and "definition" section.

2. PREAMBLE

Describe the relationship between the Agreement and the overarching Memorandum of Understanding (MOU) between the University and the Department of Further Education, Employment, Science and Technology (DFEEST). A model clause is:

This Agreement dated between the Minister and the University has been drawn up in accordance with the aims of the Memorandum of Understanding signed between the University and the Department of Further Education, Employment, Science and Technology on 13 September 2002.

3. PURPOSE

Describe the broad purpose of the Agreement for cooperation between the Minister and the University. The areas of cooperation provided for under the overarching MOU include articulation; program delivery; research and development; marketing; strategic planning; and professional development. A model clause is:

This Agreement provides the terms and conditions under which the parties agree to collaborate/deliver programs or services in [Insert a brief description of the purpose and form(s) of cooperation].

4. REPRESENTATIVES

Indicate the representatives of the Minister and the University who have primary responsibility for implementing the terms of the Agreement. A model clause follows:

Each of the parties shall appoint a member of staff who will have primary responsibility for implementing the terms of this Agreement, resolving any problems that might arise in the implementation of this Agreement. In the case of:

- **the Minister this shall be the Executive Director, Programs and Education Services (or nominee);**
- **the University this shall be the [Insert the title of the responsible officer].**

5. CONTEXT AND SCOPE

- Describe the context in which the cooperation between the parties will occur. In the case of cooperation in program delivery this section should include specific details of the awards, courses and programs offered by the Minister through TAFE SA and the University that will form the basis of the Agreement.
- Describe the range, extent, and limits of the cooperation specified in the Agreement. Detailed descriptions of student enrolment and projected enrolments may be included in an appendix.

6. STUDENTS

Where the Agreement is for the purpose of cooperation in program delivery, indicate the statutes, rules, policies, procedures and fee arrangements that govern enrolled students. A model clause is:

- 6.1 Students enrolled in the [Insert the name of the TAFE Award] are students of the [Insert the name of the Institute (established in accordance with the Technical and Further Education Act 1975)] and as such are subject to the Institute's rules, policies, provisions and fees.**
- 6.2 Students enrolled in the [Insert the name of the University award] are students of the University and as such are subject to the University's statutes, rules, policies and fees.**

7. RESPONSIBILITIES

Describe in detail the specific responsibilities of the parties for the provision of the cooperative ventures, programs or services specified in the Agreement. In the case of program delivery, specific responsibilities may include:

- Development of curriculum and course material;
- Teaching arrangements including any specific physical resources such as laboratories, workshops etc (note that any agreements involving “shared” accommodation or use of facilities may involve additional matters, and may require the preparation of appropriate lease or licensing documentation);
- Assessment and moderation of student assessment results;
- Reporting of students’ final results and notations;
- The provision of library and student support services; and
- The provision of information to students.

8. FINANCIAL ARRANGEMENTS

- Describe the corporate and financial responsibilities of the parties such as the production of invoices.
- Describe the financial arrangements and costs for delivery agreed between the parties for the implementation of the Agreement. Complex or more detailed funding or cost-sharing arrangements may be located in an appendix. Cost changes that vary from year to year may be approved by a variation to the agreement (see section 18).
- Financial arrangements should be agreed on the basis that neither party will suffer financial disadvantage as a result of their participation in the Agreement. A statement to that effect should appear in the Agreement.
- Provisions should be made for the inclusion of an appropriate GST clause for the circumstances.

9. ARTICULATION/CREDIT TRANSFER ARRANGEMENTS

Describe the principals of articulation and credit transfer between programs offered by the University and programs offered the Minister through TAFE SA. In describing these principals it should be noted that:

- Clause 4.1 of the overarching MOU between Flinders University and DFEEST requires the University and Institutes of TAFE to work together to maximise the extent of articulation and credit transfer between their programs.
- Clause 4.1.2 of the MOU between Flinders University and DFEEST encourages the University and the Minister (or their delegate) to agree to articulation and credit transfer on the basis of “block” credit as far as practicable.

- Block credit is understood to mean an Agreement that students who have completed studies of a particular level will receive credit for a fixed amount of credit in the program to which they subsequently move, rather than arrangements that are predicated on only granting credit where directly comparable study components exist between the programs offered by the University and the Minister through TAFE SA.

10. PROMOTION AND MARKETING

Indicate the responsibilities of the parties for the promotion and marketing of the collaborative ventures, services and programs specified in the Agreement. Describe any restrictions on public statements about the cooperative programs and services contained in the Agreement. It is normally the requirement that the parties should agree to any public statement before it is issued.

11. ACCESS TO INFORMATION

Describe the arrangements for the exchange of information between the parties for the execution of the Agreement. In particular, specify any conditions or restrictions such as confidentiality provisions that might be imposed on this information. A model clause is:

The parties agree to:

- 11.1 make available to each other all relevant information required to ensure that each party can fulfil its responsibilities under the terms of the Agreement; and**
- 11.2 to abide by any confidentiality provisions that may attach to such material; and**
- 11.3 abide by all relevant State and Commonwealth policy and legislation regarding privacy.**

In any particular agreement what constitutes “confidential information” and inappropriate disclosure will need to be clearly defined.

12. INTELLECTUAL PROPERTY

Describe the principles for the assignation of ownership of intellectual property generated during the execution of the Agreement. These arrangements must comply with the Intellectual Property policies of the University and the Minister. A model clause is.

- 12.1 Each party shall own the intellectual property in any teaching material, which it develops in the course of the Project/Collaboration.**
- 12.2 Intellectual property developed jointly in the course of the Project/Collaboration shall be owned by the parties in proportion to their input, and shall only be exploited or disposed of by agreement between the parties on a case-by-case basis (these matters should be determined by the Representatives and it may be necessary to proceed to dispute resolution procedures if agreement cannot be reached as to the relevant proportions or what is appropriate “exploitation” of such material).**

- 12.3 Each party agrees to grant the other a free licence to use the other's intellectual property as developed in the course of the project/collaboration for non-commercial purposes as related to the project/collaboration, with appropriate acknowledgment.**

Please note that Intellectual Property arrangements may vary widely depending on the nature of the particular Agreement, and the model clause (above) may not be applicable. Additionally, it would be appropriate for each of the parties to warrant that it had not infringed upon the intellectual property rights of any third parties.

13. INDEMNITY AND INSURANCE

Describe the arrangements in place regarding insurance and indemnities. In general, each party indemnifies the other from and against any liability which the other party may incur as a result of any default, or negligent act, or omission on the part of the indemnifying party in relation to the Agreement. The parties are also required to take out/maintain adequate insurance with respect to the matters arising out of the agreement.

With respect to the Minister, the Minister will warrant that the Minister is entitled to the benefits of the South Australian Government Insurance and Risk Management arrangements, administered by the South Australian Government Captive Insurance Corporation (SAICORP).

A model clause is:

- 13.1 Each Party shall indemnify and keep indemnified the other Party against any and all liabilities, losses, costs and expenses incurred by the other Party to the extent that the same are incurred as a result of a negligent or unlawful act, omission or failure to act on the part of the first mentioned Party.**
- 13.2 Each Party shall take out and maintain adequate insurance to indemnify them against any loss or damage which they incur or cause in the course of collaboration under this Agreement, including to the extent relevant: workers compensation insurance, third party liability insurance, occupier's liability insurance, comprehensive motor vehicle insurance, professional indemnity insurance, and any other insurance that the Parties consider necessary.**
- 13.3 The Minister warrants that the Minister is entitled to the benefits of the South Australian Government Insurance and Risk Management arrangements administered by the South Australian Government Captive Insurance Corporation ("SAICORP") in respect to operations under this agreement.**

14. DISPUTE RESOLUTION

The parties shall, in the first instance, seek to settle any dispute arising in the implementation of the Agreement amicably by consultation between the parties' Representatives identified in accordance with Item 4. Where this discussion does not settle the matter, the parties shall seek to resolve the dispute through the following steps:

- By referral to the Committee established under the Agreement to settle disputes;
- The Chief Executive for DFEEST and the Vice-Chancellor;

- An independent party for mediation or determination.

The dispute resolution provision in an Agreement should stipulate that notwithstanding the existence of a dispute each party must continue to preform its obligations under the Agreement.

A model clause for dispute resolution is:

The parties shall seek to settle any dispute arising in connection with this Agreement by negotiation and consultation between the parties in a spirit of cooperation and mutual trust. Where discussion by the Representatives (identified in item 4) does not settle the matter, the dispute shall firstly, be referred to the Committee, established under the Agreement for the settlement of disputes (which may or may not be the MOU Steering Committee). The Committee shall seek to settle the dispute through discussion and negotiation.

If the Committee is unable to settle the dispute, the matter shall be referred to the Chief Executive for the Department of Further Education, Employment, Science and Technology and the Vice-Chancellor of the University for resolution.

Finally, the matter may, if still unresolved, be referred to an independent party (e.g the President of the Law Society of South Australia) for mediation, or determination. Any determination made by such an independent party shall be final and binding upon the parties, and the parties shall pay the costs of such independent party in equal shares.

Notwithstanding the existence of a dispute each party must continue to preform its obligations under the Agreement.

15. DURATION

- Indicate the commencement date for the Agreement. This is normally the date of the signing of the Agreement.
- Indicate the time period that the Agreement will remain in effect. Agreements are normally of three (3) to five (5) years duration.
- Indicate whether there is to be any renewal of the term and upon what basis such a renewal is to operate.

16. REVIEW AND REPORTING

- Each party shall review the operation of the Agreement and provide a written report to the committee established in accordance with the Agreement on an annual basis (which may or may not be the MOU Steering Committee).

17. RENEWAL

- Renewal requires the written Agreement of both parties and a statement to that effect should be included in the Agreement.

- The Agreement may also include a time frame for a review of the Agreement if appropriate. This review normally takes place a number of years into the Agreement and prior to the date the Agreement terminates.

18. VARIATION

A variation to a contract requires the agreement of both parties and must be in writing. See the Guidelines for Developing Variation of Agreements relating to Cooperative Arrangements between the University and TAFE-SA.

In general, a variation can apply to all aspects of an Agreement including schedules or appendices. Approval of a variation normally requires the signature of those officers authorised to sign the Agreement.

19. TERMINATION

Describe the terms and conditions under which one or other of the parties may terminate the Agreement. These should include the process for issuing notice of termination and the process for disbursement of monies owing to each party (if applicable).

The Agreement should also include a statement to the effect that one or other of the parties shall meet any obligations which are outstanding at the time of termination of the Agreement which, if they remained unfulfilled, would be likely to disadvantage one or other of the parties or persons who are the subject of the Agreement.

Provision may also be made for cancellation by mutual agreement in instances where both parties are satisfied that the subject of the agreement is no longer in operation (for example, a course is no longer offered by the University or the Minister through TAFE SA).

20. OTHER MATTERS

Approved clauses must also be included in all Agreements regarding the powers of the Auditor General under the Public Finance and Audit Act 1987, and the policy of the South Australian Government regarding contract disclosure.

21. SIGNATURES

Only those officers authorised by the Minister and the University to enter into Contracts of this scope may sign the agreement, including any variations to the agreement or its appendices. In the case of:

- the Minister this shall be the Executive Director, Programs and Education Services;
- the University this shall those officers who have authority to sign agreements of this scope under the University's *Policy on Delegations of Authority to Enter Into Contracts*.

A model clause is set out below:

SIGNED for and on behalf of the **MINISTER FOR)
EMPLOYMENT, TRAINING AND FURTHER)
EDUCATION)**

by.....) (Signature of Authorised Officer)
[Insert name]

[Insert Position]

duly authorised in that regard in the presence of:)

..... (Signature of Witness)

Witness

[Print Name:]

..... (Date)

SIGNED for and on behalf of
THE FLINDERS UNIVERSITY OF SOUTH AUSTRALIA)

.....) (Signature of Authorised Officer)

[Insert Name]

[Insert position]

duly authorised in this regard in the presence of:

..... (Signature of Witness)

Witness

[Print Name:]

..... (Date)

Please note that the Agreement does not come into effect until authorised officers from both parties duly sign it.

RH:rh 25/6/04