



Australian Government

Department of Education, Employment
and Workplace Relations

Funding Agreement

between the

COMMONWEALTH OF AUSTRALIA

as represented by the

**Department of Education, Employment and Workplace
Relations**

and the

THE STATE OF WESTERN AUSTRALIA

as represented by the

Department of Training and Workforce Development

regarding a grant of financial assistance to the *Pilbara TAFE* in
relation to education infrastructure

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20 December 2010

Initials

Handwritten initials in blue ink, appearing to be 'DB' or similar, with a signature below.

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Initials

RS
DM

Parties

COMMONWEALTH OF AUSTRALIA ('Commonwealth, 'Us', 'We', 'Minister' or 'Our'), represented by and acting through the Department of Education, Employment and Workplace Relations (ABN 63 578 775 294) ('Department')

AND

THE STATE OF WESTERN AUSTRALIA represented by and acting through the Department of Training and Workforce Development of 151 Royal Street, East Perth, WA 6004 (ABN 28 925 312 809) ('You', or 'Your')

Note: this agreement uses a number of words which are defined in the glossary in clause 33.1. Defined terms start with a capital letter, eg, Asset.

Purpose

A. The Education Investment Fund (EIF) is one of the three Nation-building Funds established by the *NBF Act*. The role of the Education Investment Fund Program is to build a modern, productive, internationally competitive Australian economy by supporting world-leading, strategically-focused infrastructure investments that will transform Australian tertiary education and research.

The EIF Program is covered by Outcome 3 of the Department's portfolio budget statement, 2010-2011.

The EIF Program provides funding for projects that create or develop significant infrastructure in higher education institutions, research institutions and vocational education and training providers, in order to:

- transform Australia's knowledge generation and teaching capabilities;
- boost participation in tertiary education;
- position Australia to meet domestic skills needs now and into the future;
- enhance Australia's innovation capacity;
- invigorate the growth of Australia's research capabilities; and
- enhance Australia's international competitiveness in education and research.

As set out in Chapter 3 of the *NBF Act*, the object of the EIF Program is to enhance the Commonwealth's ability to make payments in relation to the creation or development of:

- a) higher education infrastructure; and
- b) research infrastructure; and
- c) vocational education and training infrastructure; and
- d) eligible education infrastructure.

- B. You are committed to helping Us to achieve the objectives of the EIF Program, through Your conduct of the Project in conjunction with the Funding Recipient.
- C. As a result of this commitment, We agree to support the Project by providing Funding to You to pass on to the Funding Recipient, subject to the terms and conditions of this agreement.
- D. We are required by law to ensure accountability for public money, and You are required to be accountable for all Funds provided by Us.
- E. You are audited by the Auditor-General or a State or Territory Auditor-General:
- (a) for the entire term of this agreement; and
 - (b) the Funding is included in the income and expenditure which is subject to the auditing.
- F. You agree to: (i) accept the Funding on the terms and conditions set out in this agreement; and (ii) enter into a legally enforceable arrangement with the Funding Recipient that requires the Funding Recipient to accept the Funding on the terms and conditions set out in this agreement.
- G. You agree to enter into a written arrangement with the Project Manager which will set out the terms and conditions upon which the Project Manager will manage the Project.

1 Term of Agreement

- 1.1 This agreement is entered pursuant to section 198 of the *NBF Act* and commences on the Date of this Agreement and, unless terminated earlier, it expires on the Completion Date.

2 Project

- 2.1 You must carry out the Project:
- (a) at the times and in the manner specified in item C of Schedule 1;
 - (b) within the Project Period; and
 - (c) in accordance with this agreement (and any applicable Guidelines), diligently, effectively and to a high professional standard; and
 - (d) in accordance with the requirements and responsibilities under the National Code of Practice for the Construction Industry and its associated Guidelines.
- 2.2 The Funding must be expended by You only for the Project.
- 2.3 You must, as soon as practicable and in writing: (i) notify Us of any proposed change to the Project; and (ii) seek Our prior written approval to the proposed change to the Project.
- 2.4 You must not carry out any proposed change to the Project without our prior written approval.
- 2.5 You must not act in any way that may bring the Project into disrepute.

- 2.6 We are not responsible for the provision of additional money to meet any expenditure in excess of the Funds.

3 Funding

- 3.1 Subject to compliance by You with this agreement (including the invoicing requirements, if any, specified in item E.1 of Schedule 1), We will provide You with the Funding at the times and in the manner specified in item AA of Schedule 2.
- 3.2 Without limiting Our rights, We may withhold or suspend any payment in whole or in part if:
- (a) You have not performed Your obligations under this agreement; or
 - (b) You have outstanding or unacquitted money under this agreement with Us.
- 3.3 If We exercise Our rights under clause 3.2, You must continue to perform any obligations under this agreement, unless We agree otherwise in writing.
- 3.4 You must maintain Your Current Level of Funding and Your Planned Level of Funding for infrastructure for Vocational Education and Training Providers over the next four years spending it concurrently with the Funding expended under this agreement, and providing to Us evidence of expenditure by You so as to reasonably satisfy Us that You are maintaining Your Current Level of Funding and Your Planned Level of Funding on infrastructure for Vocational Education and Training Providers.
- 3.5 Where You withdraw or do not maintain Your Current Level of Funding and/or Your Planned Level of Funding, You must notify Us immediately, and We may, in our absolute discretion, withhold or suspend any payment of the Funds for the Project under clause 3.2 or terminate or reduce the scope of this agreement under clause 27 or 28.

4 Management of Funding

- 4.1 You must manage the Funds for the Project in accordance with this agreement by:
- (a) ensuring that the Funds are held in an account in Your name, and which You solely control, with a bank or credit union carrying on banking business in Australia;
 - (b) on request from Us, providing Us and the bank or credit union with an authority for Us to obtain all details relating to any use of the account; and
 - (c) identifying the receipt and expenditure of the Funds separately within Your accounting Records so that at all times the Funds are identifiable and ascertainable.
- 4.2 You must keep financial Records relating to the Project to enable:
- (a) all income and expenditure related to the Project to be identified in Your accounts;
 - (b) the preparation of financial statements in accordance with Australian Accounting Standards; and

(c) the audit of those Records in accordance with Australian Auditing Standards.

4.3 You must not use the Funds:

- (a) as security to obtain, or comply with, any form of loan, credit, payment or other interest; or
- (b) for the preparation of, or in the course of, any litigation.

5 Repayment of Funding

5.1 If:

- (a) at any time, an overpayment occurs, including where an invoice is found to have been incorrectly rendered after payment; or
- (b) at the Completion Date (or if this agreement is terminated earlier, the date of termination) some or all of the Funding has not been:
 - (i) spent in accordance with this agreement; or
 - (ii) acquitted to Our satisfaction,

then this amount must be repaid to Us within 20 business days of a written notice from Us, or dealt with as directed in writing by Us.

- 5.2 An overpayment may be recovered from You, including by offsetting that overpayment against any amount subsequently due to You under this agreement.
- 5.3 If an overpayment is not repaid to Us, Interest is payable on the amount after the expiry of the 20 business days notice referred to in clause 5.1, until the amount is paid in full.
- 5.4 Any amount owed to Us under clause 5.1 and any Interest owed under clause 5.3, is recoverable by Us as a debt due to Us by You without further proof of the debt by Us.
- 5.5 An adjustment note must be provided to Us if required by the GST Act, including where You repay some or all of the Funding to Us.

6 Acknowledgment and Publicity

- 6.1 You must, in all publications, promotional and advertising materials, public announcements and activities by You or on Your behalf in relation to the Project, or any products, processes or inventions developed as a result of the Project, acknowledge the financial and other support You have received from Us, in the manner set out in item G.1 of Schedule 1.
- 6.2 We reserve the right to publicise and report on the awarding of Funding to You, including the amount of the Funds given to You and the title and a brief description of the Project
- 6.3 You must invite the Minister and/or any other person nominated by the Minister to take part in any significant promotional event held by You or any subcontractor. This

may include allowing the Minister or any other person nominated by the Minister to speak at, or play any role (including an integral role) in the relevant promotional event.

7 Subcontracting and management of the Project

- 7.1 You are fully responsible for the performance of Your obligations under this agreement, even if You may subcontract some or all of Your obligations.
- 7.2 You are responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that the work meets the requirements of this agreement, and to ensure compliance with the National Code of Practice for the Construction Industry and its associated Guidelines.

Note: The National Code of Practice for the Construction Industry and its associated guidelines are set out at Item Q of Schedule 1.

- 7.3 You must not enter into a subcontract under this agreement with a subcontractor named by the Director of the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the *Equal Opportunity for Women in the Workplace Act 1999*. (A list of non compliant organisations can be found at: www.eowa.gov.au/Reporting_And_Compliance/What_Happens_if_my_Report_does_not_Comply/List_of_Non_Compliant_Organisations.asp)
- 7.4 We acknowledge the policy of the State of Western Australia that requires the Project Manager to manage the Project.
- 7.5 You agree that the Project Manager's fees for managing the Project are a Non-Capital Cost.
- 7.6 You must not use, in total, more than five percent of the Funding for Non-Capital Costs.
- 7.7 You must ensure that You have a written arrangement with the Project Manager containing the requirements set out in item H.3 of Schedule 1.

8 Specified Personnel

- 8.1 You must ensure that the Specified Personnel, if any, listed in item I.1 of Schedule 1 undertake activities on the Project in accordance with the terms of this agreement.
- 8.2 Where Specified Personnel are unable to undertake activities on the Project, You must notify Us immediately. You must, if requested by Us, provide replacement personnel acceptable to Us without additional payment and at the earliest reasonable opportunity.
- 8.3 We may give notice on reasonable grounds related to performance of the Project requiring You to remove personnel (including Specified Personnel) from work on the Project. You must, at Your own cost, promptly arrange for the removal of the personnel from work on the Project and their replacement with personnel acceptable to Us.

- 8.4 If You are unable to provide acceptable replacement personnel, We may terminate this agreement under clause 28.

9 Assets

- 9.1 You must not use the Funding to purchase or create any Asset, apart from those detailed in item J of Schedule 1, without getting Our prior written approval. Our approval may be subject to conditions. Clause 9.3 applies only to Assets purchased or created with the Funding.
- 9.2 Unless it is specified in item J of Schedule 1 that We own the Asset then, subject to this clause 9, You own any Asset acquired with the Funding.
- 9.3 During the Project Period and for a period of at least **ten (10) years** following the Project Period You must:
- (a) use any Asset in accordance with this agreement and for the purposes of the Project;
 - (b) not encumber or dispose of any Asset, or deal with or use any Asset other than in accordance with this clause 9, without Our prior written approval; Our written approval may be subject to conditions;
 - (c) safeguard all Assets against theft, loss, damage, or unauthorised use;
 - (d) maintain all Assets in good working order;
 - (e) maintain all appropriate insurances for all Assets to their full replacement value, noting Our interest in the Asset under this agreement, and provide satisfactory evidence of this on request from Us;
 - (f) if required by law, maintain registration and licensing of all Assets; and
 - (g) be fully responsible for, and bear all risks relating to, the use or disposal of all Assets.

10 Insurance

- 10.1 You must, for as long as any obligations remain in connection with the Project, have insurance as specified in item K.1 of Schedule 1.
- 10.2 When requested, You must provide Us, within 10 business days of the request, with evidence satisfactory to Us that You have complied with Your obligation to insure.

11 Liaison and Monitoring

- 11.1 You must:
- (a) liaise with and provide information to the Program Delegate, or a person nominated by the Program Delegate, as reasonably required by the Program Delegate;
 - (b) comply with all reasonable requests, directions, or monitoring requirements received from the Program Delegate; and
 - (c) liaise and cooperate with and assist Us in any review or other evaluation that We undertake during the term of this agreement and two years after the Completion

Date.

12 Reporting

- 12.1 You must provide to Us Reports at the times and in the manner stated in item L of Schedule 1 of Your progress in undertaking the Project.
- 12.2 Where required, You must, at Your own expense, and at the times and in the manner stated in item L of Schedule 1 prepare and provide Us with a:
- a) detailed statement of income and expenditure for the Funding, which must include a definitive statement as to whether the financial accounts are true and fair; and
 - b) statement that the Funding was expended for the Project and in accordance with this agreement.
- 12.3 The statements referred to in clause 12.2 (a) and (b) must
- a) be certified by:
 - i. Your chief executive officer; and
 - ii. the senior executive officer employed by You who has primary responsibility for managing Your audit functions;
 - b) contain the details, if any, described in item L of Schedule 1; and
 - c) be provided to the Program Delegate within one month (or other period specified in item L of schedule 1) of the end of the Project Period.

13 Commonwealth Material

- 13.1 Ownership of all Commonwealth Material, including Intellectual Property Rights in that Material, remains vested at all times in Us but We grant You a licence to use, copy and reproduce that Material only for the purposes of this agreement and in accordance with any conditions or restrictions specified in item M of Schedule 1.
- 13.2 You must keep safely and maintain Commonwealth Material You have been given for the purposes of this agreement.
- 13.3 You may retain or destroy all Commonwealth Material remaining in Your possession at the end of this agreement, unless otherwise specified in item M or item O.1 of Schedule 1.

14 Project Material

Ownership

- 14.1 Subject to this clause 14, You Own the Project Material and the Intellectual Property Rights in Project Material immediately on their creation.
- 14.2 The Excluded Material and the Excluded IPR may be owned by You or a third party.

Licences

Initials



- 14.3 You must grant to Us (or arrange for the grant to Us of) a permanent, irrevocable, free, world wide, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit the Intellectual Property Rights in the Project Material and the Excluded Material for any purpose.
- 14.4 If You are unable to obtain a licence on the terms referred to in clause 14.3, you must arrange for the grant to Us of a licence to exercise the Excluded IPR on the terms set out in item N of Schedule 1.

Use of Project Material

- 14.5 If you are an Author (either the sole or a joint Author) of any Project Material or Excluded Material, You consent to the performance of the Specified Acts by Us or any person licensed by Us to use, reproduce, adapt and exploit that Project Material or Excluded Material.
- 14.6 You agree:
- (a) to obtain from each Author (other than You) of any Project Material or Excluded Material a written consent to the performance of the Specified Acts (whether occurring before or after the consent is given) by Us or any person licensed by Us to use, reproduce, adapt and exploit that Project Material or Excluded Material; and
 - (b) upon request, to provide the executed original of each consent to Us.

General

- 14.7 You must comply with any request that We make of You at any time to bring into existence, sign, execute or otherwise deal with any document that may be necessary or desirable to give effect to this clause 14.
- 14.8 You warrant that You are entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Project Material in accordance with this clause 14.
- 14.9 If requested by Us, You must provide Us with a copy of the Project Material in the form requested by Us.

15 Disclosure of Information

- 15.1 Subject to clause 15.5:
- (a) You must not, without Our prior written approval, disclose any of Our Confidential Information to a third party; and
 - (b) We must not, without Your prior written approval, disclose any of Your Confidential Information to a third party.
- 15.2 In giving written approval to disclosure, a party may impose conditions as it thinks fit, and the other party agrees to comply with the conditions.

- 15.3 We may at any time require You to arrange for any person engaged in, or in relation to, the performance or management of this agreement to give written undertakings, in a form required by Us, relating to the non-disclosure of Our Confidential Information.
- 15.4 If You receive a request under clause 15.3, You must promptly arrange for all undertakings to be given.
- 15.5 The obligations on the parties under this clause 15 will not be breached if information:
- (a) is disclosed by either party to their responsible Minister;
 - (b) is disclosed by either party, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia or the State of Western Australia;
 - (c) is authorised or required by law to be disclosed; or
 - (d) is in the public domain otherwise than due to a breach of this clause 15.
- 15.6 Nothing in this clause 15 limits Your obligations under clause 16 or clause 18.

16 Protection of Personal Information

- 16.1 You agree:
- (a) to comply with the Information Privacy Principles when doing any act or engaging in any practice in relation to Personal Information for the purposes of this agreement, as if You were an agency as defined in the Privacy Act; and
 - (b) to deal with Personal Information received, created or held by You for the purposes of this agreement only to fulfil Your obligations under this agreement and in accordance with any conditions or restrictions specified in item P.1 of Schedule 1.
- 16.2 An act done or a practice engaged in by You or a subcontractor to meet (directly or indirectly) an obligation under this agreement:
- (a) is authorised by this clause 16 for the purposes of sub-sections 6A(2) and 6B(2) of the Privacy Act even if the act or practice is inconsistent with a National Privacy Principle or an approved privacy code (as defined in the Privacy Act) that applies to You or the subcontractor; but
 - (b) is subject to the other obligations in this agreement including this clause 16.
- 16.3 In this clause 16, "received" includes "collected".

17 Records

- 17.1 You must make full and accurate Records of the conduct of the Project including progress against the Milestones (if any), the receipt and use of Funding (in accordance with Australian Accounting Standards), the acquisition of Assets and the creation of Intellectual Property Rights in Project Material.
- 17.2 Subject to Your obligations under clause 16, Records must be retained by You for 10 years after the end of the Project Period.

18 Access to Premises and Records

18.1 You must at all reasonable times give the Auditor-General, the Privacy Commissioner, the Program Delegate, a member of the Investigations Branch in the Department on production of photo identification, or any person authorised in writing by the Secretary:

- (a) reasonable access to:
 - (i) Your employees and equipment;
 - (ii) premises occupied by You;
 - (iii) Material; and
- (b) reasonable assistance to:
 - (i) inspect the performance of the Project;
 - (ii) to locate and inspect Material;
 - (iii) make copies of Material and remove those copies,

relevant to the Project.

18.2 The rights referred to in clause 18.1 are subject to:

- (a) the provision of reasonable prior notice to You; and
- (b) Your reasonable security procedures.

18.3 If a matter is being investigated which, in the opinion of a member of the Investigations Branch in the Department, or any person authorised in writing by the Secretary, may involve an actual or apprehended breach of the law, clause 18.2(a) will not apply.

18.4 The requirement for access specified in clause 18.1 does not in any way reduce Your responsibility to perform Your obligations under this agreement.

19 Indemnity

19.1 You agree to indemnify Us against any:

- (a) loss or liability incurred by Us;
- (b) loss of or damage to Our property; or
- (c) loss or expense incurred by Us in dealing with any claim against Us, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by Us;

arising from:

- (i) any act or omission by You, or any of Your employees, agents, or subcontractors in connection with this agreement, where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, or expense;
- (ii) any breach by You or any of Your employees, agents, or subcontractors of obligations or warranties under this agreement;
- (iii) any use or disclosure by You, Your officers, employees, agents or subcontractors of Personal Information held or controlled in connection with this agreement; or

- (iv) the use by Us of the Project Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights, or about moral rights, as defined in the *Copyright Act 1968*, in Project Material.
- 19.2 Your liability to indemnify Us under this clause 19 will be reduced proportionately to the extent that any fault on Our part contributed to the relevant loss, damage, expense, or liability.
- 19.3 Our right to be indemnified under this clause 19 is in addition to, and not exclusive of, any other right, power, or remedy provided by law, but We are not entitled to be compensated in excess of the amount of the relevant loss, damage, expense or liability.
- 19.4 In this clause 19, "fault" means any negligent or unlawful act or omission or wilful misconduct.

20 Conflict of Interest

- 20.1 You warrant that, to the best of Your knowledge after making reasonable inquiries, at the Date of this Agreement no Conflict exists or is likely to arise in the performance of Your obligations under this agreement.
- 20.2 If during the term of this agreement, a Conflict arises, or is likely to arise, You must:
 - (a) immediately notify Us in writing of that Conflict and of the steps You propose to take to resolve or otherwise deal with the Conflict;
 - (b) make full disclosure to Us of all relevant information relating to the Conflict; and
 - (c) take steps as We may, if We choose to, reasonably require to resolve or otherwise deal with that Conflict.
- 20.3 If You fail to notify Us under this clause 20, or are unable or unwilling to resolve or deal with the Conflict as required, We may terminate this agreement under clause 28.

21 Negation of Employment, Partnership and Agency

- 21.1 You will not, by virtue of this agreement, be or for any purpose be deemed to be Our employees, partners or agents.
- 21.2 You must not represent Yourself, and must ensure that Your employees, partners, agents or sub-contractors do not represent themselves, as being Our employees, partners or agents.

22 Entire Agreement, Variation and Severance

- 22.1 This agreement records the entire agreement between the parties in relation to its subject matter.
- 22.2 Except for action We are expressly authorised to take elsewhere in this agreement, no variation of this agreement is binding unless it is agreed in writing and signed by the parties.

22.3 Clause Removed.

23 Waiver

- 23.1 If either party does not exercise (or delays in exercising) any rights under this agreement, that failure or delay does not operate as a waiver of those rights.
- 23.2 A waiver by either party of any rights does not prevent the further exercise of any right.
- 23.3 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 the written waiver.
- 23.4 In this clause 23, 'rights' means rights or remedies provided by this agreement or at law.

24 Assignment and Novation

- 24.1 You must not assign Your rights under this agreement without prior written approval from Us.
- 24.2 You agree not to negotiate with any other person to enter into an arrangement that will require novation of this agreement without first consulting Us.

25 Incorporation

- 25.1 If You are a body corporate, You warrant that Your constitution is not inconsistent with this agreement.
- 25.2 You must notify Us if You intend to amend Your constitution in a way which affects Your ability to comply with this agreement.
- 25.3 If You alter Your constitution in a way which affects Your ability to comply with this agreement, We may terminate this agreement under clause 28.

26 Dispute Resolution

- 26.1 Subject to clause 26.3, the parties agree not to commence any legal proceedings in respect of any dispute arising under this agreement, which cannot be resolved by informal discussion, until the procedure provided by this clause 26 has been used.
- 26.2 The parties agree that any dispute arising during the course of this agreement is dealt with as follows:
- (a) the party claiming that there is a dispute will send the other party a written notice setting out the nature of the dispute;
 - (b) the parties will try to resolve the dispute through direct negotiation by persons who they have given authority to resolve the dispute;

- (c) the parties have 10 business days from the receipt of the notice to reach a resolution or to agree that the dispute is to be submitted to mediation or some alternative dispute resolution procedure; and

if:

- (i) there is no resolution of the dispute;
- (ii) there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
- (iii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 business days of the submission, or extended time as the parties may agree in writing before the expiration of the 15 business days,

then, either party may commence legal proceedings.

26.3 This clause 26 does not apply if:

- (a) either party commences legal proceedings for urgent interlocutory relief;
- (b) action is taken by Us under clauses 5, 18, 27 or 28; or
- (c) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the law by You.

26.4 Despite the existence of a dispute, both parties must (unless requested in writing by the other party not to do so) continue to perform obligations under this agreement.

27 Termination With Costs and Reduction

27.1 We may, at any time by written notice to You, terminate this agreement in whole or reduce the scope of this agreement without prejudice to the rights, liabilities, or obligations of either party accruing prior to the date of termination. If this agreement is terminated or reduced in scope We will only be liable for:

- (a) payments under the payment provisions of this agreement that were due before the effective date of termination; and
- (b) subject to clauses 27.3 and 27.4, any reasonable costs incurred by You and directly attributable to the termination or partial termination of this agreement.

27.2 Upon receipt of a notice of termination or reduction in scope You must:

- (a) stop work as specified in the notice;
- (b) take all available steps to minimise loss resulting from that termination and to protect Commonwealth Material and Project Material; and
- (c) continue work on any part of the Project not affected by the notice.

27.3 If there is a reduction in scope of the obligations under this agreement, Our liability to pay any part of the Funding will, in the absence of agreement to the contrary, abate proportionately to the reduction in the obligations under this agreement.

27.4 We will not be liable to pay compensation for loss of prospective profits for a termination or reduction in scope under this clause 27 or loss of any benefits that would have been conferred on You had the termination or reduction not occurred.

28 Termination For Default

28.1 We may immediately terminate this agreement by giving written notice to You of the termination if:

- (a) We are satisfied that any statement made in Your application for Funding is incorrect, incomplete, false or misleading in a way which may have affected:
 - (i) the original decision to approve the Funding;
 - (ii) the terms and conditions of this agreement; or
 - (iii) action taken by Us under this agreement;
- (b) You fail to fulfil, or are in breach of any of Your obligations under this agreement (including but not limited to Your obligations under clauses 2, 12, 20 and 25), and You do not rectify the omission or breach within 10 business days of receiving a notice in writing from Us to do so;
- (c) You are unable to pay all Your debts when they become due;
- (d) if You are an incorporated body:
 - (i) You fail to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001*;
 - (ii) proceedings are initiated to obtain an order for Your winding up or any shareholder, member or director convenes a meeting to consider a resolution for Your winding up;
 - (iii) You come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* or equivalent provisions in other legislation, or an order has been made to place You under external administration; or
 - (iv) notice is served on You or proceedings are taken to cancel Your incorporation or registration or to dissolve You as a legal entity;
- (e) if You are an individual, You become bankrupt or enter into a scheme of arrangement with creditors; or
- (f) You cease to carry on a business relevant to the performance of the Project.

29 Compliance With Laws and Our Policies

29.1 You must, in carrying out Your obligations under this agreement, comply with:

- (a) all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or local authority; and
- (b) any of Our policies notified by Us to You in writing,

including those listed in item Q of Schedule 1.

30 Applicable Law and Jurisdiction

- 30.1 The laws of the Australian Capital Territory apply to the interpretation of this agreement.
- 30.2 The parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect to any dispute under this agreement.

31 Notices

- 31.1 A party giving notice under this agreement must do so in writing or by Electronic Communication:
- (a) if given by You, marked for the attention of the Program Delegate specified in item BB of Schedule 2; or
 - (b) if given by Us, marked for the attention of the person specified in item R of Schedule 1; and
 - (c) hand delivered or sent by pre-paid post or Electronic Communication to the address of the other party specified in the schedule.
- 31.2 A notice given under clause 31.1 is taken to be received:
- (a) if hand delivered, on delivery;
 - (b) if sent by pre-paid post, 5 business days after the date of posting; or
 - (c) if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* if a notice was being given under a law of the Commonwealth.

32 Survival of Clauses

- 32.1 These clauses survive the expiration or earlier termination of this agreement: 4, 5, 6, 9, 12, 13, 14, 15, 16, 17, 19, items C.12 and C.15 of Schedule 1.
- 32.2 Clauses 6 and 18 apply during this agreement and for 7 years from the end of this agreement.

33 Interpretation

- 33.1 In this agreement, unless the contrary intention appears:

'ABN' has the same meaning as it has in section 41 of the *A New Tax System (Australian Business Number) Act 1999*;

'Asset' means any item of tangible property purchased or created in whole or in part with the Funds which has a value of over \$50,000 inclusive of GST but does not include Project Material;

'Auditor-General' means the office established under the *Auditor-General Act 1997* and includes any other entity that may, from time to time, perform the functions of that office;

'Australian Accounting Standards' refers to the standards of that name maintained

by the Australian Accounting Standards Board created by section 226 of the *Australian Securities and Investments Commission Act 2001*;

'Australian Auditing Standards' refers to the standards prepared by the Auditing Standards Board of the Australian Accounting Research Foundation and generally accepted audit practices to the extent they are not inconsistent with those standards;

'Author' means a person who is an author of any Project Material or Excluded Material for the purposes of Part IX of the *Copyright Act 1968* (Moral Rights);

'Commonwealth Material' means any Material provided by Us to You for the purposes of this agreement or which is copied or derived from that Material, except for Project Material;

'Completion Date' means:

- a) the date specified in item A of schedule 1;
- b) if no date is specified, the day after You have done all that You are required to do under this agreement to Our satisfaction; or
- c) if this Agreement is terminated, the date of termination.

'Conflict' refers to a conflict of interest, or risk of a conflict of interest, or an apparent conflict of interest arising through You or the Project Manager engaging in any activity or obtaining any interest that is likely to interfere with or restrict You or the Project Manager in providing the Project to Us fairly and independently;

'Date of this Agreement' means the date written on the signature page of this agreement, and if no date or more than one date is written there, then the date on which this agreement is signed by the last party to do so;

'EIF' means Education Investment Fund

'EIF Advisory Board' means the Advisory Board established under subsection 170(1) of the NBF Act.

'EIF Project Plan' means the document by that title at Attachment C which sets out an agreed schedule of milestones and payments;

'Electronic Communication' has the same meaning as it has in section 5 of the *Electronic Transactions Act 1999*;

'Excluded IPR' means Intellectual Property Rights in the Excluded Material;

'Excluded Material' means any Material specified under the heading 'Excluded Material' in item N of Schedule 1;

'Funding' or **'Funds'** means the amount or amounts (in cash or kind) payable by Us under this agreement by Us as specified in item AA of schedule 2, including interest earned on that amount;

'Funding Recipient' means *Pilbara TAFE* (ABN 76 594 719 231) and includes, where the context admits, its officers, employees, agents, subcontractors and successors;

'GST' has the same meaning as it has in section 195-1 of the GST Act;

'GST Act' means the *A New Tax System (Goods and Services Tax) Act 1999*;

'Information Privacy Principle' has the meaning given in the Privacy Act;

'Intellectual Property Rights' includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

'Interest' means interest calculated at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the *Taxation Administration Act 1953*, on a daily compounding basis;

'Material' includes documents, equipment, software (including source code and object code), goods, information and data stored by any means including all copies and extracts of the same;

'Milestone' means a stage of completion of the Project set out in item C of schedule 1;

'Minister' means the Minister for Education;

'NBF Act' means the *Nation-building Funds Act 2008*;

'Non-Capital Costs' has the meaning set out in the Education Investment Fund Program Guidelines EIF Round 3 and EIF Sustainability Round, as amended from time to time;

'Our Confidential Information' means information that:

- a) is described in item O of schedule 1;
- b) We identify, by notice in writing to You after the Date of this Agreement, as confidential information for the purposes of this agreement; or
- c) You know or ought to know is confidential to Us.

'Personal Information' has the same meaning as it has in section 6 of the Privacy Act;

'Privacy Act' means the *Privacy Act 1988*;

'Privacy Commissioner' means the Office of the Privacy Commissioner established under the Privacy Act and includes any other entity that may, from time to time, perform the functions of that Office;

'Program' means the part of Our operations specified in item B of schedule 1 under which We are able to give the Funding to You;

'Program Delegate' means the person for the time being performing the duties of the office of the Department specified in item BB of schedule 2 or any other person specified by the Secretary and notified in writing to You;

'Project' means the activity described in item C of schedule 1, and includes the provision of Project Material specified in that item;

'Project Manager' means the Building Management and Works Unit in the Western Australian Department of Treasury and Finance, and includes, where the context

admits, its officers, employees, agents, subcontractors and successors;

'Project Material' means all Material:

- a) brought into existence for the purpose of performing this agreement, including the Application, the EIF Project Plan and the Reports;
- b) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a); or
- c) copied or derived from Material referred to in paragraphs (a) or (b);

'Project Period' means

- a) the period specified in item D of schedule 1 during which the Project must be completed; or
- b) if this agreement is terminated early, the period ending on the day on which the agreement terminates;

'Records' includes documents, information and data stored by any means and all copies and extracts of the same;

'Report' means any report or update stipulated in item L of schedule 1;

'Secretary' means a person for the time being performing the duties of the office of Secretary to the Department and includes a person designated in writing by the Secretary to exercise any of the Secretary's powers under this agreement;

'Specified Acts' means any of the following acts or omissions by or on behalf of Us:

- a) using, reproducing, adapting or exploiting all or any part of the Project Material, with or without attribution of authorship;
- b) supplementing the Project Material with any other Material;
- c) using the Project Material in a different context to that originally envisaged;

but does not include false attribution of authorship.

'Specified Personnel' means the personnel (whether Your employees or subcontractors), or people with specific skills, specified in item I of schedule 1 as personnel required to undertake the Project or any part of the work constituting the Project;

'Application' means the document by that title at Attachment B;

'Us', 'We' and 'Our' includes the Commonwealth's officers, delegates, employees and agents, and Our successors;

'You' and 'Your' includes, where the context admits, the Funding Recipient, Your officers, employees, agents and subcontractors and Your successors;

'Your Confidential Information' means information that is described in item CC of schedule 2;

'Your Current Level of Funding' means Western Australian State Government funding for infrastructure as committed in the current Western Australian Budget, 2010;

'Your Planned Level of Funding' means Western Australian State Government

funding as committed in the Western Australian State Government Budget 2010 forward estimates on infrastructure investment.

- 33.2 In this agreement, unless the contrary intention appears:
- (a) words in the singular include the plural and vice versa;
 - (b) words importing a gender include the other gender;
 - (c) a reference to a person includes a partnership and a body whether corporate or otherwise;
 - (d) clause headings or words in bold format are inserted for convenience only, and have no effect in limiting or extending the language of provisions;
 - (e) all references to dollars are to Australian dollars;
 - (f) unless stated otherwise, a reference to legislation is to legislation of the Commonwealth, as amended from time to time;
 - (g) an uncertainty or ambiguity in the meaning of a provision of this agreement will not be interpreted against a party just because that party prepared the provision; and
 - (h) where a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning.
- 33.3 The schedules (and annexures and documents incorporated by reference, if any) form part of this agreement.
- 33.4 In the event of any conflict or inconsistency between any part of:
- (a) the terms and conditions contained in the clauses of this agreement;
 - (b) the schedules
 - (c) the annexures, if any;
 - (d) documents incorporated by reference, if any,
- then the material mentioned in any one of paragraphs (a) to (d) above has precedence over material mentioned in a subsequent paragraph, to the extent of any conflict or inconsistency.
- 33.5 For the avoidance of doubt, no right or obligation in this agreement is to be read or understood as limiting Your rights to enter into public debate or criticism of Us.

Schedule 1 Your Obligations

A. Term of agreement (clause 1)

- A.1 The Completion Date for this agreement is 30 September 2014.

B. Program (clause 2)

- B.1 The Department operates a program known as, EIF.
The policy objectives of the EIF Program are to:
- a) transform Australia's knowledge generation and teaching capabilities;
 - b) boost participation in tertiary education;
 - c) position Australia to meet domestic skills needs now and into the future;
 - d) enhance Australia's innovation capacity;
 - e) invigorate the growth of Australia's research capabilities; and
 - f) enhance Australia's international competitiveness in education and research.

C. Project (clause 2)

- C.1 The funding of \$12.19 million is to assist You and the Funding Recipient to construct new and refurbish existing infrastructure to include trade workshops and classroom facilities, access roads, IT infrastructure, trade equipment, OH&S upgrades and storage space for mobile training programs. The works will provide new and refreshed floor area of 4,882 sqm with an increase of 2,265 sqm allowing for new courses in Carpentry and Joinery, Automotive and allow for expansion in existing Resources and infrastructure operations, civil construction and other programs.
- C.2 You must ensure that the Funding Recipient carries out the Project in accordance with this agreement at the Pilbara TAFE's Pundulmurra Campus at Parker Street, South Hedland, WA, 6722.
- C.3 Except as provided for in clauses 7.5 and 7.6 of this agreement, You must, in a timely manner, pass on all the Funding to the Funding Recipient in order to enable the Funding Recipient to carry out the Project in accordance with this agreement.
- C.4 Without limiting any other obligations that You have under this agreement, You must ensure that:
- a) the Project will be implemented as outlined in the Application documents and agreed EIF Project Plan documents; and
 - b) all subcontractors and other project participants (including the Project Manager) will provide the resources and perform their respective obligations required by this agreement, including those set out in the Application and agreed EIF Project Plan documents.
- C.5 The Pundulmurra Campus Upgrade will be managed in accordance with the provisions set out in the Application documents.
- C.6 You must perform and ensure that the Project Manager and the Funding Recipient perform all the obligations that are necessary to enable You and the Funding Recipient to meet the Milestones as set out in the agreed EIF Project Plan and the following table.

Milestones for the Pundulmurra Campus Upgrade

Planned Project Milestone	Expected Completion Date of Project Milestone	Evidence of Completion of Project Milestone	Payment amount required on completion of Project Milestone
Project Milestone 1: Signing of funding agreement	December 2010	Funding agreement signed and copies of agreements with Pilbara TAFE and the Project Manager	\$2.0 million
Project Milestone 2: Engagement of Architect	February 2011	Letter of engagement	\$3.0 million
Project Milestone 3: Major equipment for civil metalliferous training purchased.	March 2011	Equipment delivered and in place – photographs provided and receipts.	
Project Milestone 4: Design and documentation Review schematic designs consultation with project control group (PCG)	April 2011	Report from Architect including a review of costings and minutes	
Project Milestone 5: Design and Documentation and costings	July 2011	Report	\$2 million
Project Milestone 6: Contract documentation	November 2011	Report for tender process	\$2 million
Project Milestone 7: Tender for construction	December 2011	Tender process outline	\$3.19 million
Project Milestone 8: Tender review approved, builder appointed	March 2012	Appointment letter	
Project Milestone 9: Builder on site project delivery commencement	April 2010	Photographic report and PCG minutes	

Planned Project Milestone	Expected Completion Date of Project Milestone	Evidence of Completion of Project Milestone	Payment amount required on completion of Project Milestone
Project Milestone 10: Demolition completed	July 2012	Photographic report and PCG minutes	
Project Milestone 11: New workshop component completed	January 2013	Photographic report and PCG minutes	
Project Milestone 12: Workshop Refurbishment completed	August 2013	Photographic report and PCG minutes	
Project Milestone 13: Road works completed	November 2013	Photographic report and PCG minutes	
Project Milestone 14: Completion of works/occupation	February 2014	Certificate of practical completion entering defects period. Photographic evidence	

C.7 Budget

Table 1 - Outline of the EIF Program Round 2 funding (GST exclusive) for the Project. This does not include contributions to be made by You or other participant organisations

	2010-11 (\$m)	2011-2012 (\$m)	2012-2013 (\$m)	TOTAL (\$m)
Funding	5.0	7.19	0	12.19

- C.8 You must enter into a legally enforceable arrangement with the Funding Recipient that requires it to comply with Your obligations under this agreement or the equivalents of those obligations and to do all things which under this agreement You are required to do in order to ensure that the Project will be, in accordance with this agreement, successfully completed. You must ensure that any legally binding arrangement between You and the Funding Recipient and its subcontractors does not contain any terms that are inconsistent with this agreement.
- C.9 You must monitor the conduct of the Project by the Funding Recipient and inform Us immediately in writing if the Funding Recipient is not conducting the Project in accordance with this agreement.
- C.10 If You become aware of the circumstance mentioned in item C.9, You must assist the Project Manager and the Funding Recipient to develop strategies and interventions to rectify any difficulties in fully conducting the Project. If required by Us, You must not provide any further Funds to the Funding Recipient if in Our sole opinion the Funding Recipient is not conducting the Project in accordance with this agreement, until the non-compliance is remedied to Our satisfaction if the non-compliance can be remedied

or until You are otherwise notified by Us.

- C.11 You must ensure that the Funding Recipient liaises with You and provide information to You or Us as reasonably required by You or Us, and comply with all reasonable requests, directions or monitoring requirements received from You or Us.
- C.12 You must ensure that the Funding Recipient allows Us the same degree of access to its premises and records as is specified in clause 18 of this agreement, during the term of this agreement and for 7 years after the Completion Date.
- C.13 You must ensure that the Funding Recipient, in conducting the Project, comply with: (a) all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or local authority; and (b) any of our policies notified by Us to You in writing, including those listed in item Q of Schedule 1 of this agreement.
- C.14 You must ensure that You are entitled to immediately terminate any legally binding arrangement that You have with the Funding Recipient for the conduct of the Project or to reduce the scope of such an arrangement, in circumstances that are equivalent to clauses 27 and 28 of this agreement.
- C.15 You must ensure that, under Your arrangement with the Funding Recipient, You or We are entitled to require, within 20 business days of written notice from You or Us, repayment of Funding from the Funding Recipient where some or all of the Funding has not been spent for the Project or acquitted to Our or Your satisfaction, or where an overpayment from You to the Funding Recipient has occurred. You must ensure that Our or Your entitlement to require repayment in accordance with this item C.15 of this Schedule survives the expiration or earlier termination of this agreement and Your arrangement with the Funding Recipient. If You are directed by Us in the circumstances specified in this item C.15 of Schedule 1, You must immediately take all necessary steps to recover Funding from the Funding Recipient and, if required by Us, repay that Funding to Us. Amounts payable by You to Us in accordance with this item C.15 are a debt due by You to Us.
- C.16 You must include in Your arrangement with the Funding Recipient (which You must enter pursuant to item C.8) a provision that, on the receipt by the Funding Recipient of a written notice from You or Us, Your rights under that arrangement (as specified in the notice) will be immediately assigned to Us. You agree to an assignment of Your rights to Us in accordance with this item C.16 of Schedule 1.
- C.17 You must, as soon as You enter into Your written agreement with the Funding Recipient, give Us a copy of that agreement. You must also give us a copy of any variations to that agreement as soon as You and the Funding Recipient have made them.

D. Project Period (clause 2)

- D.1 The Project commences on the Date of this Agreement and must be completed by 31 May 2014.

E. Invoice Requirements (clause 3)

- E.1 Invoices forwarded by You must be correctly addressed and include the:
 - (a) title of Project;
 - (b) Your name and ABN;

- (c) name of Program Delegate;
- (d) agreement number or date of execution;
- (e) fees and expenses to be invoiced (including a description of the deliverables or milestones that the invoice relates to); and
- (f) bank account details for payment of the invoice by electronic funds transfer.

E.2 Where the invoice relates to a taxable supply made under this agreement the invoice must comply with the requirements for a tax invoice, as defined in the GST Act.

F. Bank Accounts (clause 4)

F.1 Clause removed.

G. Acknowledgement and Publication (clause 6)

G.1 In all of Your, or Your subcontractors, relevant publications, promotional materials, activities and statements, You or Your subcontractors must acknowledge that the Project is an initiative of the Australian Government being conducted as part of the Education Investment Fund.

G.2 You must, at Your own cost, install a building plaque on the completed Project and a signage on the building site during the construction period from the commencement to the completion to acknowledge Commonwealth funding. The building plaque and signage on the building site must be in accordance with any requirements specified by Us.

H. Subcontracting and Management of the Project (clause 7)

H.1 Not applicable.

H.2 All persons invited to express an interest in Australian Government construction projects or projects which the Australian Government contributes funding (including this Program) to must be informed of the application of the National Code of Practice for the Construction Industry and its associated Guidelines to the Project. Advertisements calling for expressions of interest, requests for tenders, submissions, invitations to join Common Use Arrangements, etcetera, must incorporate the following statement:

The National Code of Practice for the Construction Industry, in accordance with the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, August 2009 (see Item Q of Schedule 1), applies to this project.

H.3 Your written arrangement with the Project Manager under clause 7.7 of this agreement must not contain any terms that are inconsistent with this agreement. It must contain provisions that require the Project Manager to:

<ul style="list-style-type: none"> • comply with this agreement;
<ul style="list-style-type: none"> • to do all things which under this agreement You are required to do in order to ensure that the Project will be successfully completed;
<ul style="list-style-type: none"> • provide periodic reports to You on the progress of the Project;

<ul style="list-style-type: none"> inform You immediately if the Funding Recipient is not conducting the Project in accordance with Your agreement with the Funding Recipient and/or this agreement;
<ul style="list-style-type: none"> liaise with You and provide information to You or Us as reasonably required by You or Us and comply with all reasonable requests, directions or monitoring requirements received from You or Us;
<ul style="list-style-type: none"> allow Us the same degree of access to its premises and records as is specified in clause 18 of this agreement during the term of this agreement and for 7 years after the Completion Date;
<ul style="list-style-type: none"> in managing the Project, comply with (a) all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or local authority; and (b) any of our policies notified by Us to You in writing, including those listed in item Q of Schedule 1 of this agreement;
<ul style="list-style-type: none"> allow You to immediately terminate Your arrangement with it or to reduce the scope of Your arrangement with it in circumstances that are equivalent to clauses 27 and 28 of this agreement.
<ul style="list-style-type: none"> comply with clauses 13 to 17 of this agreement or provisions equivalent to those clauses.

H.4 You must, as soon as You enter into Your written arrangement with the Project Manager, give Us a copy of that arrangement. You must also give us a copy of any variations to that arrangement as soon as You and the Project Manager have made them.

I. Specified Personnel (clause 8)

I.1 Not applicable.

J. Assets (clause 9)

J.1 For the purpose of this agreement, Your Assets are:

- (a) The Pundulmurra Campus Upgrade.
- (b) Assets over the value of \$50,000 purchased or created with EIF funding for the Pundulmurra Campus Upgrade as stated in Your Application.

J.2 You own any Asset acquired with the Funding.

K. Insurance (clause 10)

K.1 You must maintain:

- (a) workers' compensation insurance for an amount required by the relevant State or Territory legislation; and
- (b) public liability insurance for \$10,000,000 (ten million dollars) or more per claim;
- (c) professional indemnity insurance for \$1,000,000 (one million dollars) or more per claim;
- (d) insurance for all Assets purchased from the Funds sufficient to enable; replacement of the Asset and claims arising from the use of the Assets;
- (e) product liability insurance for products and goods (if applicable); and

- (f) ensure that all Project Participants and subcontractors hold appropriate insurances.

L. Reporting (clause 12)

- L.1 You must, in accordance with clause 12 of this agreement, provide Progress Reports, Annual Progress Reports and a Final Report that are acceptable to Us. The contents of the Progress Reports; Annual Progress Reports and the Final Report are set out below. You must provide them in a format agreed by Us beforehand. The Reports must be provided to Us on the due dates set out below:

Details of Report	Period covered by Report	Due Date
Initial Progress Report	Project commencement – February 2011	7 March 2011
2010-2011 Progress Report 2	March 2011 – May 2011	14 June 2011
2010-2011 Annual Progress Report	1 July 2010 – 30 June 2011	7 September 2011
2011-2012 Progress Report 1	July 2011 – August 2011	7 September 2011
2011-2012 Progress Report 2	September 2011 – November 2011	8 December 2011
2011-2012 Progress Report 3	December 2011 – February 2012	8 March 2012
2011-2012 Progress Report 4	March 2012 - May 2012	11 June 2012
2011-2012 Annual Progress Report	1 July 2011 – 30 June 2012	6 September 2012
2012-2013 Progress Report 1	June 2012 – August 2012	6 September 2012
2012-2013 Progress Report 2	September 2012 – November 2012	6 December 2012
2012-2013 Progress Report 3	December 2012 – February 2013	6 March 2013
2012-2013 Progress Report 4	March 2013 - May 2013	10 June 2013
2012-2013 Annual Progress Report	1 July 2012 – 30 June 2013	5 September 2013
2013-2014 Progress Report 1	June 2013 – August 2013	5 September 2013
2013-2014 Progress Report 2	August 2013 – November 2013	6 December 2013
2013-2014 Progress Report 3	December 2013 – February 2014	6 March 2014
2013-2014 Progress Report 4	March 2014 – May 2014	10 June 2014
2013-2014 Annual Progress Report	1 July 2013 – 30 June 2014	10 June 2014 or within one month of project completion

Details of Report	Period covered by Report	Due Date
Final Report (including final financial report)	Project commencement to Project completion	10 June 2014 or within one month of project completion

- L.2 Progress Reports in any year should provide a brief overview of progress over the reporting period and must include, but is not limited to, the following:
- a) a description of the progress made by You on the Project against any applicable milestones as set out in the relevant Project including photographs if applicable.
 - b) any confidential information should be clearly identified as such and presented in a separate attachment.
 - c) a financial statement on the expenditure of the Project for the reporting period, including:
 - i. expenditure of Commonwealth EIF funding;
 - ii. itemised expenditure for Non-Capital Costs; and
 - iii. total expenditure.
 - d) for the first Progress Report only and at the commencement stage, an estimate of the number of jobs supported by the Project based on an estimate of the average daily number of on-site workers for the duration of the Project, in three categories:
 - i. total number of jobs;
 - ii. apprentices; and
 - iii. Indigenous. (Statistics on apprentices and Indigenous can be reported at a later stage if not available at the initial stage of the Project.)
 - e) key risks - exception reporting, if the Project is not on track.
- L.3 Each Annual Progress Report should provide an accurate description, including a description of the Project activities, and the overall Project status for each reporting period, assessed against the EIF Project Plan in a format that is agreed by Us beforehand. Each Annual Progress Report must include, but must not be limited to, the following:
- a) an overview of the status of the Project, addressing, for instance, highlights, difficulties or breakthroughs.
 - b) a description of the activities undertaken, including a discussion of unexpected or unusual activities.
 - c) a description of the progress made by You on the Project including photographs if applicable against the milestones set out in the relevant EIF Project Plan, including discussion of agreed milestones not fully met and the explanations for this;
 - d) discussion of any deviations from the EIF Project Plan, including:
 - i. additional activities undertaken (nature of activities, reason for undertaking the activities, realised or expected benefits from the additional activities);
 - ii. agreed activities not completed and an explanation why they were not completed; and

- iii. remedial action proposed, including timeframes.
 - e) a discussion of the level of cash and in-kind co-investment received against expected levels.
 - f) an audited financial statement, as set out in clause 12, of actual versus planned income and expenditure for the Project, including:
 - i. expenditure of Commonwealth EIF funding;
 - ii. itemised expenditure for Non-Capital Costs; and
 - iii. total expenditure.
 - g) key risks - exception reporting, if the Project is not on track.
 - h) any confidential information should be clearly identified as such and presented in a separate attachment.
- L.4 The Final Report must include the following:
 - a) copies of all relevant certificates of completion in relation to the construction of the building.
 - b) a report on Your attainment of the project milestones including photographs, if applicable.
 - c) an audited financial statement, as set out in clause 12, of actual versus planned income and expenditure of the whole Project, including:
 - i. expenditure of Commonwealth EIF funding;
 - ii. itemised expenditure for Non-Capital Costs; and
 - iii. total expenditure.
 - d) a discussion of the expected future usage of the building, as well as the terms of usage, including access terms and pricing (as appropriate).
 - e) a discussion of the expected future trends in the use of the building as appropriate.
- L.5 The Reports and any notice provided by You to Us must be submitted in hard copy and electronically in PDF format.

M. Commonwealth Material (clause 13)

M.1 Not applicable.

N. Project Material (clause 14)

- N.1 Project Material means all Material brought into existence for the purpose of performing this agreement, including:
- a) the Application;
 - b) the agreed EIF Project Plan;
 - c) Reports.

O. Confidential Information (clause 15)

O.1 Not applicable.

P. Protection of Personal Information (clause 16)

P.1 No conditions or restrictions.

Q. Compliance with Laws and Policies (clause 29)

Compliance with Laws

Q.1 You acknowledge that:

- (a) You may have obligations under the *Equal Opportunity for Women in the Workplace Act 1999* and You must comply with those obligations;
- (b) when dealing with Your employees, You must comply with the *Fair Work Act 2009 and related legislation*, and obligations under relevant occupational health and safety laws;
- (c) Chapter 7 of the Criminal Code provides for offences which attract substantial penalties, including theft of Commonwealth property and other property offences, obtaining property or financial advantage by deception, offences involving fraudulent conduct, bribery, forgery and falsification of documents;
- (d) giving false or misleading information is a serious offence under the Criminal Code;
- (e) the publication or communication of any fact or document by a person which has come to their knowledge or into their possession or custody by virtue of the performance of this agreement (other than a person to whom You are authorised to publish or disclose that fact or document) may be an offence under section 70 of the *Crimes Act 1914*, punishment for which may be a maximum of two years imprisonment;
- (f) in respect of data, including personal information, held in connection with this agreement, any unauthorised and intentional access, destruction, alteration, addition or impediment to access or usefulness of the data stored in any computer in the course of performing this agreement is an offence under Part 10.7 of the Criminal Code which may attract a substantial penalty, including imprisonment;
- (g) You are aware of the provisions of section 79 of the *Crimes Act 1914* relating to official secrets;
- (h) You are aware of Your obligations under Part 4 of the *Charter of United Nations Act 1945* and the *Charter of United Nations (Terrorism and Dealing with Assets) Regulations 2002*;

Note: more information about the Charter of United Nations Act and the Charter of United Nations (Terrorism and Dealing with Assets) Regulations is available at http://www.dfat.gov.au/icat/freezing_terrorist_assets.html.

- (i) You may be subject to the provisions of the *Trade Practices Act 1974* and the *Archives Act 1983*.

Compliance with Policies

Q.2 You must:

- (a) when using Our premises or facilities (including information systems), comply with Our directions and procedures relating to occupational health and safety, environmental management and security (which you acknowledge may change during the term of this agreement); and
- (b) ensure that any person who will have access to official secrets within the meaning of section 79 of the *Crimes Act 1914* signs an acknowledgment that he or she is aware of the provisions of that section;
- (c) when dealing with Your employees, You must comply with Our policies on

employment, including the *Fair Work Act 2009 and related legislation*, and obligations under relevant occupational health and safety laws.

National Code of Practice for the Construction Industry

Q.3 In this section:

- (a) **'Code'** means the National Code of Practice for the Construction Industry. A copy of the Code appears on the Internet at www.deewr.gov.au/building;
- (b) **'Implementation Guidelines'** means the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, August 2009, published by the Department of Education, Employment and Workplace Relations. A copy of the Guidelines appears on the Internet at www.deewr.gov.au/building
- (c) **'Project Parties'** means all contractors, subcontractors, suppliers, consultants and employees who perform work in relation to the Project including those listed in item H.1.
- (d) **'Code Monitoring Group'** has the same meaning as is given to that term in the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, August 2009 available at www.deewr.gov.au/building

Q.4 Construction activity is defined in the Code as including all organised activities concerned with demolition, building, landscaping, maintenance, civil engineering, process engineering, mining (excluding mining operations) and heavy engineering. Activity which falls within the scope of construction activity also includes building refurbishment or fit out, installation of building security systems, fire protection systems, air-conditioning systems, computer and communication cabling and building and construction of landscapes.

Q.5 Where the Funding results in construction and building activity, subject to the financial thresholds specified in the Implementation Guidelines, You must comply and ensure that the Project Parties comply with the Code and the Implementation Guidelines.

Q.6 The Code and Implementation Guidelines also apply to all construction activity indirectly funded by the Department through grant and other programs where:

- (a) the value of the Australian Government contribution to a project is at least \$5m and represents at least 50% of the total construction project value; or
- (b) the Australian Government contribution to a project is \$10m or more, irrespective of the proportion of Australian Government funding.
- (c) Where the Funding results in construction and building activity, subject to the financial thresholds specified in the Implementation Guidelines, You must comply and ensure that the Project Parties comply with the Code and the Implementation Guidelines.

Q.7 The Implementation Guidelines help Commonwealth agencies interpret and implement aspects of the Code. It is important that you familiarise yourself with the Code and Implementation Guidelines as there are other obligations which must be complied with, eg, reporting requirements. More information can be found at: www.deewr.gov.au/building.

Q.8 You must ensure that:

- (a) all requests for tender in relation to the Project made by You or any of the

- Project Parties contain the commitment to apply the Code and Implementation Guidelines as set out in the model tender documents; and
- (b) all contracts entered into in relation to the Project by You or any of the Project Parties contain the commitment to apply the Code and Implementation Guidelines as set out in the model contract.
- Q.9 You must maintain adequate records of Your compliance, and that of each of the Project Parties, with the Code and the Implementation Guidelines. You must permit Us and those authorised by Us, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, full access to Your premises and records, and those of the Project Parties, to:
- (a) inspect any work, material, machinery, appliance, article or facility;
- (b) inspect and copy any record relevant to the Project and works governed by this agreement; or
- (c) interview any person;
- as is necessary to allow validation of progress by You and the Project Parties in complying with the Code and the Implementation Guidelines.
- Q.10 Additionally, You, and each of the Project Parties, will agree to a request from Us, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, to produce a specified document within a specified period, in person, by fax or by post.
- Q.11 We and those authorised by Us may publish or otherwise disclose information in relation to compliance by You and the Project Parties with the Code and the Implementation Guidelines. You must obtain the consent of the Project Parties to the publication or disclosure of information under this clause.
- Q.12 You must not appoint a Project Party if that appointment would constitute a breach of a sanction imposed by the Code Monitoring Group.
- Q.13 You must not contract with an organisation which is precluded from tendering for Australian Government construction activity as a result of sanctions imposed by the Code Monitoring Group for a breach of the Code for the period of the preclusion. A list of organisations subject to sanctions can be found at:
<http://www.deewr.gov.au/WorkplaceRelations/Policies/BuildingandConstruction/Pages/Sanctions.aspx>.
- Q.14 While acknowledging that value for money is the core principle underpinning decisions on government procurement, when assessing tenders You may preference contractors, subcontractors and consultants that have a demonstrated commitment to:
- (a) adding and/or retaining trainees and apprentices;
- (b) increasing the participation of women in all aspects of the industry; or
- (c) promoting employment and training opportunities for Indigenous Australians in regions where significant indigenous populations exist.
- Q.15 You must not appoint a contractor, subcontractor or consultant in relation to the Project where:
- (a) the appointment would breach a sanction imposed by the Minister for Employment and Workplace Relations; or
- (b) the contractor, subcontractor or consultant has had a judicial decision against them relating to employee entitlements, not including decisions under appeal, and has not paid the claim.

Australian Government Building and Construction OHS Accreditation Scheme (the Scheme)

- Q.16 From 1 October 2007 only persons who are accredited under the Scheme are able to contract for building work that is "indirectly funded" by the Australian Government where:
- (a) the value of the Australian Government contribution to the project is at least \$5 million and represents at least 50 per cent of the total construction project value; or
 - (b) the Australian Government contribution to a project is \$10 million or more, irrespective of the proportion of Australian Government funding.
- Q.17 The Scheme is established by the *Building and Construction Industry Improvement Act 2005* (the *BCII Act*) and the Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005 (the Accreditation Scheme Regulations).
- Q.18 Building work is considered indirectly funded where it is funded by the Commonwealth (Australian Government) or a Commonwealth authority through grants and other programmes. This includes building projects where the Australian Government provides money through a funding agreement or grants to a person, for example a state or territory government who then may contract with persons who will undertake the building work or persons who will arrange for the building work to be carried out.
- Q.19 You acknowledge that:
- (a) subject to the definition of building work in the *BCII Act* and the thresholds contained in the Accreditation Scheme Regulations, the application of the Scheme is a condition of this funding; and
 - (b) any head contract for building work (between You and any other person) under the Project that is valued at \$3 million or more must:
 - i. be notified by You to the Office of the Federal Safety Commissioner at the earliest possible opportunity (that is, when approaching the market); and
 - ii. contain a requirement that the builder:
 - a. be accredited under the Scheme;
 - b. maintains Scheme accreditation for the life of the contract; and
 - c. must comply with all conditions of the Scheme accreditation.

R. Notices (clauses 8 and 31)

- R.1 The person who can accept notices for You is:
Name: Mr John Cloake, Principle VET Strategic Capital Analyst
Office Address: Department of Training and Workforce Development, 151 Royal Street, EAST PERTH, WA, 6004
Postal Address: Department of Training and Workforce Development, 151 Royal Street, EAST PERTH, WA, 6004
Fax: (08) 9238 4578
Phone: (08) 9238 2547

Email: john.cloake@dtwd.wa.gov.au

Handwritten initials, possibly 'JC', written in dark ink.

Schedule 2 Our Obligations

AA. Funding (clause 3)

AA.1 The total Funding for the Project is \$12.19 million (GST exclusive) payable by the following instalments:

Amount	Payable	Indicative Payment Date
\$5 million	On the provision by You of: <ul style="list-style-type: none"> • Initial Progress Report by the due date, specified in item L1. of Schedule 1 showing, in our opinion satisfactory performance against Milestone 1 and 2 of the agreed Project Plan and in item C5 of Schedule 1; and • a correctly rendered tax invoice showing GST as \$0 (zero). 	March 2011
\$2 million	On the provision by You of: <ul style="list-style-type: none"> • 2010-11 Progress Reports 3, 2010-11 Annual Progress Report and 2011-12 Progress Report 1 by the due dates, specified in item L1. of Schedule 1 showing, in our opinion satisfactory performance against Milestone 3, 4 and 5 of the agreed Project Plan and in item C5 of Schedule 1; and • a correctly rendered tax invoice showing GST as \$0 (zero). 	October 2011
\$2 million	On the provision by You of: <ul style="list-style-type: none"> • 2011-12 Progress Reports 2 by the due date, specified in item L1. of Schedule 1 showing, in our opinion satisfactory performance against Milestone 6 of the agreed Project Plan and in item C5 of Schedule 1; and • a correctly rendered tax invoice showing GST as \$0 (zero). 	January 2012
\$3.19 million	On the provision by You of: <ul style="list-style-type: none"> • 2011-12 Progress Report 3 and 4 by the due dates, specified in item L1. of Schedule 1 showing, in our opinion satisfactory performance against Milestone 7 of the agreed Project Plan and in item C5 of Schedule 1; and • a correctly rendered tax invoice showing GST as \$0 (zero). 	April 2012

AA.2 On the basis that payments under this agreement are of a funding nature, are to a government-related entity for GST purposes, are sourced from the *NBF Act* and are to be used for the purposes stated in this agreement, the parties rely on GSTR 2006/11 for the payments not being consideration for any supply and for no GST being imposed by reference to them.

AA.3 Subject to acceptance by Us, in our sole opinion that the relevant Progress Reports, Annual Progress Report or the Final Report represent satisfactory performance in the conduct of the Project, the date for payment is 30 days after the receipt by Us of a correctly rendered invoice and notification by Us to You that the relevant report has been accepted and after the delivery of the Project or part of the Project to which the payment relates.

BB. Program Delegate (clauses 11 and 31)

BB.1 The Program Delegate is:

Name: Mr James Hart, Branch Manager, Education Investment Fund Branch, Higher Education Group or the employee of the Department from time to time occupying or performing the duties of that position.

Office Address: Level 9, 50 Marcus Clarke Street, Canberra City, ACT, 2601

Postal Address: GPO Box 9880, Canberra, ACT, 2601

Email: eif@deewr.gov.au

CC. Your Confidential Information (clause 15)

CC.1 Not applicable.

THIS AGREEMENT is made on the 20th day of JANUARY 2011
SIGNED for and on behalf of)
THE COMMONWEALTH OF AUSTRALIA)
by Mr James Hart)
the Branch Manager)
Education Investment Fund Branch)
of Higher Education Group)
of the Department of Education, Employment)
and Workplace Relations)

James Hart
.....

In the Presence of:

[Signature]
.....

WITNESS

SUSAN MARY MILLET - Public Servant
.....

Full name and occupation or profession of witness (Please print)

SIGNED BY)

Dr Ruth Shean)
Director General)
Department of Training and Workforce Development)

Ruth Shean
.....

In the Presence of:

CKK
.....

WITNESS

Carolyn Keniczek Senior Project Officer
.....

Please print full name and occupation or profession of witnesses above.



ATTACHMENTS

ATTACHMENT A

APPLICATION

Initials

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ATTACHMENT B

EIF Round 3 – Project Plan

Institution Name: Pilbara TAFE

Project Name: Pundulmurra Campus Upgrade

Project Description

The project is to be located at the South Hedland Campus in WA located at Parker Street, South Hedland, 6722. The buildings are to be a mix of new and refurbished infrastructure, to include trade workshops and classroom facilities, access roads, IT infrastructure, trade equipment, \$1 million worth of OH&S upgrades and storage spaces for mobile training programs. The project will refurbish or provide new 4,882 sm of floor area which is an increase of 2,265 sm. Additionally extensive outdoor training areas and roads will be delivered as part of external works to make 43,183sm of gross floor area impacted by the project. See Table 3 Work and Floor Areas.

Pilbara TAFE will build new, and refurbish existing, classrooms and training workshops as well as horticultural and outdoor training facilities to build on existing Certificate III and higher level training in building, metalliferous mining and civil construction. The project is intended to boost participation and attainment rates with the design of the new facilities ensuring a best practice Aboriginal teaching and learning environment. The project will facilitate new courses [Certificate III (Carpentry and Joinery), Certificate I (Automotive)], as well as allow for expansion of existing course Certificate I (Resource and Infrastructure Operations), Certificate II (Metalliferous Mining, Conservation and Land Management, Horticulture), Certificate III (Civil Construction).

Please complete the following items for the above-named project:

1. Planned Project Milestone;
2. Expected Completion Date of Milestone;
3. Evidence to be provided on Completion of Milestones; and
4. Payment required on Completion of Milestone.

Table 1: Schedule of Milestones and Budget for Expenditure

Planned Project Milestone	Expected Completion Date of Milestone	Evidence of Completion of Project Milestone	Payment amount required on completion of Project Milestone
Project Milestone 1: Signing of funding agreement	December 2010	Funding agreement signed and copies of agreements with Pilbara TAFE and the Project Manager	\$2.0 million
Project Milestone 2: Engagement of Architect	February 2011	Letter of engagement	\$3.0 million
Project Milestone 3: Major equipment for civil metalliferous training purchased.	March 2011	Equipment delivered and in place – photographs provided and receipts.	\$0
Project Milestone 4: Design and documentation Review schematic designs consultation with project control group (PCG)	April 2011	Report from Architect including a review of costings and minutes	\$0

Project Milestone 5: Design and Documentation and costings	July 2011	Report	\$2 million
Project Milestone 6: Contract documentation	November 2011	Report for tender process	\$2 million
Project Milestone 7: Tender for construction	December 2011	Tender process outline	\$3.19 million
Project Milestone 8: Tender review approved, builder appointed	March 2012	Appointment letter	
Project Milestone 9: Builder on site project delivery commencement	April 2010	Photographic report and PCG minutes	
Project Milestone 10: Demolition completed	July 2012	Photographic report and PCG minutes	
Project Milestone 11: New workshop component completed	January 2013	Photographic report and PCG minutes	
Project Milestone 12: Workshop Refurbishment completed	August 2013	Photographic report and PCG minutes	
Project Milestone 13: Road works completed	November 2013	Photographic report and PCG minutes	
Project Milestone 14: Completion of works/occupation	February 2014	Certificate of practical completion entering defects period. Photographic evidence	
Project milestone 15: Defects period completed	February 2015	Defects acceptance signed document	

Contact details:

Name:	John Cloake
Position:	Principal VET Strategic Capital Analyst
Phone number:	(08) 9238 2547
Date:	25 September 2010

Table 2: Payments as agreed by the Commonwealth in each Financial Year.

Financial Year of Payment	Amount
2010-2011	\$5 m
2011-2012	\$7.19 m
Total	\$12.19 m

Note: The funding profile in Table 2 has been approved by the Australian Government and as such, neither timing nor quantum of payment is negotiable

Table 3: Work and Floor Areas

TPM1_DEAPPLICATION TABLE - REV 1_07.17.09

BLOCK	DESCRIPTION	GFA (m2)	Change in GFA (m2)	Cost per m2 (\$)	Actual / Indicative total cost
Block 7A CLASSROOMS	new veranda & pathway upgrade of existing classrooms (light, power, communications, security & air conditioning)	617	0	386	163,950.00
Block 9A WORKSHOP	upgrade of existing training workshop (equipment layout, demolition work, lighting, power, communications & security) new fibre optic new spray booth new mezzanine store new tool store new classroom new staff office new covered area	606	263	1,589	1,074,480.00
Block 8B WORKSHOP	new classroom new staff office new tool store upgrade of existing workshop (demolition work, ventilation, lighting, power, communications, security)	490	100	970	475,530.00
Block 11 REC HALL	new access ramp upgrade of existing (new sports walls, lighting, power, communications, security)	763	0	1,930	600,940.00
Block 16A TEACHING BLOCK	upgrade of existing (lighting, power, communications, security & air conditioning)	219	0	381	85,305.00
Block 16B TEACHING BLOCK	new mezz & female toilets to existing store upgrade of existing (lighting, power, communications, security & air conditioning)	219	0	793	173,510.00
Block 18 WORKSHOP	upgrade existing mezzanine store new veranda & pathway upgrade of existing (lighting, power, communications, security & compressed air)	601	0	321	190,575.00
Block 20 & 24 NEW WORKSHOPS	3 new training workshops 3 new classrooms 2 new stores new tool store new mezzanine level training workshop new covered way	1,105	1,105	2,245	2,617,230.00
Block 21 NEW COVERED AREA	new covered work area new cutting & grinding rooms new mezz & female toilets new universal toilet new cleaner store new covered way	301	301	2,100	762,900.00
Block 22 NEW HORTICULTURE AREA	new concrete handstand new soil storage bins relocate existing shadehouse & potting shed new storage shed	572	372	1,574	622,545.00
Block 25 NEW FLAMMABLE LIQUIDS STORE	new cyclone mesh capped structure	16	16	3,530	58,080.00
External Works	demolition of existing redundant buildings & structures new outdoor training area - 1345m ² new roads - 2402m ² new sealed bitumen forecourt - 4534m ² upgrade of existing car parks - 108m ² new carparking - 138m ² new fencing to perimeter of campus upgrade of existing fire service system				2,394,910.00
		Gross floor area (m2) (GFA)	4,882		
		Net change in GFA (m2)		2,267	
		Total Actual / Indicative Cost (\$)			9,105,955.00

Initials

[Handwritten initials]