

Details

Date 17 May 2012

Parties

The Australian National University ("ANU")

Australian National University Student Media ("Student Association")

Background

- A The ANU wishes to provide financial support to student organisations providing services and amenities to students of the ANU.
- B The ANU and the Student Association wish to cooperate in good faith to ensure that all requirements of law applying to the Funds are fulfilled and that the application of the Funds result in benefits to students.
- C The Student Association is a student organisation and accepts the Funds on the terms and conditions of this Agreement.

Agreed Terms

1. Duration of Agreement

This Agreement begins on the Commencement Date and continues for three years unless terminated in accordance with clause 16.

2. Funds

- 2.1 On or around the commencement of this Agreement and no later than 30 September for the subsequent calendar year for which this Agreement is in operation, the Student Association will submit to the ANU a written request for annual funding in the form required by the ANU.
- 2.2 The ANU will enter into good faith consultation with the Student Association on the funding request and will, at its discretion, and in accordance with Law, after such consultation determine:
 - (a) the amount of funding to be allocated to the Student Association for that year; and
 - (b) the Budget which will guide the expenditure of Funding; and
 - (c) any conditions that may be applied by the ANU to the grant of the funding.

- 2.3 Subject to this clause and the Student Association complying with this Agreement, the ANU will pay the Funds to the Student Association in twice yearly instalments in accordance with the funding approved by ANU for the relevant period.
- 2.4 The first instalment will constitute 70% of the funding for the year and the second instalment will constitute 30% of the funding for the year and (subject to the requirements of this Agreement having been met) will be paid by ANU within 14 days after the Semester 1 census date (31 March) and 14 days after the Semester 2 census date (31 August), upon receipt of a correctly rendered invoice.
- 2.5 The ANU is not obliged to make any payment of the Funds if the ANU has reasonable grounds for considering that the Student Association will not be able to ensure the Funds are applied in accordance with the requirements of this Agreement.
- 2.6 The ANU is not required to provide additional money to meet any expenditure in excess of the Budget.
- 2.7 The ANU may suspend payment of the Funds (or any part of the Funds) if:
- (a) the Student Association has not provided a sufficiently accurate and complete Report due to be provided before the date for payment, until the Report (to the required standard) is provided;
 - or
 - (b) the Student Association has spent the Funds otherwise than in accordance with this Agreement.
- 2.8 Without limiting any other right or remedy of the ANU, the ANU may reduce the amount of any instalment of the Funds:
- (a) if by the date for payment of the instalment the Student Association has not spent, or committed Funds previously paid to the Student Association, by the amount that has not been spent or committed; or
 - (b) if, in the Funds have been spent other than in accordance with this Agreement, by the amount that was spent other than in accordance with this Agreement.
- 2.9 Despite any suspension under clause 2.7 or reduction under clause 2.8, the Student Association must continue to perform its obligations under this Agreement.
- 2.10 The Student Association must provide a correctly rendered tax invoice to the ANU for the Funds.
- 2.11 The Student Association must pay all:
- (a) stamp duty (including penalties and interest) assessed or payable in respect of this Agreement and its use of the Funds; and
 - (b) subject to clause 14, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.

3. Use of Funds

- 3.1 The Student Association must ensure the Funds are only spent in accordance with clause 3.2 and 3.3, taking into account the agreed Budget as the preferred pattern of expenditure.
- 3.2 Notwithstanding anything else in this Agreement, or any Budget approved by the ANU, the Student Association must not use the Funds:
- (a) directly or indirectly, to support a political party; or
 - (b) directly or indirectly, to support, the election of a person as a member of a Commonwealth or state or territory parliament, or as a member of a local government body; or

- (c) for a purpose other than a purpose described in clause 3.3.
- 3.3 Subject to this Agreement, and as guided by the Budget, the Funds may be used for the following purposes:
- (a) providing food or drink to students on an ANU campus;
 - (b) supporting a sporting or other recreational activity by students;
 - (c) supporting the administration of an association most of whose members are students;
 - (d) caring for children of students;
 - (e) providing legal services to students;
 - (f) promoting the health or welfare of students;
 - (g) helping students secure accommodation;
 - (h) helping students obtain employment or advice on careers;
 - (i) helping students with their financial affairs;
 - (j) helping students obtain insurance against personal accidents;
 - (k) supporting debating by students;
 - (l) providing libraries and reading rooms (other than those provided for academic purposes) for students;
 - (m) supporting an artistic activity by students;
 - (n) supporting the production and dissemination to students of media whose content is provided by students;
 - (o) helping students develop skills for study, by means other than undertaking courses of study in which they are enrolled;
 - (p) advising on matters arising under the Australian National University Act 1991, the ANU's statutes, rules or policies;
 - (q) advocating students' interests in matters arising under the Australian National University Act 1991, ANU's statutes, rules or policies;
 - (r) giving students information to help them in their orientation; and
 - (s) helping meet the specific needs of overseas students relating to their welfare, accommodation or employment.
- 3.4 ANU may by notice in writing notify the Student Association of changes in permitted uses of the Funds, if necessary to comply with any change in Law affecting permitted categories of expenditure.
- 3.5 The ANU may by Notice direct the Student Association not to spend Funds if the Student Association has not completed a Report that was due before the date of notification or if the Student Association is otherwise in breach of this Agreement.
- 3.6 The Student Association must not spend any Funds after it receives notice from the ANU under subclause 3.5 unless and until the ANU notifies the Student Association otherwise.

4. Bank account

- 4.1 The Student Association must:
- (a) ensure that Funds paid to the Student Association are held in an account in the Student Association's name, and which the Student Association solely controls, with an authorised deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia, which is solely used for receipt of the Funds and interest (the **Account**).
 - (b) notify the ANU, prior to the receipt of any Funds, of details sufficient to identify the Account;
 - (c) on notification from the ANU, provide the ANU and the authorised deposit-taking institution with an authority for the ANU to obtain any details relating to the use of the Account; and
 - (d) if the Account changes, promptly notify the ANU, providing the ANU with details of the new account, and comply with clause 4(c) in respect of the new account.

5. Repayment and Surplus

- 5.1 During or after the Agreement Period, the ANU is entitled to recover from the Student Association any Funds which have been spent other than in accordance with clause 3 of this Agreement (including any interest earned by the Student Association).
- 5.2 The ANU may give the Student Association a notice requiring the Student Association to repay to the ANU an amount which the ANU is entitled to recover under this clause and the Student Association must repay the amount specified within 30 days of the notice.
- 5.3 If any Funds remain unexpended or have not been legally committed at the end of a Budget period, the unexpended or uncommitted amount shall be counted by the ANU as available funding in setting the Budget for the subsequent Budget period.
- 5.4 If any Funds remain unexpended or have not been legally committed at the end of the Agreement Period, the unexpended or uncommitted amount may be taken into account by ANU in any funding provided to the Student Association under future funding agreements.

6. Student Associations Committee

- 6.1 The ANU maintains a Student Associations Committee (or equivalent) and will notify the Student Association of the time, location and agenda of meetings of the committee and provide relevant papers to the Student Association.
- 6.2 The Student Associations Committee provides advice to the Vice Chancellor of the ANU through the chair of the Committee, and operates in accordance with terms of reference determined from time to time by the ANU, after consultation with student associations.
- 6.3 The ANU will call meetings of the Student Associations Committee no less frequently than four times annually.
- 6.4 The Student Association will ensure it is appropriately represented by its senior officers at meetings of the Student Associations Committee.
- 6.5 The following officers of the Student Association are entitled to attend meetings of the Student Associations Committee:
 - (a) the President or Chair of the Student Association (or in his or her absence, the Vice President); and
 - (b) the Treasurer of the Student Association; and
 - (c) the person performing the duties of a general manager (where the Student Association has such an officer).

7. Governance

- 7.1 The Student Association will ensure that at all times that it holds any Funds under this Agreement that it maintains proper governance arrangements of the Association as required by law and its articles of incorporation and to ensure the Association is able to discharge its obligations under this Agreement, including that Funds are only used as permitted by law and this Agreement.
- 7.2 The Association must ensure that any election for any position in the governance of the Association is conducted in accordance with its articles of incorporation, and that any such election is carried out in a manner that is free and fair.
- 7.3 The Association must immediately report to the University any material change in its governance arrangements that may affect its ability to perform this agreement, including any resignation of an office bearer or any change in office bearers.

8. Reports

- 8.1 The Student Association must provide the Reports required by this clause to the ANU at the times, in the format and containing the information (including financial information) required by the ANU from time to time.
- 8.2 No later than 15 July and 15 January in any year during the Agreement Period, the Student Association must provide to the ANU an updated, comprehensive and detailed acquittal of expenditures incurred by the Student Association in the previous six month period as against the Budget and the permitted categories of expenditure set out in clause 3 of this Agreement.
- 8.3 During the Agreement Period and for 12 months afterwards, the Student Association must provide a copy of each audited Annual Report prepared by the Student Association as soon as practicable after the Annual Report is completed and in any case no later than 30 April each year.
- 8.4 The Student Association must make all Reports submitted to the ANU available to its members and the public via a dedicated web page maintained on the Student Association website which is accessible via a direct link on the front page of the Student Association website.
- 8.5 If any of the Reports provided to the ANU under this clause are not provided within the time required, or the ANU considers the Report to be unsatisfactory, the ANU may, without limiting any of its other rights under this Agreement or at Law:
 - (a) require the Student Association to correct any shortcomings and errors in the Report; and
 - (b) reduce, suspend or terminate the Funds or require the Student Association to repay to ANU all or part of the Funds received by the Student Association under this Agreement.

9. Books and records

- 9.1 The Student Association must (at its own cost):
 - (a) keep adequate books and records which identify the receipt and expenditure of the Funds separately within the Student Association's accounting records so that at all times the Funds are identifiable and ascertainable; and
 - (b) keep adequate books and records, in accordance with Australian Accounting Standards, in sufficient detail to enable all receipts and payments related to the Funds to be identified and reported in accordance with this Agreement; and retain and require its subcontractors to retain for a period of seven years after the expiry or termination of this Agreement, all books and records relating to the Funds.

9.2 This clause 9 applies for the Agreement Period and for a period of seven years thereafter.

10. Audit

- 10.1 The Student Association must ensure that its accounts are audited in accordance with applicable legislation governing the auditing of its financial records.
- 10.2 The Student Association must ensure that its terms of engagement of any auditor include certification that the Funds have been expended in accordance with this Contract..
- 10.3 The Student Association will ensure that ANU is provided with a copy of the auditor's report including certification provided in accordance with clause 10.2 at the time it submits its audited annual report to the ANU.

11. Indemnity

- 11.1 The Student Association indemnifies the ANU, its officers and employees (referred to in this clause 11 as "those indemnified") from and against any loss or liability (including costs and expenses including the costs of defending or settling any claim referred to in this clause) arising out of or as a consequence of any breach of this Agreement by the Student Association, or negligence on the part of the Student Association, its Personnel or subcontractors or wrongful or unlawful act or omission on the part of the Student Association, its Personnel or subcontractors in connection with this Agreement.
- 11.2 The Student Association's liability to indemnify those indemnified under clause 11.1 will be reduced proportionally to the extent that any negligent act or omission of those indemnified contributed to the loss.

12. Insurance

- 12.1 During the Agreement Period, the Student Association must have and maintain:
- (a) Workers' compensation insurance for an amount required by the relevant State or Territory legislation;
 - (b) Public liability insurance for \$10,000,000 (ten million dollars) or more per claim; and
 - (c) Professional indemnity insurance for \$1,000,000 (one million dollars) or more per claim.
- 12.2 Certificates of currency
- The Student Association must, on request by the ANU, provide current relevant confirmation of insurance documentation from its insurers or insurance brokers certifying that it has insurance as required by clause 12.1.

13. Publicity

- 13.1 The ANU reserves the right to publicise and report on the awarding of the Funds, and may do this by, amongst other means, including the Student Association's name, the amount of the Funds and the use of the Funds, in media releases, general announcements, annual reports, and on the ANU website.
- 13.2 The Student Association grants the ANU a perpetual, irrevocable, world-wide, non-exclusive, royalty free licence (including the right to sub-licence) over copyright in the Reports to use or publish the Reports (or any part of them) for the purposes of this Agreement, compliance with Law, or reporting to the government or for the purposes of this clause.

14. GST

- 14.1 In this clause, words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law.
- 14.2 Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are inclusive of GST.

15. Dispute resolution

- 15.1 If a dispute arises in relation to the conduct of this Agreement (Dispute), a party must comply with this clause before starting court proceedings except proceedings for urgent interlocutory relief. Nothing in this clause affects a parties rights under clause 16
- 15.2 A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.
- 15.3 During the 14 days after a notice is given under clause 15.2 (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts to resolve the Dispute by negotiation between the parties.
- 15.4 If a Dispute is not resolved under clause 15.3 within 14 days, either party may refer the Dispute for mediation by the Australian Commercial Dispute Centre Limited ('ACDC') for resolution in accordance with the Mediation Rules of the ACDC.

16. Termination

- 16.1 The ANU may terminate this Agreement by providing 60 days written notice of termination to the Student Association with termination taking effect at the expiry of the notice period.
- 16.2 Without limiting any other rights or remedies the ANU may have against the Student Association arising out of or in connection with this Agreement, the ANU may terminate this Agreement effective immediately by giving notice to the Student Association if:
- (a) the Student Association breaches a material provision of this Agreement where that breach is not capable of remedy;
 - (b) the Student Association breaches any provision of this Agreement and fails to remedy the breach within 14 days after receiving notice requiring it to do so;
 - (c) if the Student Association has spent any Funds other than as permitted by this Agreement;
 - (d) if any statement made in the Student Association's submission for funding (if any) is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the provision of the Funds; or
 - (e) an event specified in clause 16.3 happens.

- 16.3 The Student Association must notify the ANU immediately if :
- (a) the Student Association ceases to be able to pay its debts as they become due;
 - (b) proceedings are initiated with a view to obtaining an order for the winding up of the Student Association, or any person convenes a meeting for the purpose of considering or passing any resolution for the winding up of the Student Association;
 - (c) the Student Association applies to come under, the Student Association receives a notice requiring it to show cause why it should not come under, an order has been made for the purpose of placing the Student Association under, or the Student Association otherwise comes under one of the forms of external administration referred to in Chapter 5 of the Corporations Act or equivalent provisions in State or Territory legislation in relation to incorporated associations.
- 16.4 Without limiting any of the ANU's other rights or remedies, on termination of this Agreement, the ANU:
- (a) is not obliged to pay to the Student Association any outstanding amount of the Funds, except to the extent that those monies have been legally committed for expenditure by the Student Association in accordance with this Agreement and payable by the Student Association as a current liability (written evidence of which will be required) by the date the Student Association receives the notice of termination; and
 - (b) is entitled to recover from the Student Association:
 - (i) any Funds which have not been spent, or legally committed for expenditure by the Student Association in accordance with this Agreement and payable by the Student Association as a current liability (written evidence of which will be required), by the date the Student Association receives the notice of termination; and
 - (ii) the amount of any Funds which have been spent other than in accordance with this Agreement.
- 16.5 The ANU may give the Student Association a notice requiring the Student Association to repay to the ANU (or deal with as specified by the ANU) an amount which the ANU is entitled to recover under clause 16.4(b) and the Student Association must repay the amount specified in the notice in full (or deal with it as specified by the ANU) within 30 days of the date of the notice.
- 16.6 Termination of this Agreement does not affect any accrued rights or remedies of a party.

17. Notices and other communications

- 17.1 A Notice must be in writing, in English and signed by a person duly authorised by the sender; and hand delivered or sent by prepaid post or facsimile or email transmission to the Student Association's address.
- 17.2 A Notice taken to be received:
- (a) if hand delivered, on delivery;
 - (b) if sent by prepaid post, on the second Business Day after the date of posting;
 - (c) if sent by email, on the day on which the transmission was sent in its entirety;
 - (d) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight business hours after the

transmission, the Student Association informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

18. Miscellaneous

- 18.1 The Student Association must not use any of the Funds as any form of security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest, or for the preparation of, or in the course of any litigation.
- 18.2 Without limiting any other of the ANU's rights or remedies, any amount owned or payable to the ANU (including by way of refund), or which the ANU is entitled to recover from the Student Association, under this Agreement will be recoverable by the ANU as a debt due and payable to the ANU by the Student Association.
- 18.3 The ANU may set-off any money due for payment by the ANU to the Student Association under this Agreement against any money due for payment by the Student Association to the ANU under this Agreement.
- 18.4 Subject to sub-clause 18.5, no agreement or understanding varying or extending this Agreement is legally binding upon either party unless the agreement or understanding is in writing and signed by both parties.
- 18.5 ANU may, by notice in writing to the Student Association, unilaterally vary this Agreement, to give effect to any requirement of Law imposed on the ANU in respect of Funds.
- 18.6 A party may only assign its rights or novate its rights and obligations under this Agreement with the prior written consent of the other party.
- 18.7 This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.
- 18.8 A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.
- 18.9 Waiver of any provision of or right under this Agreement:
 - (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
 - (b) is effective only to the extent set out in any written waiver.

- 18.10 This Agreement does not create a relationship of employment, agency or partnership between the parties. The parties must not represent themselves, and must ensure that their officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.
- 18.11 Clauses 3, 4, 5, 8.3, 8.4, 9, 10, 11, 13.1, 13.2, 15 and 16 survive the expiry or termination of this Agreement and remain in full force and effect.
- 18.12 This Agreement is governed by the law of the Australian Capital Territory and each party irrevocably and unconditionally submits to the non exclusive jurisdiction of the courts of the Australian Capital Territory.

19. Definitions and interpretation

- 19.1 In this Agreement, except where the contrary intention is expressed, the following definitions are used:

Account	the account the Student Association must establish under clause 4.1(a)
Australian Accounting Standards	the standards of that name maintained by the Australian Accounting Standards Board (created by section 226 of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth)) or other accounting standards which are generally accepted and consistently applied in Australia.
Agreed Terms	Clauses 1 to 19 of this Agreement, which set out terms and conditions agreed by the parties.
Agreement	this agreement between the ANU and the Student Association, as varied from time to time in accordance with clause 18.4 or 18.5, and includes its schedules and any attachments.
Agreement Period	the period during which this Agreement is in effect in accordance with clauses 1 and 16.
Annual Report	means a report the Student Association must prepare and provide to the ANU under clause 8.3.
Budget	a budget approved by ANU under clause 2.2.
Business Day	a day that is not a Saturday, Sunday, public holiday, or bank holiday in the place where the act is to be performed or where the Notice is received.
Commencement Date	the date on which this Agreement commences, as specified in item 1 of Schedule 1.
Funds	the amounts payable by the ANU under this Agreement after determination of a Budget by ANU in accordance with clause 2.2.
GST	has the same meaning as in the GST Law.
GST Law	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).

Law	any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the ANU, or a local government, and includes the common law and rules of equity as applicable from time to time.
Notice	a notice, demand, consent, approval or communication issued under this Agreement.
Personnel	in relation to the ANU, any employee, officer, agent, or professional adviser of the ANU, and in the case of the Student Association, employee, officer, agent, representative, member, or professional adviser of either the Student Association.
Reports	the reports to be provided under clause 7.
Schedules	the schedules to this Agreement.

19.2 In this Agreement, except where the context does not permit:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph or schedule is to a clause or paragraph of, or schedule to, this Agreement;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Canberra, Australia time;
- (g) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (k) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (l) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (m) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it;

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- (n) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day;
- (o) headings are for ease of reference only and do not affect interpretation; and
- (p) any words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law.

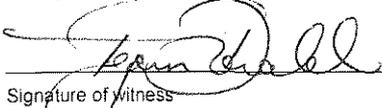
Schedule 1 – Agreement Details

Item number	Description	Clause Reference	Details
1.	Commencement Date	1 and 19	Date that this Agreement is signed by the last executing Party
2.	Address for Notices	17	<p>ANU: Pro Vice Chancellor (Learning Teaching and Students Chancelry Building 10 The Australian National University 0200 ACT Facsimilie: (02) 6125 9614</p> <p>Recipient: ANU Student Media Building 16T, Union Court The Australian National University, 0200, ACT</p>

Signing page

EXECUTED as an agreement.

Signed for and on behalf of the Australian National University by its duly authorised delegate in the presence of

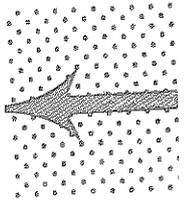

Signature of witness

ROGAN DONALD
Name of witness (print)

←  ←
Signature of delegate

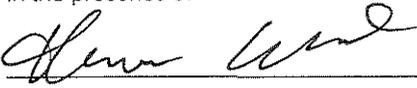
IAN YOUNG
Name of delegate (print)

VICE-CHANCELLOR
Position of delegate (print)



Signed for and on behalf of the Australian National University Student Media

by
in the presence of


Signature of witness

Thomas Westland
Name of witness (print)

←  ←
Signature of Authorised Officer

Angus Minns
Name of Authorised Officer (print)

Editor-in-Chief
Position of Authorised Officer (print)

