

**INTERIM AFFILIATION,
SERVICES AND
PREMISES AGREEMENT**

BETWEEN

**THE GOVERNING COUNCIL OF
THE UNIVERSITY OF TORONTO**

AND

UNIVERSITY OF TORONTO SCHOOLS

As of January 1, 2004



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THIS INTERIM AGREEMENT made as of the 1st day of January, 2004

B E T W E E N:

**THE GOVERNING COUNCIL OF THE UNIVERSITY OF
TORONTO**

(hereinafter called the "**University**")

OF THE FIRST PART

- and -

UNIVERSITY OF TORONTO SCHOOLS

(hereinafter called "**UTS**")

OF THE SECOND PART

WHEREAS UTS began operation in 1910 as a "practice school" connected with the academic education of teachers at the University;

AND WHEREAS since 1996, when the Faculty of Education and the Ontario Institute for Studies in Education merged to form OISE/UT, UTS has been operated as a unit of OISE/UT;

AND WHEREAS prior to 1994, UTS was funded by a grant from the Province of Ontario;

AND WHEREAS since 1994, UTS has been funded through student enrollment fees and substantial direct and indirect financial support provided by the University and OISE/UT;

AND WHEREAS through a multi-part consultation process with UTS stakeholders, including parents, alumni, staff, students, the University and OISE/UT, UTS has been continued as a non-profit corporation affiliated with the University but governed by its own board of directors;

AND WHEREAS pursuant to such consultation process and the approval of the Governing Council of the University of Toronto, UTS has been incorporated as a corporation without share capital under the Corporations Act of Ontario by Letters Patent dated the date hereof;

AND WHEREAS this Agreement is intended to provide a period of time that will: (i) allow the University to fully evaluate the contribution UTS has and can offer to the performance of the University's mission; (ii) allow sufficient time to fully define the post-interim period academic and administrative affiliation between UTS and the University; (iii) allow UTS time to draft and begin the implementation of a plan for the in-house transition of services currently provided to UTS by the University; and (iv) be adequate for the University and UTS to negotiate long-term renewable agreement by which both the University and UTS are enriched by a shared vision;

AND WHEREAS during the Interim Period (as defined herein) the University shall continue to provide, on the same terms and conditions, substantially the same services, support and subsidization to and of UTS that were provided prior to the date hereof.

NOW THEREFORE in consideration of the promises and the mutual covenants herein contained, and for other good and valuable consideration, the parties hereto agree as follows:

ARTICLE 1 - General

1.01 The University confirms its acceptance of the provisions of the Letters Patent and By-Laws of UTS as the bases for the internal governance of UTS, including, without limiting the generality of the foregoing, the procedures set out therein for the amendment of such documents.

1.02 The President of the University, or his or her designate, is hereby designated as the University officer who will be primarily responsible on behalf of the University for all matters relating to the relationship between the University and UTS,

and the Chair of the UTS board of directors, or his or her designate, is designated as the UTS officer who will be primarily responsible on behalf of UTS for all such matters.

1.03 This Interim Agreement governs matters between the parties concerning academic affiliation, licensing of space and provision of services that comprise the existing functional relationship between UTS and the University. This Interim Agreement, effective from January 1, 2004 until April 30, 2006 (the “**Interim Period**”) or earlier if a superseding long-term agreement is executed by the parties hereto, is intended to describe the current status of said relationship between the parties and to ensure its preservation during the Interim Period.

1.04 Nothing herein shall be construed so as to constitute the relationship between the University and UTS as a partnership, co-tenancy, joint venture, agency, or any other similar arrangement.

1.05 For greater certainty, unless a particular provision herein is explicitly stated to apply beyond the termination of this Agreement, all provisions and agreements herein shall be of no force or effect upon the termination of this Agreement.

ARTICLE 2 - Direct Financial Support from OISE/UT

2.01 During the Interim Period, OISE/UT shall continue to provide UTS with direct financial support in the amount of \$216,326 per fiscal year through the termination of the Interim Period.

ARTICLE 3 - Financial Services

3.01 The University has established new ledger accounts in its financial information system for UTS and will continue to maintain all such necessary accounts and will continue to provide UTS with access to the "Administrative Management System" system which provides detailed statements of transactions relating to such ledger accounts. The University will provide such services (i) for so long as UTS desires

during the term hereof, and (ii) in accordance with the University's standard policies for providing such services to any other University department or unit.

3.02 The University will continue to provide various financial administrative services on the same basis as before the Interim Period, including without limitation: processing of payroll forms and issuance of University cheques or direct deposits for payment of salary to staff, issuance of University cheques, drafts or wires for payment to UTS suppliers for goods and services, as requested.

3.03 The University will continue to provide petty cash to UTS from a UTS account and UTS will continue to process the petty cash reimbursements.

3.04 The University will continue to provide an imprest bank account and UTS will continue to process the imprest account reimbursements.

3.05 The University will assist UTS in the preparation of annual financial statements and will assist auditors of UTS, as requested by UTS from time to time. All costs and expenses of UTS' auditors shall be paid by UTS.

3.06 As a condition of using the University's financial system, UTS shall comply with the University's financial policies and procedures in effect and communicated in writing to UTS from time to time.

3.07 In the case of each of the services provided pursuant to this Article 3, such services shall be provided on the same basis as is customary for other University affiliates and ancillary corporations.

3.08 Each of the services provided by the University pursuant to this Article 3 (excluding clause 3.05) shall be provided at no cost to UTS.

3.09 The University will pay interest on positive cash balances in accounts held on behalf of UTS equal to the 90 day Treasury bill rate and will charge interest on negative cash balances equal to the 90 day Treasury bill rate plus 25 basis points. This rate is subject to change from time to time and upon reasonable notice to UTS.

ARTICLE 4 - Environmental, Health and Safety Consultation Services

4.01 The University will continue to provide environmental, health and safety consultation services to UTS, as requested by UTS from time to time, and on the same basis as is customary for other University academic units, affiliates and ancillary corporations.

ARTICLE 5 - Human Resources

5.01 All employees employed at UTS as of the day before the incorporation of UTS and who through 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.

5.02 In the case of unionized employees, any collective agreements and bargaining rights will be assumed by UTS pursuant to the Ontario *Labour Relations Act* (Ontario). Thus, compensation and benefits contained in collective agreements will continue during the term of the collective agreement.

5.03 In the case of non-union employees, employment with UTS after incorporation will be on substantially similar terms and conditions of employment as enjoyed prior to UTS' incorporation.

5.04 During the Interim Period access to the University of Toronto libraries will continue for UTS employees on the same basis as is currently enjoyed.

5.05 During the Interim Period all UTS employees who were employed as of the day before the incorporation of the new UTS and who become employees of UTS will have access to the University for internal job postings, and for layoff and termination rights (such as, in the case of staff covered by the USWA agreement, the redeployment pool).

5.06 During the Interim Period UTS will work in good faith to resolve transitional issues with employees and/or their representatives.

5.07 No employee on the staff of UTS at the date of incorporation will lose employment as a direct result of the incorporation of UTS for the duration of the Interim Period.

5.08 Through the Interim Period, the University and OISE/UT will continue to offer UTS, at no additional cost, the full range of human resources and labour relations services provided prior to UTS' incorporation, including but not limited to human resources advice and administration, labour relations advice and negotiations, payroll and benefits administration, health and wellness services, occupational health services, and pension services.

5.09 UTS will continue to reimburse the University at the then current standard benefit rate for the costs of benefits provided by the University to UTS employees.

5.10 Notwithstanding clause 5.01 the University may, by agreement with any of the unions, retain the bargaining unit employees as University employees, and to arrange for the provision of the services of such employees to UTS during the Interim Period.

ARTICLE 6 - Premises Licence and Related Services

6.01 The University hereby grants a license to UTS for the Interim Period and on the terms and conditions set out below for the continued use of all space previously assigned to UTS under the most recent University space inventory (as identified on Schedule A hereof) (the "**Licensed Premises**") at 371 Bloor Street West in the City of Toronto (the "**Building**") and such common areas in the Building as are required for the efficient use of UTS' space.

6.02 OISE/UT will maintain control over space in the Building currently assigned to it and the University will maintain control (and security) over the entire

Building between 5:00 pm and 7:00 am weekdays and from 5:00 pm Fridays until 7:00 am Mondays.

6.03 Services:

- (a) The University shall maintain the Building and Licenced Premises in material compliance with all municipal, zoning, occupational, environmental, health, fire and safety laws, by-laws and regulation.
- (b) The University will continue to provide UTS, at no cost to UTS: electrical energy, air conditioning, ventilation, heat, hot and cold water, grass cutting, gardening services, pest control, window washing, janitorial services, snow removal at entrances and all normal access routes to the Building and garbage removal from the Building all as reasonably required for the operations of UTS, and in each case on the same basis as is customary for other comparable University owned and maintained buildings.
- (c) The University will continue to provide police and fire protection services for the Building and Licenced Premises on the same basis as is customary for other comparable University owned and maintained buildings.
- (d) The University will repair and maintain the Licenced Premises in accordance with its current practices and on the same basis as is customary for other comparable University owned and maintained buildings.
- (e) The University's security staff and staff of the University's Facilities and Services Department shall continue to have access to the Licenced Premises at all times for the purpose of inspecting their condition.
- (f) Employees shall continue to have access to University parking on the same terms and at the same rates as those charged to unsubsidized members of the University.

6.04 If a long-term agreement is not executed by the parties hereto prior to or upon the termination of this Interim Agreement, the licence granted herein shall be extended to no later than August 31, 2008 upon the same terms and conditions set out in this Article 6, with the additional condition that UTS pay the University monthly rent, in arrears, in the amount of \$75,000 with the first payment due by May 1, 2006.

ARTICLE 7 - Access to University Libraries

7.01 During the Interim Period, employees and students of UTS shall continue to be entitled to free access to and use of all University libraries on all University campuses pursuant to the same rules and rates and otherwise on the same basis as such access and use is available to staff and students of academic units of the University. UTS employees and students shall be responsible for any normal charges or fines for borrowings that are overdue, lost, damaged, etc.

ARTICLE 8 - Fundraising and Endowment

8.01 The Division of University Advancement will continue to process gifts it receives for UTS, including the provision of tax receipts therefor.

8.02 The University of Toronto Asset Management Corporation will continue to manage UTS Trust Funds (to be identified on Schedule B hereto and designated as either endowed or expendable trust funds) on the same basis as is customary for other University affiliates and ancillary corporations.

8.03 UTS will continue to participate in the University's prospect clearance process.

8.04 UTS may elect to process and manage gifts at its own expense, in which case UTS shall report on funds raised monthly to the Division of University Advancement.

ARTICLE 9 - Insurance

9.01 The University has arranged for UTS, at no cost to UTS, to continue to be covered by the University's insurance policies underwritten by the Canadian Universities Reciprocal Insurance Exchange ("CURIE") on the same terms and conditions as are currently in place for all academic and non-academic divisions of the University, as follows:

- (a) "all risks" of direct physical loss or damage to the buildings, equipment and other physical assets owned by, or licensed by the University to, UTS, on a repair/replacement cost basis, subject to normal insurance policy terms and exclusions and with a current deductible amount to the University of \$250,000 and to UTS as the University may determine from time to time. During the Interim Period, the deductible to UTS shall be \$2,500 per loss and the University, and shall be treated as is customary for other University academic units, affiliates and ancillary corporations;
- (b) comprehensive general liability coverage against bodily injury, personal injury and property damage to third parties in respect of the operations of UTS, with a limit of not less than \$10,000,000 per occurrence, or if that limit is not reasonably obtainable, such lesser limit as may be agreed upon;
- (c) errors and omissions liability coverage for persons who are acting in the capacity of directors or officers of UTS against liability incurred in such capacities except where the liability relates to the person's failure to act honestly and in good faith with a view to the best interests of UTS; and
- (d) such other insurance coverages as the University UTS may agree upon from time to time (such as business interruption, boiler & machinery, transit, fine art, crime/fidelity).

9.02 The University will use its reasonable best efforts to arrange that UTS will, at no cost to UTS, continue to be covered under all non-CURIE insurance policies placed by the University for the benefit of its academic and non-academic divisions. Current applicable insurance policies, including letters of confirmation of coverage of UTS and its officers and directors, and descriptions of coverage, are listed in Schedule D hereof.

9.03 UTS will comply with all University insurance policies and procedures relating in any way to insurance coverage that apply to all academic units and ancillary corporations of the University and identified in Schedule D hereof, copies of which have been provided to UTS.

9.04 The University will also, until otherwise agreed, use its reasonable best efforts to maintain and continue insurance referred to in clauses 9.01 and 9.02 for the account of UTS against loss or damage as aforesaid and substantially as insured against by the University immediately prior to the date hereof, and as such policies may be varied from time to time in the normal course of the University's operations. Notwithstanding any of the foregoing, all such insurance shall be upon and subject to the terms and conditions of CURIE policies, as amended from time to time, so long as the University is a member thereof and participant therein, and of other applicable policies. When and if requested, UTS will submit a list of insurable values to the University's Insurance and Risk Department and will provide all such other information from time to time as the University may request for the purpose of obtaining and maintaining such coverage. The University will provide evidence of such coverage to UTS upon its written request to the University's Insurance and Risk Manager.

9.05 UTS is and shall remain a named insured under the University's insurance policies.

9.06 If any coverage previously provided by or through the University is terminated, UTS will be responsible for securing all necessary coverage, including comprehensive general liability and errors and omissions liability.

9.07 The University shall maintain insurance coverage in respect of the Building and Licensed Premises (as described in Article 6 hereof) on the same basis as the same were insured immediately prior to the commencement of the Interim Period. Such coverage include those listed in clause 9.01 and in Schedule D hereof.

ARTICLE 10 - Trade-marks, Official Marks, etc.

10.01 UTS acknowledges the proprietary interest of the University in all names, official marks, trademarks, crests or logos owned by the University, including the name "University of Toronto Schools" and "UTS", and shall not use any University name, official mark, trade-mark, crest and logo without the express prior written consent of the University.

10.02 The University hereby grants a royalty-free license to UTS to continue to use the name "University of Toronto Schools" and "UTS" and any marks previously used in connection with the UTS unit of OISE/UT. Such license shall be valid for so long as this Interim Agreement is in force. Said licence shall expire at the termination or expiry of this Interim Agreement.

ARTICLE 11 - General University Policies

11.01 UTS will comply with all applicable University policies and procedures that apply to all academic and non-academic divisions of the University. To the extent that such policies and procedures are not reasonably applicable to UTS, the University shall modify or waive their application as to UTS.

ARTICLE 12 - Annual Reports to the Governing Council

12.01 UTS shall prepare and deliver to the Governing Council no later than 90 days following the end of each of UTS' fiscal years financial reports including: (1) the audited Statement of Operations Income and Expense operating results statement for

most recently completed fiscal year and (2) the budget/forecast for the current and first succeeding fiscal years.

ARTICLE 13 - Term -- Termination without Long-term Agreement

13.01 The term of this Interim Agreement shall commence on January 1, 2004 and shall end upon the earlier of midnight on April 30, 2006 and the execution of a superseding long-term agreement.

13.02 If this Agreement terminates prior to the execution of a long-term agreement between the parties hereto, UTS shall reimburse the University for the actual cost of all services provided after April 30, 2006 and shall pay rent pursuant to clause 6.04 hereof.

13.03 If this Agreement is not replaced or is not followed by a long-term affiliation agreement with UTS, the University shall ensure that then current students of UTS are not placed at an academic or financial disadvantage due to said lack of a long-term affiliation agreement, and to the extent, in such circumstances, students are placed at any such notice of non-renewal does place students at such a disadvantage, the University will be responsible for remediating such disadvantage..

ARTICLE 14 - Negotiation of Long-term Agreement

14.01 The intent of each party hereto is to use the Interim Period to negotiate and enter into a long-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 Principle of Funding after the Interim Period: After the Interim Period, UTS shall become self-funding, relying on revenue it generates (including fees or grants it may receive from the University in consideration of UTS' contribution to the University's mission). The direct and indirect financial support provided by the University after the Interim Period will be based solely upon the value UTS provides to the University. Such value will be the subject of negotiation during the Interim Period.

14.04 The University shall agree in any renewable long-term agreement entered into with UTS that it shall not give a notice of non-renewal of the long-term agreement if it would place then current students of UTS at an academic or financial disadvantage and to the extent any such notice of non-renewal does place students at such a disadvantage, the University will be responsible for remediating such disadvantage.

14.05 Representatives of the University and UTS shall meet no less than every three months during the Interim Period to discuss the progress of UTS' transition as an ancillary corporation and for the purposes of negotiating the terms of the long-term agreement.

14.06 Notwithstanding any other provision of this Agreement, all of its provisions are without prejudice to a full negotiation of all terms of any long-term agreement between UTS and the University.

ARTICLE 15 - Indemnity

15.01 For all claims alleged to have arisen prior to the date hereof, the University will indemnify and save harmless UTS, its directors, officers, employees and agents of and from any and all suits and other claims, liabilities, losses, costs or expenses, including reasonable legal fees, that may arise by reason of the operations or activities of UTS or of the University in respect of UTS, or any other act, neglect or omission of

the University or UTS, their respective governors, directors, officers, employees, agents or other persons engaged or retained by them for whose acts or omissions they are in law responsible.

15.02 For all claims alleged to have arisen after the date hereof, the University will indemnify and save harmless UTS, its directors, officers, employees and agents of and from any and all suits and other claims, liabilities, losses, costs or expenses, including reasonable legal fees, that may arise by reason of the operations or activities of the University in respect of UTS, or any other act, neglect or omission of the University, its governors, officers, employees, agents or other persons engaged or retained by them for whose acts or omissions they are in law responsible.

ARTICLE 16 - Mediation

16.01 In the case of any dispute between the University and UTS as to the interpretation of this Interim Agreement or any matter arising hereunder, either party hereto shall be entitled to give to the other party notice of such dispute and request mediation thereof, and, after the giving of such notice and request, the parties shall choose a mediator who is independent of the parties and has, where necessary, expertise relating to the dispute under consideration, and shall in good faith seek the advice of such mediator to resolve such dispute. The selection of such mediator shall be agreed upon by UTS and the University. If the parties cannot reach agreement on the mediator to be selected to mediate the dispute within ten business days, being a day other than a Saturday or Sunday or statutory holiday in the City of Toronto (a "**Business Day**"), of the date notice of such dispute is given by one party to the other, then the parties will apply to a judge of the Superior Court of Justice (Ontario) to appoint such mediator from a list of four candidates suggested by the parties, two of whom will be suggested by the University and two of whom will be suggested by UTS. The parties agree to co-operate and participate in good faith in consultations with such mediator and to attempt to resolve the conflict on the basis of the advice given by the mediator. The terms of reference for the mediator shall be as set out in Schedule C hereto. If within 10 Business Days of the appointment of the mediator the parties cannot reach

agreement on the appropriate resolution of such dispute, then either may apply to a court of competent jurisdiction in Ontario for a determination of the issue.

16.02 The mediation provisions of this Article 16 shall not prejudice either party's right to request that the other party agree to submit a dispute to arbitration pursuant to the *Arbitration Act* (Ontario).

ARTICLE 17 - Notices

17.01 Any notice, request, demand, consent, advice, approval or other communication provided for or permitted hereunder shall be in writing and may be given by personal delivery, or may be sent by registered mail, postage prepaid, addressed to the party for which it is intended at its address as follows:

The University: University of Toronto
Simcoe Hall
27 King's College Circle
Toronto, Ontario
M5S 1A1

Attention: President

UTS: University of Toronto Schools
371 Bloor Street West
Toronto, Ontario
M5S 2R8

Attention: Chair, Board of Directors

provided, however, that any party may change its address for purposes of receipt of any such communication to another address in Canada by giving ten (10) days' prior written notice of such change to the other party in the manner above prescribed. Any notice sent by registered mail as aforesaid shall be deemed to have been given on the fifth business day next following the mailing thereof. Any notice delivered as aforesaid shall be deemed to have been received on the day of delivery if a Business Day, or if not, on the first Business Day following the day of delivery. In the event of an actual or threatened disruption in postal service, notice shall be delivered.

ARTICLE 18 - Assignment

18.01 This Agreement shall enure to the benefit of and be binding upon the respective successors and permitted assigns of the parties hereto. Neither party shall assign any of its rights or obligations hereunder without the express prior written consent of the other party.

ARTICLE 19 - Governing Law

19.01 This Agreement and all performance hereunder shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

ARTICLE 20 - Severability

20.01 Wherever possible, each provision of this Interim Agreement shall be interpreted in such manner as to be effective and valid pursuant to applicable laws and if any provision of this Interim Agreement shall be prohibited by or held invalid pursuant to applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Interim Agreement.

ARTICLE 21 - Entire Agreement

21.01 This Agreement, together with all Schedules, contains the entire agreement of the parties, and there are no representations, inducements, promises, agreements, arrangements, or undertakings, oral or written, between the parties hereto with respect to the subject matter hereof other than those set forth herein and duly executed in writing. Except as otherwise expressly provided herein, no modification of this Interim Agreement or supplementary agreement of any kind shall be binding upon

either party unless and until the same has been made in writing and duly executed by both parties.

ARTICLE 22 - No Deemed Waiver

22.01 No delay, omission, or forbearance on the part of a party herein to exercise any right, option, duty or power arising out of any breach or default by the other party of any of the terms, provisions, or covenants contained herein, shall constitute a waiver by the non-defaulting party to enforce any such right, option, duty or power as against the defaulting party or as to a subsequent breach or default of the defaulting party.

ARTICLE 23 - Force Majeure

23.01 A party shall not be liable for failure to perform any of its obligations under this Interim Agreement if it proves that the failure is due to an impediment beyond its control and it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the Agreement or to have avoided or overcome the impediment or its consequences. The suspension of the obligations provided by this Article has effect only for the period during which the impediment exists.

[This space is intentionally blank.]

ARTICLE 24 - Public Communications

24.01 The parties agree to co-operate in publishing and promoting the relationship between them. It is the intention of the parties hereto that each party will credit the other in public communications where appropriate, and therefore neither party will issue a press release concerning publishing and promoting the relationship between them without the consent of the other.

IN WITNESS WHEREOF the parties hereto have executed this Interim Agreement as of the date first mentioned above.

THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO

Per: _____

c/s

Per: _____

UNIVERSITY OF TORONTO SCHOOLS

Per: _____

c/s

Per: _____