



University of Toronto

OFFICE OF THE VICE-PRESIDENT, HUMAN RESOURCES & EQUITY

TO: Business Board
Planning and Budget Committee

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Business Board: for meeting of February 27, 2006

AGENDA ITEM: Business Board item 11

ITEM IDENTIFICATION: Affiliation Agreement between the Governing Council of the University of Toronto and the University of Toronto Schools, July 1, 2006 to June 30, 2021.

JURISDICTIONAL INFORMATION:

Planning and Budget Committee. Section 4.5.2 and 4.6 of the terms of reference of the Planning and Budget Committee make it responsible for agreements with associated organizations. Section 3 of its terms of reference state that the Committee is generally responsible for making recommendations concerning the use of University resources including funds, space and facilities.

Business Board. The Business Board is responsible for several matters that would arise in the implementation of the proposal including: financial arrangements that require the balancing of revenue and expense, in this case, the grant of a line of credit (terms of reference section 5.1.b); arrangements for the non-University use of University property (terms of reference section 5.3.b); designation and termination of designation as ancillary operations (terms of reference 5.4); and human-resource matters (terms of reference, section 5.9 and 5.10).

PREVIOUS ACTION TAKEN:

An Interim Affiliation Agreement, between the University and UTS for the period January 1, 2004 to April 30, 2006, was approved by Governing Council in 2003.

Article 14 of the Interim Affiliation Agreement, states:

14.01 The intent of each party hereto is to use the Interim Period to negotiate and enter into a longer term renewable agreement respecting the academic and administrative affiliation between them

14.02 During the Interim Period, each party hereto shall (i) fully evaluate the contribution UTS has and can offer to the performance of the University's mission; (ii) negotiate and fully define the post-Interim Period academic and administrative affiliation between them; (iii) draft a plan for the in-house transition of services (or the cost of such services) then provided by the University to UTS; and (iv) negotiate a long term renewable agreement by which both the University and UTS are enriched by a shared vision.

14.03 After the Interim Period, UTS shall become self-funding, relying on revenues it generates (including fees or grants it may receive from the University in consideration of UTS' contribution to the University's mission).

The Affiliation Agreement being considered today is consistent with the principles noted above.

HIGHLIGHTS:

Background

The University of Toronto Schools has a rich and long history. UTS began, some 94 years ago, as a practice school linked to the Faculty of Education. While the strength of the academic and programmatic linkages between UTS and the University has varied over time, a strong relationship between the two institutions has been maintained through its joint graduates, many of whom have held leadership positions within the University. As was noted at the time of the approval of the Interim Affiliation Agreement, both UTS and the University have viewed – and continue to view- the potential of an ongoing relationship, albeit to be changed from the status quo, to be in both parties' interest.

Shortly after approval of the Interim Agreement, Vice-President Angela Hildyard was asked to lead a University team in negotiating a long term affiliation agreement with UTS. The negotiating committee has included Cathy Riggall (Vice-President, Business Affairs), Pierre Piche (Controller), Tad Brown (Legal Counsel, Finance and Development), Steve Moate (Legal Counsel to the Office of the Vice-President and Provost and the Office of the Vice-President, Human Resources & Equity), and, for academic relationship matters, Professor Dennis Thiessen, OISE/UT (representing Dean Jane Gaskell).

Key Terms

Notwithstanding a long and productive past relationship between the University (particularly the former Faculty of Education) and UTS, academic linkages between the two institutions are currently limited. Accordingly, the University and UTS are both committed to continuing to explore future academic relationships. However, the University approached these negotiations with a goal of achieving an agreement that would optimize the long term viability of UTS as a fully self-sufficient school that will no longer be dependent upon the University for ongoing financial or in-kind support regardless of whether or not academic relationships are strengthened.

In our discussions with UTS, three key issues surfaced: firstly, financial self sufficiency for UTS will require significant fee increases which, while feasible for new students, are problematic for current students; this issue also creates tensions vis-à-vis UTS' stated mission of maintaining accessibility; secondly, as the school moves to financial self sufficiency, it will face significant cash flow problems; and thirdly, as fees rise, ensuring that the school has some guarantee of appropriate long term accommodation will become increasingly important to parents.

With respect to the financial issues, the University undertook its own analysis of the financial projections prepared by UTS and we agreed that there will be operating deficits in the first few years as UTS introduces fee increases, establishes its own fundraising capability and recruits a principal who can define a vision for the future of the school. Therefore, the University negotiating team structured a proposal that provides financial support when it is needed; establishes the school on a financial model that clarifies the actual operating costs of the school and provides explicit subsidies and an operating line of credit; and sets a repayment schedule that is reasonable and encourages the school to achieve financial self sufficiency.

With respect to the issue of physical location and continued use of 371 Bloor Street West, the University has proposed a long term license for the use of the current space. However, the proposed agreement also includes a commitment to explore a redevelopment of that site that would accommodate University needs, including those of OISE/UT, as well as the future needs of UTS. There is a clear understanding that any such redevelopment plan will be subject to the normal approval processes within the University.

With respect to staff , Clause 5.01 of the Interim Agreement states:

All employees employed at UTS as of the day before the incorporation of UTS and who through the continuance of collective agreement coverage or through the acceptance of an offer of employment with UTS continue in employment with UTS will be employees of UTS and not the University.

For clarity, the current terms and conditions of employment of UTS teachers have been negotiated between OSSTF and UTS. UTS is engaged in discussions with the United Steelworkers regarding the terms and conditions of USW employees who were hired after January 2004. Employees hired pre January 2004 who are members of the United Steel Workers will be transferred to UTS in accordance with the sale of business provisions of the Ontario Labour Relations Act and in consultation with the Union. This new agreement, however, provides for a small number of administrative employees who were formerly employees of the University to continue membership in the Pension Plan and certain benefit plans.

Finally, the financial and capital commitments of the University have been structured so as to maximize the probability that UTS will succeed as a self sufficient entity. However, we must be mindful of the fact that UTS is a small business, subject to the vagaries of the market and a client base that will always have other options. Therefore, the agreement makes it clear that in the event UTS is not viable in the long term, the University will not be financially responsible for its students, its staff or any debts it has incurred.

Appendix 1 includes a detailed Term Sheet that outlines the provisions of the legal document.

FINANCIAL AND/OR PLANNING IMPLICATIONS:

1. ASSETS

- a. The University will transfer to UTS (or to a Charitable Foundation established by UTS) the financial assets it currently holds on behalf of UTS, including endowed and expendable funds, some physical assets and cash on hand. Transfer of endowed and expendable funds will be subject to court approval. If UTS ceases operation, these assets will revert to the University subject to court approval.

The use of these assets is currently restricted to UTS and therefore their transfer has no financial or planning implication

2. OPERATING COSTS/OPERATING SUBSIDY

- a. The University will pay UTS four annual payments in the amount of \$1.5m, starting July 1, 2006.
- b. Effective July 1, 2006, UTS will be required to pay an annual fee of \$615,000 per annum for a license for the use of specified portions of 371 Bloor Street West

- c. Effective July 1, 2006, UTS will pay the University for its share of utilities (hydro, gas, water) at market rates; for cleaning and maintenance at a set rate per nasm, to be increased annually by CPI; and for human resource and technology support at set rates.

Although the University is proposing to provide UTS with a \$6m subsidy, the requirement that UTS now pay for a license for the use the space, for the cost of utilities, maintenance and so on, results in a break even situation for the University within 6 years, even taking into account one time only costs to be covered by the University. The maximum estimated net cost to the budget in any year is \$443,000.

3. LINE OF CREDIT

- a. The University will provide up to \$4m as a line of credit at the rate of prime plus one half. The maximum amount of the loan that can be drawn in any year is \$1m; no amounts can be drawn after 2012; the loan must be fully re-paid by 2016.

The provision of this line of credit will have no significant impact on the University's ongoing operations.

4. REDEVELOPMENT OF 371 BLOOR STREET SITE

- a. The agreement contemplates the exploration of the possibility of a proposal for joint re-development of 371 Bloor Street West to meet the academic needs of the University as well as current and future needs of UTS. Any proposal for redevelopment will be prepared in accordance with normal University practice and policy and will be subject to our normal approval processes. It is understood, however, that the University will provide UTS with the opportunity to acquire some form of long term interest in the property if a redevelopment is approved.
- b. The agreement provides UTS with an opportunity to submit its plan for the redevelopment of that site in the event there is no joint submission, or the joint submission not approved. However, while the University must consider any such proposal in good faith, there is no obligation to approve it.
- c. In the event no redevelopment of any kind is approved by 2011, the University agrees to revisit the question of the remaining length of the license.

Any redevelopment of 371 Bloor Street West must be approved in full accordance with University policy; therefore, the financial and planning implications of a redevelopment will be considered as part of the approval process at that time.

RECOMMENDATION:

Planning and Budget Committee. It is recommended that the Committee recommend for approval:

- (a) THAT the Interim Agreement between the University and the University of Toronto Schools be extended from April 30, 2006 to June 30, 2006
- (b) THAT the Vice-President, Human Resources and Equity be given authority to execute an Affiliation Agreement between the Governing Council of the University of Toronto and the University of Toronto Schools, for the period July 1, 2006 to June 30, 2021, that is essentially in accordance with the principles and terms outlined in the Term Sheet (Appendix 1).

Business Board. It is recommended:

- (a) With respect to the financial and property and human-resource arrangements,

THAT the Business Board concur with the prospective recommendation of the Academic Board

THAT the Vice-President, Human Resources and Equity be given authority to execute an Affiliation Agreement between the Governing Council of the University of Toronto and the University of Toronto Schools, for the period July 1, 2006 to June 30, 2021, that is essentially in accordance with the principles and terms outlined in the Term Sheet (Appendix 1).
- (b) THAT, upon execution of an Affiliation Agreement between the Governing Council of the University of Toronto and the University of Toronto Schools, for the period July 1, 2006 to June 30, 2021 (as above), the University of Toronto Schools cease to be designated as an ancillary operation of the University of Toronto.

TERM SHEET

Affiliation Agreement Between The Governing Council of the University of Toronto and the University of Toronto Schools - Summary of Key Terms.

- 1. Term:** the term is from July 1, 2006 to June 30, 2021. Any decision as to whether or not to renew the term by mutual agreement must be made by December 31, 2014.
- 2. Academic Affiliation Activities:** to facilitate the achievement by UTS of its educational objects within the University community a “Joint Academic Affiliation Activities Committee” is established. The University is not bound to undertake any particular activities, but the Committee provides a forum for exploration of mutually beneficial areas of cooperation.
- 3. UTS Name, Marks, etc:** The University retains the property in the UTS name and all trade marks, etc. It licenses them to UTS on a royalty-free basis during the term of the Agreement.
- 4. Transfer of Assets:** the financial assets that the University currently holds on behalf of UTS (endowed bursary funds, other endowed funds, expendable building funds and certain other expendable funds) as well as some physical assets (furniture and equipment) and cash on hand are transferred to UTS on Closing or as soon thereafter as legally permitted. In the case of the endowed and expendable funds the transfer is subject to court approval to ensure that the terms of any of the endowments are respected. UTS (or a charitable foundation it sets up) must use its best efforts have its charitable status fully in place by Closing. If UTS ceases operations or fundamentally alters the nature of its business the assets revert to the University, subject to court approval.
- 5. Advancement:** Effective July 1, 2006, UTS is responsible for its own advancement activities, which it may undertake on an unrestricted basis.
- 6. Employee Issues:** as of July 1, 2006 UTS employees no longer have access to University pension and benefit plans or certain other benefits. A few UTS employees who were long service University employees are grandparented. Note that the OSSTF-represented employees are currently, and have been since January 1, 2004, directly employed by UTS. All post- January 1, 2004 new hires into the USW unit are UTS employees. Pre- January 1, 2004 hires in the USW group (a very small number) will be transferred to UTS in accordance with the collective agreement and the sale of a business provisions of the *Ontario Labour Relations Act* and in consultation with the union.
- 7. License for use of 371 Bloor West:** UTS is granted a 15 year license for the use of specified portions of 371 Bloor (essentially what the School is using now). UTS pays an annual fee of \$615,000 for the license.

8. License for use of Roberts Street Field: UTS is granted a 15 year non-exclusive license to use the Robert Street field, for the sum of \$1. The University can terminate the license on reasonable notice, in which case it must endeavour to make reasonable alternate playing fields available. These arrangements essentially replicate the status quo. If the 371 Bloor St. W. license is extended, so may be the Robert Street field license.

9. University Facilities and Services: UTS continues to be able to access certain University services (library and athletic facilities) on the same terms and on the same rates as University staff and students have access. For one year the University provides transitional access to its AMS systems.

10. Operating Costs: UTS pays the University for cleaning and maintenance at a set rate per net assignable per square metre. It pays for utilities (hydro, gas, water) for the portion of space that it uses at market rates. It may purchase certain additional services (HR and OISE/UT Education Commons support up to specific limits) at a specified hourly rate.

11. Subsidies: the University grants a subsidy of \$6 million, paid in four equal annual installments starting on July 2, 2006 to be used over the course of the agreement to defray license fee and operating costs.

12. Revolving Line of Credit: the University grants UTS a \$4 million revolving line of credit at the rate of prime plus one half. The availability of this line of credit declines from June 30, 2013 to June 30, 2016 at which time it must be paid off. While the loan is outstanding UTS provides a financial plan to the University, together with quarterly operating statements. UTS provides a general security interest in favour of the University. Various events of default are listed, as they would be with a commercial loan.

13. Site Redevelopment: because of OISE/UT's interest in exploring the redevelopment of 371 Bloor Street W. for its own uses, and because of UTS' desire to redevelop part of the site for the School, a committee is to be struck to see if the parties can agree to submit to University governance a "Joint Proposal" for redevelopment. The University retains complete discretion as to whether to submit such a Joint Proposal to governance. The development of the Joint Proposal and its content if submitted are entirely governed by the existing University policy for the development of and approval of capital projects. The University will assume reasonable costs for UTS' planning costs for such a proposal, but such costs may be included in the final proposal submitted for governance approval. The development process is to last approximately 24 months, If, in its complete discretion, the University decides to submit a Joint Proposal for governance approval, it must ensure that what it presents gives UTS the opportunity to acquire some form of property interest (such as a long term lease or a condominium title) in the redeveloped site relating to the space that it will occupy and use.

If no Joint Proposal is submitted, or it is declined by either University or UTS governance, UTS has the ability to develop its own redevelopment proposal that must meet strict criteria. The University is not bound to accept such proposal, but it shall consider it in good faith. All of the normal University capital projects policy controls apply.

If by July 1, 2011 no redevelopment proposal of either kind has been approved, the University is to review the License to determine if it may be extended beyond June 30, 2021.

14. Transitional items: the University continues to pay for certain costs incurred prior to the setting up of UTS as a separate entity (some costs for a small number of employees and some costs for student accommodation issues).

15. Insurance: UTS is responsible for maintaining its own insurance, naming the University as a named insured, at a \$20 million per occurrence level.

16. Indemnities: the University indemnifies UTS for claims arising or having their basis prior to July 1, 2006 (UTS must provide a schedule of known or potential claims). UTS indemnifies the University for claims having their basis after that date. The University indemnifies UTS for actions of its personnel or persons acting on its behalf (cleaning, maintenance, police, fire and emergency personnel).

17. Dispute Resolution: disputes are to be resolved by non-binding mediation.

18. Termination: upon termination of the Agreement for any reason, whether default on the loan, expiry of the term without renewal, or any other reason, UTS agrees that the University has no liability whatsoever for obligations of UTS to its students or employees. Details of various events triggering termination are listed. Before taking steps that might result in wind-up UTS must advise the University.

19. Membership on UTS Board: UTS By Laws are to be revised in order to replace the two U of T Directors with Non-Affiliated Directors. The University will have Observer status on the Board.