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## GUIDANCE NOTES

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### Guidance Notes

#### 1. Departmental and Faculty Level Approval

Evidence of Departmental and Faculty level approval is required before an application can proceed to Committee for strategic approval. The reviewer must:

- a) Confirm that the form is fully complete and has been signed by the appropriate:
  - a. Head of Department
  - b. Faculty Signatory, either Faculty PVC (or designated nominee) or Academic Chair of Faculty Academic Affairs Committee (or equivalent); and
- b) Confirm that there is evidence which demonstrates that the form has been considered and approved by the Faculty Committee. This may be by evidence noted on the form or the Faculty Committee Minutes.

Where either A or B is not met, the form shall be returned to the Faculty without further consideration.

#### 2. Proposed Arrangement

- A. Does the evidence available suggest that the proposed arrangement is feasible given the Department's resources? It may be implied that where the application has been reviewed by the Department and the Faculty, that they consider themselves to be adequately resourced. Where however the Department already has a number of existing partnerships the reviewer may have legitimate concerns that additional collaborations may prove too onerous upon the Department, and request further clarification. Equally where the Department/Faculty has limited experience in the type of collaboration proposed, they may not have a full understanding of the commitment. In such circumstances, again clarification may be sought.
- B. The reviewer should consider whether the rationale of the agreement complies with the Universities Strategic Objectives as detailed in its Strategic Plan and International Strategy. Where the rationale does not clearly meet the University's strategic expectations, the reviewer may return the proposal to the Faculty for further review.
- C. The reviewer should consider the proposal in the context of the Faculty's track record with other collaborations. This may include collaborations of a similar nature or other types of collaboration. A poor or limited track record will not in itself preclude an application from proceeding.

#### 3. Institution Review:

Section three considers the standing of the Institution and guides the reviewer in determining an Institutional risk score. Each question provides a range of options and a risk score noted in brackets. The Institutional Risk score is an average of scores for each of the considerations detailed at A to H.

#### 4. Regional Officer Review:

Where the proposed Partnership falls within the region of an AU Regional recruitment Officer, e.g. International Officer or Schools Liaison Officer, the appropriate officer should be invited to provide their comments on the proposal. The Officer should be provided a copy of the AP 1 form where section A has been fully completed and asked to provide their comments. **Where the Regional Officer has been involved in the development of the proposal, this should be clearly noted on the form.**

#### 5. Memorandum of Understanding:

This section involves reviewing the proposed MOU agreement. Whilst the MOU is generally non-legally binding it may contain some legally binding clauses and will serve as the starting point for developing the MOA.

- A. Is it proposed that the University standard MOU template be used? Where specific amendments have been requested, these should be noted if known at this stage.
- B. Where the AU MOU template is being used, this question is assumed to have been met. Where the partner MOU is being proposed, the reviewer must compare the content with the AU template and note any notable differences.
- C. Legal Jurisdiction: refers to the court which has authority to determine any dispute in respect of the agreement. The reviewer should detail here the proposed court jurisdiction and any proposed arbitrator. AU would prefer the Courts of England and Wales to have exclusive jurisdiction over any agreement. AU also permits for an established arbitrator to be agreed upon, although in any event the arbitrator's jurisdiction will be in the first instance only.
- D. Choice of Law: refers to which law shall govern the agreement. An exclusive choice of law must be detailed in the MOU (i.e. multiple choices of law cannot be listed). AU's default position is that the Law of England and Wales apply exclusively. AU acknowledges that parties may wish to conclude agreements with another governing law, in such circumstances the University will need to seek further advice prior to contracting.

#### 6. Potential Risk:

The potential risk section provides an initial risk assessment in respect of the proposed collaboration. This section considers the following score categories of risk. Any project presenting an extremely high risk will ordinarily be referred to the PVC with a recommendation for termination.

- 1 Low
- 2 Moderate
- 3 High
- 4 Very High
- 5 Extreme

- A. Collaboration Risk Level: refers to the categorical score based on the type of collaboration. These are listed in the Academic Quality Handbook. Where multiple collaborations are proposed with the same institution the higher risk level should be noted. +1 should be added to the categorical score any non-standard models in recognition of the additional associated risks and complications.

- B. Strategic Risk: This section refers to the collaboration's parity with the University's Strategic Plan and International Strategy (as appropriate). A collaboration which aligns strongly with the proposed collaboration should be awarded a low score within this section whereas larger deviation should be awarded a higher score. Higher deviation scores may for example be awarded where :
- a. The partner operates in a country which the University does not consider a priority country for developing strategic partnerships
  - b. The collaborative proposed is not of the type which the University wishes to develop at a strategic level
  - c. The reputation of the partner does not align with the reputational expectations of the University
  - d. The subject matter of the proposal is not an area in which the University wishes to collaborate
  - e. The delivery method does not align with the University's established delivery methods and its strategic intentions
- C. Institutional Risk: Is the overall score noted at section 3
- D. Financial Risk: Considers whether any financial or insurance risks have been identified
- E. Legal Risk: Considers in particular the proposed MOU and its content, as noted in section 4. Factors which may result in a high result in a high risk score:
- a. AU MOU template is not used and the proposed template does not comply with AU expectations
  - b. The Jurisdiction of the agreement, i.e. the court which has authority to consider any dispute in respect of the agreement. The following scale should be considered:
    1. Courts of England and Wales, Scotland or Northern Ireland<sup>1</sup>
    2. European Union State or other developed common Law Jurisdiction, except North America
    3. Clearly identified Civil Law Jurisdiction (outside of EU)
    4. North American Jurisdiction
    5. National Law of a developing state or no clear jurisdiction noted<sup>2</sup>

The reviewer should note that it is common practice for an arbitration or mediation clause to be included in the agreement, requiring independent arbitration prior to reference to a Court of Law. The absence of such a clause may be considered an aggravating feature and may justify a higher risk score.
  - c. The Choice of Law, i.e. the Law Governing the Agreement:
    1. England and Wales<sup>3</sup>

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<sup>1</sup> Note that UK courts are not sufficiently specific

<sup>2</sup> Note that in the case of Federal states, the agreement must specifically reference which regional has jurisdiction

<sup>3</sup> Note that UK law is not sufficiently specific

2. Scottish or Northern Ireland Law; the Law of another European Union state or other developed Common Law jurisdiction, excluding North American Jurisdictions
3. Clearly identified Civil Law Jurisdiction (outside of EU)
4. North American Law (USA or Canada) or other developing Common Law jurisdiction
5. The Law of a Developing State or no clear governing law(s) noted<sup>4</sup>

d. Any other factors which give rise to a cause of concern

F. Ethical or Political Risk: This section considers any wider ethical or political risks associated with the Collaboration. The reviewer may at this stage only have a limited background knowledge of the collaboration and the proposed partner however should attempt to search for any relevant information in respect of the proposed partner, country of origin and notable individuals relating to the collaboration to determine whether any risks exist. A single risk factor may justify a high score for this section. These may include concerns relating to:

1. Financial Improprieties, including but not limited to bribery and corruption, or sources of funding, investment and or a history of tax evasion
2. Criminal Activity
3. Human Rights violations
4. Equality and Diversity
5. Confidentiality, Data Security and Data Protection
6. Institutional Governance and/or Management
7. Employment Practices
8. Academic and/or Research Misconduct
9. Third party associations
10. Conflicting Organisational Values
11. Environmental Impact
12. Health and Safety concerns
13. Political factors
14. Conflicts of Interest
15. Breaches of Codes

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<sup>4</sup> Note that in the case of Federal states, the agreement must specifically reference which regional law should apply.

The reviewer should note in the comments section what concerns have been identified.

- G. Reputational Risk: In this section, the reviewer should consider any matters which may give rise to a risk of reputational damage. Those factors listed at 5.F may also be relevant here as my wider matters, including poor publicity, the Institution's Marketing practices, the relationship between the institution and its students, working practices and educational culture. As with 5.F a single factor may result in a high risk score, although multiple factors will likely be needed to justify an extremely high risk score. The reviewer should note in the comments section what concerns have been identified.
- H. Operational Risk: This section considers whether any operational challenges might arise in respect of the proposed collaboration. This may include systems and organisational structures, infrastructure and technology, and also administrative procedures and the administrative burden presented by the collaboration. Where either the partner or Academic Faculty has multiple partners, this may present a higher operational risk given the burden involved in managing multiple relationships. Additionally, where the location of the partner in a different time zone may present challenges to the operation.
- I. Quality Assurance: The QA risk section considers any matters relating to Academic Quality or learning opportunities which may influence the risk presented by the project. It is not anticipated at this stage that the reviewer will have extensively reviewed the partner's QA systems and procedures as that would not be expected until Site Visit stage. The score shall therefore be determined on the basis of the information available and the information note on the MOU application form. More complex collaborations will generally attract a higher QA risk level however factors such as the partner's National and Global ranking may also influence the score, as may the partner's membership of any national or international Quality frameworks.
- J. Overseas Business Risk: The reviewer should review the Overseas Business Risk published by the UK Government's Foreign & Commonwealth Office and Department for International Trade and consider any possible risks or barriers to business. The Overseas Business Risk service provides geopolitical and economic analysis on overseas markets to new and expanding exporters. The guides also provide information on potential risks including human rights issues, bribery and corruption, terrorism, criminal activity and intellectual property which may therefore influence risk scores for other categories in addition to this score.

Overall Risk: The overall risk score shall be calculated as an average