

MEMORANDUM OF AGREEMENT
BETWEEN
THE AUSTRALIAN NATIONAL UNIVERSITY, AUSTRALIA
AND
THE STATE UNIVERSITY OF NEW YORK, U.S.A.

THIS AGREEMENT is made on the 26 day of September 2006

BETWEEN

THE AUSTRALIAN NATIONAL UNIVERSITY, ABN 52 234 063 906, CRICOS Provider No. 00120C, an institution pursuant to the *Australian National University Act 1991* (Cth) as represented by Student Recruitment and International Education, of Acton, in the Australian Capital Territory, Australia ('the ANU')

AND

THE STATE UNIVERSITY OF NEW YORK, an educational corporation organized and existing under the laws of the State of New York, with its principal place of business located at the State University Plaza, Albany, New York 12246, for and on behalf of the State University of New York at Stony Brook ('SBU'),

together the 'Parties'.

The Parties agree as follows:

1. Number of Exchange Students and Duration of Exchange

- (a) Commencing with the 2005/2006 academic year, and in each succeeding year during the term of this Agreement, each University will annually nominate up to two full-time equivalent students per year (four semester places) as exchange students to the Host University. Any variance in the number of exchange students each year may be negotiated and agreed by the Parties before recruitment of students.
- (b) The period of exchange will be one academic term (semester) or one academic year. In the case of SBU, first term is from September to end of December and second term is from January to end of May. In the case of ANU, first term (semester) is from February to June and second term (semester) is from July to October.

- (c) The Parties agree that for the purposes of determining the balance of students exchanged, two exchange students participating for one academic term (semester) will be counted as equivalent to one exchange student participating for one academic year.
- (d) Exchange students will continue as candidates for degrees of their Home University and will not be candidates for degrees of the Host University but will be enrolled at the Host University for the duration of their exchange. It is understood that students enrolling at the Host Universities as candidates for degrees will not be considered as part of this exchange program and will be responsible for tuition and fees of the Host University.
- (e) If a Party is unable to send two full-time equivalent exchange students per year during any year of the Agreement, then that Party will be eligible to send additional students in the following year to make up for the imbalance in the previous year. However, once a student from a Party has registered in the Host University for one academic term (semester)/year of study, the quota is considered to be filled, even if the student fails to complete the term (semester)/year of study for any reason.
- (f) If an imbalance of exchange places exists at the time of written termination of this Agreement, the Party having hosted the larger number of exchange students will be entitled to rectify any imbalance by sending additional students to the other Party under the terms of this Agreement within one year from the date that this Agreement officially terminates.

2. Selection, Course and Enrolment

- (a) Exchange students will be selected by their Home University on the basis of the following criteria. They will be recommended to the Host University which will have the final say on whether to accept and enrol the student based on its Statutes, Rules and Orders, general principles of selection and any special requirements applying to the particular course of study:
 - (i) Students will have completed at least one year of university study prior to participation in the exchange; and
 - (ii) have good academic standing. Each Host University will determine the minimum academic requirements for incoming students to its university.
- (b) The deadline for ANU to forward completed application packages to SBU is April 1 for first term admission and October 2 for second term admission. The deadline for SBU to forward completed application packages to ANU is 1 December for first semester and 1 May for second semester. The Host

University will inform the Home University of final admission decisions within 2 months of the application deadline.

- (c) Exchange students will pursue an academic program developed in consultation with the student's Home University. The Host University will permit the exchange students to enrol in a normal course load and in all courses where they meet the Host University's prerequisites and language proficiency requirements, with the exception of courses (insert excluded courses), the ANU's School of Medicine and graduate programs at the ANU where there may be no provision for exchange places. It is understood that quota limitation, normal timetabling and scheduling constraints apply to all students.
- (d) SBU acknowledges that due to visa restrictions in Australia, all study to be undertaken in Australia must comprise a full-time load.
- (e) Any academic credit received during the course of the exchange program may be transferred to the Home University in accordance with the appropriate regulations of the Home University.
- (f) While on exchange, students will be subject to the Statutes, Rules, Orders, policies, procedures, guidelines and discipline of the Host University and all relevant local laws.
- (g) The Host University will provide the Home University with an official transcript on each exchange student at the completion of the exchange.

3. Fees and Costs

- (a) Exchange students will pay normal tuition and fees to their Home University in accordance with the policies of that Party. Neither Party will make charges upon the other Party or upon the exchange students for tuition or application fees.
- (b) Each Party will use reasonable endeavours to assist exchange students in finding accommodation on or near the Party's campus. SBU undertakes to guarantee that accommodations will be made available to ANU exchange students studying at SBU.
- (c) Exchange students will be responsible for personal health and hospitalization insurance coverage. SBU students intending to enrol at the ANU must take out the Overseas Student Health Cover (OSHC) prior to departure as a condition of their student visa. ANU students attending SBU will be required to enroll in the mandatory SBU insurance program and be responsible for all deductible costs related to health care services. Each Party will offer basic outpatient health care

to all exchange students as can be provided by and at their respective University Health Service. Any medical expenses that exceed the coverage provided by such insurance will be borne by the exchange student and his/her family.

- (d) Exchange students will be responsible for making their own international and domestic travel arrangements and associated costs, as well as for expenses involving meals, study materials, local transportation, personal expenses, passport, visa applications and all other general living expenses.
- (e) All payments, if any, to be made by a party under this Agreement will be made such that the net amount paid after deduction for, or on account, of any taxes (including value added tax) imposed, levied, collected, withheld or assessed in that party's country to which the other party may become subject will equal the original amount specified under this Agreement.

4. Privacy

- (a) SBU acknowledges and agrees that the ANU is bound by the provisions of the *Privacy Act 1988* (Cth) ('the Privacy Act'). The Privacy Act requires the ANU to pass on the obligations outlined in this clause to a third party where the ANU is providing Personal Information to that third party. For the purposes of this clause 'Personal Information' means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion. ANU acknowledges and agrees that SBU is bound by and obligated to follow New York State and United States federal law requirements governing the disclosure of personal information.
- (b) Subject, at all times, to relevant state and federal law, SBU agrees to:
 - a. use Personal Information held in connection with this Agreement only for the purposes of fulfilling its obligations under this Agreement;
 - b. take all reasonable measures to ensure that Personal Information in its possession or control in connection with this Agreement is protected against loss and unauthorised access, use, modification or disclosure;
 - c. comply with those Information Privacy Principles and National Privacy Principles which affect the security, use and disclosure of Personal Information to the extent that the content of those Principles apply to the types of activities SBU is undertaking under this Agreement, as if SBU were an agency as defined in the *Privacy Act 1988*;
 - d. cooperate with any reasonable demands or inquiries made either by the ANU or the Privacy Commissioner on the basis of the exercise of the

functions of the Privacy Commissioner under the *Privacy Act 1988* including, but not limited to, a request from the ANU to comply with a guidelines concerning the handling of Personal Information;

- e. ensure that any person who has access to any Personal Information is made aware of, and undertakes in writing, to observe the Information Privacy Principles, National Privacy Principles and other obligations referred to in this clause;
- f. comply, as far as practicable, with any policy guidelines furnished to SBU as are laid down by the ANU or issued by the Privacy Commissioner from time to time relating to the handling of Personal Information;
- g. comply, as far as practicable, with any direction of the ANU to observe any recommendation of the Privacy Commissioner relating to any acts or practices of SBU that the Privacy Commissioner considers breaches SBU's obligations set out in this clause;
- h. to the extent authorized by the New York State Court of Claims Act and case decisions thereunder, indemnify the ANU as the circumstances require, in respect of any loss or expense suffered or incurred by the ANU arising out of or in connection with a breach of the obligations of SBU under this clause or any misuse of Personal Information by SBU or any disclosure by SBU in breach of an obligation or confidence whether arising under the *Privacy Act 1988* or otherwise.

(c) SBU acknowledges that its obligations under this clause are in addition to, and do not restrict, any obligations it may have under New York State or federal law as well as the *Privacy Act 1988* as amended from time to time. The ANU will promptly notify SBU in writing of any amendments made to the *Privacy Act 1988* from time to time.

(d) The Parties will ensure that students are informed prior to commencing a student exchange, that their grades and other information necessary for admittance to the exchange program will be provided by the ANU to SBU and by SBU to the ANU, so that both Parties can monitor a student's performance on exchange. In order to comply with this clause, each Party will obtain the student's written consent to allow the transfer of information from one Party to the other Party.

5. Marketing of Exchange Program

Each Party will be responsible for the marketing of the student exchange program in its own country. SBU acknowledges that advertising and promotion of the exchange program in the United States is subject to the *Education Services for Overseas Students Act 2000* ('the ESOS Act') which binds Australian universities and their agents. SBU agrees to advertise and promote the student exchange

program in accordance with the ESOS Act obligations set out in Schedule 1 to this Agreement.

6. Use of Logos and Names

Each party grants a non-exclusive license to the other party to use their respective logos and names in all promotional materials, including advertisements, brochures, stationery materials, etc., only in connection with or relating to the promotion or conduct of the student exchange program the subject of this Agreement for the duration of this Agreement, provided all promotional material is in accordance with clause 9. Any intellectual property in the logos or names remains the property of the respective party. Each party warrants that it shall not, by action or omission, jeopardize the rights of the other party, or the validity or subsistence of such rights, in the name and logo of the other party, and shall promptly notify the other party of any infringement by any person or entity of the other party's intellectual property rights in its name and logo which comes to its attention.

7. Indemnity

Subject to the provisions of this Agreement and, when applicable, New York State's Court of Claims Act, each Party will at all times indemnify and hold harmless the other Party (in this clause referred to as "those indemnified") from and against any loss (including legal costs and expenses on a solicitor/own client basis), or liability, reasonably incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such loss or liability was caused by any wilful, unlawful or negligent act or omission of the party, its employees, agents or subcontractors in connection with the performance of its obligations under this Agreement. A Party's liability to indemnify the other Party under this clause 7 will be reduced proportionally to the extent that any act or omission of the other Party or its employees or agents contributed to the loss or liability. The indemnity referred to in this clause 7 will survive the expiration or termination of this Agreement.

8. Dispute Resolution

Before resorting to external dispute resolution mechanisms, the Parties will attempt to settle by negotiation any dispute in relation to this Agreement including by referring the matter to personnel who may have authority to intervene and direct some form of resolution. If a dispute is not settled by the parties within 10 working days of one Party first sending to the other Party written notice that they are in dispute, the dispute may be the subject of court proceedings or may be submitted to some alternative dispute resolution mechanism as may be agreed in writing between the Parties.

9. Amendment, Renewal and Termination

- (a) This Agreement will take effect from the date of the last signature for a period of five (5) years and may be modified or revised only by mutual written agreement of the Parties.
- (b) The Agreement may be renewed by mutual agreement through an exchange of letters confirming the renewal.
- (c) The Agreement may be terminated by either Party provided that six month's written notice of termination is given to the other Party. In the event of termination of this Agreement, the Parties will provide all normal support services as outlined in this Agreement for the current group of exchange students until the end of their exchange.
- (d) Either Party may terminate this Agreement if the other is in default or in breach of any provision under this Agreement provided that the aggrieved Party has first given thirty (30) days notice of its intention to terminate this Agreement. If the default or breach has not been remedied at the expiry of the specified time the aggrieved Party may by written notice terminate this Agreement.

10. Notice

Notice to either party must be in writing, signed by the party giving it, and be served by registered or certified mail, addressed as follows:

ANU: Tim Beckett
Director, Student Recruitment and International Education
Pauline Griffin Building (11)
The Australian National University
Canberra ACT 0201

SBU: William Arens, PhD
Dean, International Academic Programs
E5340 Melville Library
State University of New York at Stony Brook
Stony Brook, New York 11794-3397

copy to: James Fabian, Director
Procurement Department
State University of New York at Stony Brook
Stony Brook, New York 11794-6100

11. Jurisdiction

This Agreement and all matters arising out of or relating to it (including without limitation, its enforceability) are governed by the laws applicable in the country (Australia or the United States) in which the matters giving rise to dispute took place.

12. Representation

The Parties will not represent themselves, and will ensure that their employees do not represent themselves, as being an employee, partner or agent of the other Party, or as otherwise able to bind or represent the other Party. A Party will not by virtue of this Agreement be or for any purpose be deemed to be an employee, partner or agent of the other Party, or as having any power or authority to bind or represent the other Party.

13. Force Majeure

(a) For the purposes of this clause, 'Unexpected Event' affecting a Party means anything outside that Party's reasonable control, including but not limited to, acts or omissions of the other Party, fire, storm, flood, earthquake, acts of God, pestilence, war (whether declared or undeclared), transportation embargo or failure or delay in transportation, act or omission (including laws, regulations, disapprovals or failures to approve) of any third person (including but not limited to, sub-contractors, customers, governments or government agencies). If an Unexpected Event affecting a Party precludes that Party ('the Precluded Party') partially or wholly from complying with its obligations under this Agreement then:

- a. as soon as reasonably practicable after that Unexpected Event arises, the Precluded Party must notify the other Party of the Unexpected Event; and
- b. to the extent and for the period that the Precluded Party is precluded by the Unexpected Event from complying with its obligations under this Agreement, those obligations will be suspended.

(b) This clause 13 does not apply to any obligation to pay money.

14. Entire Agreement

This Memorandum of Agreement, the referenced Schedule 1 and the Memorandum of Understanding between the parties, constitutes the entire agreement of the parties. All previous communications between the parties, whether written or oral, with reference to the subject matter of this Memorandum of Agreement, are hereby superseded.

SCHEDULE 1: ESOS ACT REQUIREMENTS

1. The ANU is subject to the provisions of the *Education Services for Overseas Students Act* 2000 (Cth) ('the ESOS Act'). The ESOS Act imposes certain requirements on the ANU in relation to overseas students, including that the ANU ensure that organisations with which it collaborates also complies with the ESOS Act provisions. This schedule sets out the provisions with which SBU must comply.
2. In performing its obligations under this Agreement and subject to its obligation to act at all times in accordance with New York State and United States law, SBU must:
 - 2.1 perform its obligations under this Agreement observing the highest standards in honesty, quality of service and ethics and in accordance with the standards particularly described in paragraph 2.3 below;
 - 2.2 if the ANU asks SBU to do so, give the ANU any information the ANU considers reasonably necessary to assess and monitor SBU's credentials to act as its representative. The ANU may use or disclose that information to any person it reasonably considers necessary to allow it to check SBU's credentials properly. However, the ANU will not use that information for any other purpose;
 - 2.3 abide by the Code, a copy of which it is provided at Annexure 1. SBU agrees that it has read and understood the Code and has already familiarised itself with the content of the Code. The ANU undertakes to notify SBU of any changes to the Code and, subject to relevant State and federal law, SBU will be bound by those changes. Specifically, SBU undertakes the following undertakings:
 - 2.3.1 to market the ANU's education and training services with integrity and accuracy;
 - 2.3.2 to provide full, free and accurate information about the ANU, its courses of study and facilities, based only on official information that the ANU provides to it;
 - 2.3.3 to recruit students in an honest, ethical and responsible manner;
 - 2.3.4 to ensure that all necessary evidence and documentation accompanies a prospective student's application or acceptance of offer;
 - 2.3.5 to advise prospective students that they are required to provide to the ANU accurate contact details, including updates of these details as necessary;
 - 2.3.6 to observe guidelines, rules, or codes that the ANU imposes concerning recruitment of students;
 - 2.3.7 not to publish information that is misleading, inaccurate or damaging to the ANU or another Australian tertiary institution;
 - 2.3.8 not to guarantee or imply the availability of employment to prospective students while they are enrolled with the ANU;
 - 2.3.9 not to guarantee or imply immigration or residency opportunities for prospective students while studying or after graduation in Australia;

- 2.3.10 to inform prospective students that students coming to Australia on a student visa must have a primary purpose of studying and must study on a full-time basis and that any school-aged dependants accompanying them to Australia will be required to pay full fees if they enrol in either government or non-government schools;
 - 2.3.11 to provide to prospective students comprehensive and accurate information about living costs in Australia;
 - 2.3.12 to accept no inducement for and make no promises about admission to the ANU;
 - 2.3.13 to represent itself, the ANU and SBU's position as the ANU's representative in a way that upholds SBU's and the ANU's dignity and reputation and the reputation of Australian international education and training;
 - 2.3.14 where any prospective student does not meet the ANU's admission standards to promptly advise them that they do not;
 - 2.3.15 not to charge directly or indirectly any fee to students or any other person for recruitment services or activities connected with recruitment services without first seeking the ANU's written permission;
 - 2.3.16 give to all prospective students a copy of the ANU's current policy concerning refunds (note this policy changes from time to time. The ANU undertakes to notify SBU about any changes); and
 - 2.3.17 not promise or imply to any prospective student anything that is contrary to the ANU's policy concerning refunds of fees.
3. The ANU undertakes to notify SBU of any changes to the Code and the parties agree to amend this Schedule from time to time to include such of those changes which are, in the ANU's opinion, relevant to this Agreement, with which SBU shall comply.
4. In order to safeguard the ANU's academic standards, and to ensure that international students are able to benefit fully from its academic programs, the ANU requires all prospective students to satisfy similar admission requirements to those expected of Australian prospective students, and to demonstrate adequate English language ability (both spoken and written). Accordingly, SBU acknowledges and agrees that:
- 4.1 the ANU's published admission requirements are non-negotiable, and SBU must not use its position to promise special consideration to any prospective student;
 - 4.2 the final decision whether to admit a prospective student is the ANU's decision alone, and no person can be guaranteed admission;
 - 4.3 it is SBU's responsibility to advise prospective students honestly if they do not meet the ANU's admission standards, and SBU must not accept an application from them if they do not; and
 - 4.4 it has no authority whatsoever to commit the ANU to accepting any prospective student who does not meet the ANU's admission requirements.

For the purposes of this Agreement:

Code means the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students, established pursuant to Part 4 of the *Education Services for Overseas Students Act 2000*, as amended from time to time; and

prospective student means a person who seeks to apply to become a student of the ANU.

Executed as an Agreement:

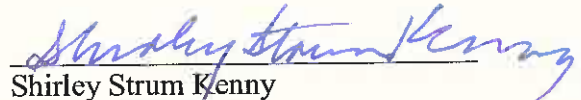
For and on behalf of The Australian
National University



Professor Malcolm Gillies
Deputy Vice-Chancellor (Education)

Date: 15 August 2006

For the State University of New York
at Stony Brook



Shirley Strum Kenny
President

Date: 9/26/06