

Funding Agreement

between the

COMMONWEALTH OF AUSTRALIA

as represented by the

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

and

Canberra Institute of Technology

**regarding funding for the Better TAFE Facilities element of the
Teaching and Learning Capital Fund for Vocational Education
and Training Program**

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Parties

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

AND

CANBERRA INSTITUTE OF TECHNOLOGY ABN 43 273 796 990 ('You', or 'Your')

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

Purpose

- A. The Australian Government announced the Teaching and Learning Capital Fund (TLCF) for Vocational Education and Training (VET) ('the Program') as part of a \$4.7 billion nation-building infrastructure package to support Australia's economy.

The TLCF (VET) will provide \$500 million during the 2009-10 financial year which will be distributed through initiatives focused on modernising and improving the quality of teaching and learning across the vocational education and training sector. Funding for this initiative will be provided through the following three program elements: Better TAFE Facilities; Training Infrastructure Investment for Tomorrow; and Investing in Community Education and Training.

- B. You are committed to helping achieve the Program, through Your conduct of the Project. The Project is the Better TAFE Facilities Project. Under the Better TAFE Facilities (BTF) program element, \$200 million will be provided over the 2009-10 financial year to modernise and improve the quality of teaching and learning facilities across the vocational education and training sector. Funding is for projects that address immediate maintenance needs, and/or involve small capital works and equipment and plant purchases.
- C. As a result of this commitment, We agree to support the Project by providing Funding to You, 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 agree to accept the Funding on the terms and conditions set out in this agreement.

1 Term of Agreement

- 1.1 This agreement 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.
- 2.2 The Funding must be expended by You only for the Project.
- 2.3 You must not act in a way that may bring the Project into disrepute.
- 2.4 We are not responsible for the provision of additional money to meet any expenditure in excess of the Funds.

3 Not applicable

- 3.1 Not applicable.

4 Funding

- 4.1 Subject to sufficient funds being available for the Program, and compliance by You with this agreement (including the invoicing requirements, if any, specified in item E of Schedule 1), We will provide You with the Funding at the times and in the manner specified in item AA of Schedule 2.
- 4.2 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;
 - (b) You have outstanding or unacquitted money under any arrangement (whether contractual or statutory) with Us; or
 - (c) infrastructure funding by Your state or territory is reduced.
- 4.3 If We exercise Our rights under clause 4.2, You must continue to perform any obligations under this agreement, unless We agree otherwise in writing.

5 Management of Funding

- 5.1 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.

5.2 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.

6 Repayment of Funding

6.1 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.

- 6.2 An overpayment may be recovered from You, including by offsetting that overpayment against any amount subsequently due to You under this agreement or any other arrangement between You and Us or between You and the Commonwealth generally.
- 6.3 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 6.1, until the amount is paid in full.
- 6.4 Any amount owed to Us under clause 6.1 and any Interest owed under clause 6.3, is recoverable by Us as a debt due to Us by You without further proof of the debt by Us.
- 6.5 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.

7 Acknowledgment and Publicity

- 7.1 You must comply with the requirements for acknowledgement and publicity contained in item G of Schedule 1.
- 7.2 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.

8 Assets

- 8.1 You must not use the Funding to purchase or create any Asset, apart from those detailed in item H of Schedule 1, without getting Our prior written approval. Our approval may be subject to conditions. Clauses 8.3 to 8.7 apply only to Assets purchased or created with the Funding.

- 8.2 Unless it is specified in item H of Schedule 1 that We own the Asset then, subject to this clause 8, You own any Asset acquired with the Funding. If We own the Asset, clauses 8.4, 8.5 and 8.6 do not apply.
- 8.3 Unless We otherwise agree in writing, during the Project Period and for three years after the end of the Project Period, You must:
- (a) use any Asset in accordance with this agreement and for the purposes of the Approved Project;
 - (b) do not encumber or dispose of any Asset, or deal with or use any Asset other than in accordance with this clause 8, without Our prior written approval;
 - (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;
 - (g) be fully responsible for, and bear all risks relating to, the use or disposal of all Assets;
 - (h) if specified in item H of Schedule 1, maintain an Assets register in the form and containing the details as described in item H of Schedule 1;
 - (i) as and when requested by Us, provide copies of the Assets register to Us; and
 - (j) if the Asset ceases to be used for the purposes of Approved Projects or to deliver training, transfer (where the nature of the Asset permits) the Asset to another organisation within 20 business days of being directed to do so by Us in writing. In the event that an Asset ceases to be Used for the purpose of an Approved Project You must advise Us of options, including Your preferred option, for transferring the Asset.
- 8.4 We may require You to pay to Us a proportion of the market value of an Asset which is equivalent to Our contribution to the purchase of the Asset:
- (a) if You sell or otherwise dispose of the Asset during the Project Period (which must be with Our prior written consent and subject to any conditions We may impose).
- 8.5 If You fail to make payment as required by clause 8.4, within 20 business days of receiving written notice from Us:
- (a) You must pay Us the Interest on the amount from the date it was due, for the period it remains unpaid; and
 - (b) the amount and Interest are recoverable by Us as a debt due to Us by You.
- 8.6 If any of the Assets are lost, damaged or destroyed, You must reinstate the Assets including from the proceeds of the insurance and this clause 8 continues to apply to

the reinstated Assets. Any surplus from the proceeds of the insurance must be notified to Us and used and accounted for as Funding under this agreement.

- 8.7 If You do not carry out an Approved Project in accordance with this agreement You must ensure that You deal with Assets as We, at Our sole discretion, direct in writing.

9 Insurance

- 9.1 You must, for as long as any obligations remain in connection with the Project, have insurance as specified in item I of Schedule 1.
- 9.2 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.

10 Liaison and Monitoring

- 10.1 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; and
 - (b) comply with all reasonable requests, directions, or monitoring requirements received from the Program Delegate.

11 Reporting

- 11.1 You must provide to Us Reports at the times and in the manner stated in item J of Schedule 1.
- 11.2 Unless clause 11.6 applies, You must provide Us with:
- (a) a certificate that all Funding received was expended for the Project and in accordance with this agreement, in the form of the document in Attachment A;
 - (b) an audited detailed statement of income and expenditure in respect of the Funding, which must include a definitive statement as to whether the financial accounts are true and fair, and a statement of the balance of Your account referred to in clause 5; and
 - (c) an audit statement that the Funding was expended for the Project and in accordance with this agreement.
- 11.3 The certificate referred to in clause 11.2(a) and the audits referred to in clause 11.2(a) and (c) must:
- (a) contain the details, if any, described in item J of Schedule 1;
 - (b) be provided to the Program Delegate within one month (or other period specified in item J of Schedule 1) of the end of the Project Period; and
 - (c) at the other times specified in item J of Schedule 1, if any.
- 11.4 The certificate referred to in clause 11.2(a) must be provided by the person specified in item J of Schedule 1 or, if no person is specified, by Your chief executive officer, chief internal auditor or board member.
- 11.5 Subject to clause 11.6, the audits referred to in clause 11.2(a) and (c) must:

- (a) comply with the Australian Auditing Standards; and
 - (b) be carried out by a person who is:
 - (i) registered as a company auditor under the *Corporations Act 2001*, or a member of the Institute of Chartered Accountants in Australia (who is entitled to use the letters CA or FCA), or of CPA Australia (who is entitled to use the letters CPA or FCPA) or the National Institute of Accountants (who is entitled to use the letters MNIA, FNIA, PNA or FPNA); and
 - (ii) not a principal, member, shareholder, officer or employee of You (Your holding company or a subsidiary of You or Your holding company).
- 11.6 If 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 audit,
- then, instead of the audits referred to in clause 11.2 (b) and 11.2 (c), You may provide Us with:
- (i) 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 a statement of the balance of Your account referred to in clause 5; and
 - (ii) statement that the Funding was expended for the Project and in accordance with this agreement.
- 11.7 The statements referred to in clause 11.6(i) and (ii) 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; and
 - (b) be delivered at the times and in the manner specified in clause 11.3.

12 Records

- 12.1 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), and the acquisition of Assets.
- 12.2 Records must be retained by You for 7 years after the end of the Project Period.

13 Access to Premises and Records

- 13.1 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;
 - (i) 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.

13.2 The rights referred to in clause 13.1 are subject to:

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

13.2 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 13.2(a) will not apply.

13.3 The requirement for access specified in clause 13.1 does not in any way reduce Your responsibility to perform Your obligations under this agreement.

14 Indemnity

14.1 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.

14.2 Your liability to indemnify Us under this clause 14 will be reduced proportionately to the extent that any fault on Our part contributed to the relevant loss, damage, expense, or liability.

14.3 Our right to be indemnified under this clause 14 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.

- 14.4 In this clause 14, "fault" means any negligent or unlawful act or omission or wilful misconduct.

15 Negation of Employment, Partnership and Agency

- 15.1 You will not, by virtue of this agreement, be or for any purpose be deemed to be Our employees, partners or agents.
- 15.2 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.

16 Entire Agreement, Variation and Severance

- 16.1 This agreement records the entire agreement between the parties in relation to its subject matter.
- 16.2 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.
- 16.3 If a court or tribunal says any provision of this agreement has no effect or interprets a provision to reduce an obligation or right, this does not invalidate, or restrict the operation of, any other provision.

17 Waiver

- 17.1 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.
- 17.2 A waiver by either party of any rights does not prevent the further exercise of any right.
- 17.3 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.
- 17.4 In this clause 17, 'rights' means rights or remedies provided by this agreement or at law.

18 Assignment and Novation

- 18.1 You must not assign Your rights under this agreement without prior written approval from Us.
- 18.2 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.

19 Dispute Resolution

- 19.1 Subject to clause 19.3, 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 19 has been used.
- 19.2 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.

- 19.3 This clause 19 does not apply if:
- (a) either party commences legal proceedings for urgent interlocutory relief;
 - (b) action is taken by Us under clauses 6, 13, 20 or 21; or
 - (c) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the law by You.
- 19.4 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.

20 Termination With Costs and Reduction

- 20.1 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 20.3 and 20.4, any reasonable costs incurred by You and directly attributable to the termination or partial termination of this agreement.
- 20.2 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
 - (c) continue work on any part of the Project not affected by the notice.
- 20.3 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.
- 20.4 We will not be liable to pay compensation for loss of prospective profits for a termination or reduction in scope under this clause 20 or loss of any benefits that would have been conferred on You had the termination or reduction not occurred.

21 Termination For Default

- 21.1 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; or
 - (b) You fail to fulfil, or are in breach of any of Your obligations under this agreement, 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) You fail to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001*;
 - (e) 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;
 - (f) 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
 - (g) Notice is served on You or proceedings are taken to cancel Your incorporation or registration or to dissolve You as a legal entity; or
 - (h) You cease to carry on a business relevant to the performance of the Project.

22 Compliance With Laws and Our Policies

- 22.1 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 K of Schedule 1.

23 Applicable Law and Jurisdiction

- 23.1 The laws of the Australian Capital Territory apply to the interpretation of this agreement.
- 23.2 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.

24 Notices

- 24.1 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 L of Schedule 1; and
- hand delivered or sent by pre-paid post or Electronic Communication to the address of the other party specified in the schedule.
- 24.2 A notice given under clause 24.1 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.

25 Survival of Clauses

- 25.1 These clauses survive the expiration or earlier termination of this agreement: 5, 6, 8, 11, 12, 14.
- 25.2 Clauses 7 and 13 apply during this agreement and for 7 years from the end of this agreement.

26 Interpretation

- 26.1 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*;

'Approved Project' means a project approved by Us as part of the Better TAFE Facilities element of the Program as set out in Schedule 3.

'Asset' means any item of tangible property which has a value of over \$5,000 inclusive of GST;

'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;

'Budget' means a budget included in a Project Submission or an Implementation Plan, whichever is applicable.

'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;

'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;

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

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

'Implementation Plan' means the plan which must be developed for an Approved Project where the Project Funding is \$500,000 or more, in accordance with item C of Schedule 1 of this agreement;

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

'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 an Approved Project as set out in the Project Submission or Implementation Plan whichever is applicable for an Approved Project (whether or not expressly described as a milestone), or of the Project as the context requires;

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

'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;

'Program Guidelines' refers to the guidelines for the Program as described in item B

of Schedule 1;

'Project' means the activity described in item C of Schedule 1;

'Project Funding' means a part of the Funds which You must spend for an Approved Project in accordance with this agreement.

'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;

'Project Submission' means a Better TAFE Facilities Project Submission submitted by You and approved by Us;

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

'Report' means a report required to be provided to Us under this agreement by You;

'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;

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

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

26.2 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.

26.3 The schedules (and annexures and documents incorporated by reference, if any) form part of this agreement.

26.4 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.

27 Disclosure of information

- 27.1 You acknowledge that We may be required to provide information in relation to the Funding or this agreement, as required by the operation of any law, judicial or parliamentary body or governmental agency or as We consider necessary for Our purposes, and accordingly We can give no undertakings to treat any of Your information or this Agreement as confidential information.
- 27.2 Unless We specify otherwise, You are permitted to disclose Material provided by Us to You for the purposes of this agreement, provided such disclosure is in accordance with any conditions that We have imposed from time to time.

28 Incorporation

- 28.1 If You are a body corporate, You warrant that Your constitution is not inconsistent with this agreement.
- 28.2 You must notify Us if You intend to amend Your constitution in a way which affects Your ability to comply with this agreement.
- 28.3 If You alter Your constitution in a way which affects Your ability to comply with this agreement, We may terminate this agreement under clause 21.

29 Protection of Personal Information

- 29.1 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 We specify to You in writing.
- 29.2 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 29 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 29.

29.3 In this clause 29, "received" includes "collected".

30 Subcontracting

- 30.1 You must, if requested by Us, inform Us immediately of the legal and any trading name of any subcontractor which has been or will be engaged for the purpose of the Project, and immediately provide Us with copies of any of Your subcontracts for the purpose of the Project.
- 30.2 The terms and conditions relating to the use of subcontractors are identified in item M of Schedule 1.
- 30.3 You are fully responsible for the performance of Your obligations under this agreement, even if You subcontract some or all of Your obligations.
- 30.4 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.
- 30.5 We may require You to promptly cease using a subcontractor on any reasonable ground by giving written notice to You. On receipt of the notice You must, at Your own cost, promptly cease using that subcontractor, arrange their replacement with personnel or another subcontractor acceptable to Us, and, if requested by Us, inform Us immediately of the legal name and any trading name of the replacement personnel or subcontractor.
- 30.6 If require You to cease using a subcontractor, You remain liable under this agreement for the past acts or omissions of Your subcontractors as if they were current subcontractors.
- 30.7 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*.

SCHEDULE 1 Your Obligations

A. Term of agreement (clause 1)

A.1 The Completion Date for this agreement is 31 July 2010.

B. Program and Guidelines (clause 2)

B.1 The Australian Government announced the Teaching and Learning Capital Fund (TLCF) for Vocational Education and Training (VET) (the Program) as part of a \$4.7 billion nation-building infrastructure package to support Australia's economy.

B.2 The purpose of the Teaching and Learning Capital Fund for Vocation Education and Training: Guidelines for the Better TAFE Facilities element of the Program (the Program Guidelines) is to assist states and territories to submit project proposals for funding under the Better TAFE Facilities element of the TLCF (VET).

C. Project (clause 2)

C.1 The Project includes all Approved Projects described in the Project Submission and

- C.7 You must inform Us by email or in writing of any proposed material variation to Approved Projects. You must ensure that material variation to Approved Projects is not made without the prior written approval of the Program Delegate. 'Material variation' has the meaning given in item J.4 below.
- C.8 You must undertake any construction involved in Approved Projects in a manner which maximises the training opportunities for trainees and apprentices.
- C.9 You must ensure that any subcontracts You enter do not contain any terms which are inconsistent with this agreement.
- C.10 You must develop strategies and measures to rectify any significant difficulties in fully performing the Project (which You must immediately inform Us of under item J.5 below), and implement those strategies and measures. If reasonably required by Us, You must immediately modify such strategies and measures in a manner specified by Us and implement the revised strategies and measures.
- C.11 In any case where an Approved Project remains incomplete as at 30 June 2010, You must ensure that the Approved Project is completed in accordance with the Project Submission and this agreement. For the avoidance of doubt this item survives the expiry of the Completion Date.

Implementation Plan for Approved Projects valued at \$500,000 or more

- C.12 You must provide to Us, for Our approval by 31 July 2009, an Implementation Plan for each Approved Project where the Project Funding is \$500,000 or more. The Implementation Plan must be based on a template which We will provide to You and must fully address all matters in that template, and be provided to Us in the form (electronic word format or hard copy) specified by the template.
- C.13 You must make any changes to the Implementation Plan which We notify to You and provide a revised version of the Implementation Plan within 5 business days of such notification. We may require this process to be repeated until We are satisfied with the Implementation Plan. If an Implementation Plan for an Approved Project has not been provided to Our satisfaction by 31 August 2009 We may terminate Our approval of the Approved Project and in that event You must immediately repay to Us all Project Funding for the relevant Approved Project.
- C.14 You must ensure that all Approved Projects for which an Implementation Plan must be developed are undertaken in accordance with the corresponding Implementation Plan, which We approve.
- C.15 Notwithstanding item C.14, You may commence work on Approved Projects prior to Our approval of the corresponding Implementation Plan.

D. Project Period (clause 2)

- D.1 The Project Period commences on the date this agreement is signed by Us and must be completed by 30 June 2010.

E. Invoice Requirements (clause 4)

- 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 5)

You are required to maintain a separate bank account for the Funds.

G. Acknowledgement and Publication (clause 7)

- G.1 You must hold opening ceremonies for Approved Projects and must ensure that:

- (a) the Deputy Prime Minister is be invited to all opening ceremonies;
- (b) You contact Us to arrange an Official Recognition ceremony through the TLCF (VET) website at: www.deewr.gov.au/tlcfvet;
- (c) You provide the Deputy Prime Minister with at least two months notice of any openings and public events relating to Approved Projects;
- (d) You provide three dates to allow greater flexibility for the Deputy Prime Minister or representative to attend;
- (e) a convenient date for the ceremony for all parties is chosen;
- (f) ceremonies are not scheduled on Parliamentary sitting days;
- (g) the official opening or ceremony is held within three months of the completion of the Approved Project, unless otherwise agreed by the Deputy Prime Minister;
- (h) You make provision in the official proceedings for the Deputy Prime Minister or her representative to speak; and
- (i) Arrangements for the Deputy Prime Minister or representative to open a facility are not changed without Our agreement.

- G.2 You and We reserve the right to publicise and report on the awarding of Funds to You, including the amount of the Project Funds for each Approved Project and the title and a brief description of the Approved Project.
- G.3 You must:
- (a) acknowledge Our funding of Approved Projects in Your newsletters and websites, and in any other advertising or promotion related to the Approved Project, using words specified by Us;
 - (b) affix plaques containing information specified by Us to completed Approved Projects within one month of completion including all assets purchased, created or modified with TLCF funding. If a plaque cannot be attached because of the nature of the Approved Project, then place a plaque in an appropriate and visible location in its premises such as the front foyer. Plaques must not be removed without the written agreement of Us and /or
 - (c) Acknowledge using words specified by Us Our funding of Approved Projects in outdoor signs on Your premises within one month of completion of Approved Projects, and in roadside signs where approval for such signs can be obtained from relevant traffic or council authorities. Such signs must not be removed without the written agreement of Us, and
 - (d) Contact Us, through the TLCF (VET) website at www.dcewr.gov.au/tlcfvet, to obtain information as to Our acknowledgement requirements for plaques and roadside signs.

H. Assets (clause 8)

- H.1 Any assets, the purchase or creation of which are necessary to the performance of an Approved Project, may be purchased or created without Our prior approval. You must maintain an Assets register recording all Assets purchased or created for the Approved Project, and must provide a copy of the register to Us on Our written request within 10 business days of the request.

I. Insurance (clause 9)

- I.1 You must maintain:
- (a) workers' compensation insurance for an amount required by the relevant State or Territory legislation;
 - (b) public liability insurance for \$10,000,000 (ten million dollars) or more per claim;
 - (c) insurance for all Assets purchased or created using the Funds to enable replacement of the Asset;
 - (d) insurance for claims arising from use of the Assets for \$10,000,000 (10

- million dollars) or more per claim; and
- (e) professional indemnity insurance for \$1,000,000 (one million dollars) or more per claim..

J. Reporting (clause 11)

- J.1 You must provide to Us monthly reporting on the Project within 14 days of the end of each month during the Project Period, using the template or templates which We will provide for this purpose. The information which the template or templates will elicit will include details of:
- a. project expenditure versus budgeted expenditure by Milestone – include actual expenditure to date and forecast expenditure for all milestones;
 - b. administrative expenditure versus budget;
 - c. progress of the Approved Project against Milestones;
 - d. exception reporting on issues of concern and an update on project risks. Estimated impact on project schedule, budget and job creation should be provided;
 - e. a photo or photos showing the progress of the Approved Project; and other matters specified on the template.
- J.2 You must provide to Us written annual Reports by 30 June 2011, 30 June 2012, and 30 June 2013. Annual Reports must include full details of:
- (a) numbers commencing training in or using facilities purchased, constructed or improved as part of the Approved Project, or as a result of the Approved Project, including the details of the qualifications they are enrolled in;
 - (b) numbers of those in item J.2(a) completing training including the details of the qualifications they are enrolled in, and
 - (c) utilisation of the facility, including community and other groups using the facility, including community and other groups using the facility, either for training or for purposes other than training.
- J.3 You must provide to Us any additional reports whether written or otherwise which We require within 5 business days of written notification by Us including but not limited to any reports We specify where an Approved Project remains incomplete as at 30 June 2010.
- J.4 You must provide to Us a written request to make any proposed material variation to an Approved Project. The request must include a description of the proposed material variation. We may approve or decline the material variation in Our sole discretion, or impose conditions on Our approval. 'Material variation' means an increase in the proportion of the Budget used for administrative expenditure, an increase in the Budget for an Approved Project by more than 10% (note that We are not liable to provide additional Funds if there is an increase in the Budget for an

Approved Project), or a reduction in the size of the Approved Project by more than 10%.

- J.5 You must immediately advise Us of any significant difficulties in fully performing the Project.

K. Compliance with Laws and Policies (clause 22)

Compliance with Laws

K.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 *Workplace Relations Act 1996*, 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

K.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.

National Code of Practice for the Construction Industry

K.3.1 In these clauses:

- (a) **'the Code'** means the National Code of Practice for the Construction Industry. A copy of the Code appears on the Internet at www.workplace.gov.au/building
- (b) **'the Guidelines'** means the Australian Government Implementation Guidelines for National Code of Practice for the Construction Industry, Revised September 2005, Reissued June 2006, published by Us. A copy of the Guidelines appears on the Internet at www.workplace.gov.au/building

K.3.2 Where an Approved Project specifically relates to building and construction activity, subject to the thresholds specified in the Guidelines, You must comply with the Code and Guidelines.

K.3.3 The Guidelines require You to ensure that:

- a) all requests for tender, expressions of interest, submissions and invitations in relation to the Approved Projects contain the commitment to apply the Code and Guidelines as set out in the model tender documentation published by Us; and
- b) all contracts entered into in relation to an Approved Project contain the commitment to apply the Code and Guidelines as set out in the model contract clauses.

K.3.4 You must maintain adequate records of compliance by You with the Code and the Guidelines. You must ensure that We, and those authorised by Us, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, have full access to Your premises and records to:

- a) inspect any work, material, machinery, appliance, article or facility;
- b) inspect and copy any record relevant to an Approved Project;
- c) interview any person as is necessary to monitor compliance with the Code and Guidelines. Additionally, You must ensure that You cooperate with a request from

Us, or from 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.

- K.3.5 We and those authorised by Us may publish or otherwise disclose information in relation to compliance by You with the Code and the Guidelines.
- K.3.6. You must ensure that You do not appoint a subcontractor, consultant or material supplier in relation to an Approved Project where the appointment would breach a sanction imposed by the Minister for Employment and Workplace Relations.

Occupational Health and Safety Accreditation Scheme

- K.4.1 This project is bound by the application of the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) and the following conditions:
- K.4.2 All head contracts for building work under this Project that are valued at \$3 million or more must:
- a. be notified to the Office of the Federal Safety Commissioner at the earliest possible opportunity (that is, when approaching the market).
 - b. contain a requirement that the builder:
 - i. is accredited under the Scheme;
 - ii. maintains Scheme accreditation for the life of the contract; and
 - iii. must comply with all conditions of the Scheme accreditation.”

Environmental Protection and Biodiversity

- K.5 You must ensure that when undertaking an Approved Project You comply with the *Environment Protection and Biodiversity Act 1999* to the extent, if any, it may be applicable.

L. Notices (clause 24)

L.1 The person who can accept notices for You is:

| | |
|-----------------|---|
| Name: | Mr Ivan Radic |
| Office Address: | Room 102, Block A, Reid Campus Constitution Ave, Reid |
| Postal Address: | PO Box 826, Canberra 2601 |
| Fax: | (02) 6207 3199 |
| Phone: | (02) 6207 3521 |
| Email: | <u>Ivan.Radic@cit.act.edu.au</u> |

M. Subcontracting (clause 30)

M.1 A written subcontract must be entered into which binds the subcontractor to all relevant terms and conditions of this agreement including: clause 9 (Insurance); clause 12 (Records), clause 13 (Access to Premises and Records); clause 15 (Negation of Employment, Partnership and Agency); clause 20 (Termination with Costs and Reduction); clause 21 (Termination for Default); clause 22 (Compliance with Laws and Our Policies); clause 27 (Disclosure of Information); clause 29 (Protection of Personal Information).

M.2 You must include in all Your subcontracts for the purpose of the Project a schedule of payments and milestones for 2009-10 so that all payments by You to the subcontractor are due by no later than 30 June 2010, subject to the subcontractor completing all its obligations under the subcontract.

SCHEDULE 2 Our Obligations

AA. Funding (clause 4)

AA.1 The maximum Funds payable under this agreement is \$3,173,526. Subject to the terms of this agreement, We will pay You the Funds, as follows:

- a. \$ 2,062,791.90 (65% of the Funds) by 7 July 2009;
- b. \$ 952,057.80 (30% of the Funds) on 7 December 2009 and upon successful completion of all Your obligations under this agreement up to that date; and
- c. \$ 158,676.30 (5% of the Funds) on 7 July 2010 and upon successful completion of all Your obligations under this agreement.

AA.2 Subject to acceptance by Us, the date for payment is 30 days after delivery of a correctly rendered invoice to Us and after delivery of the Project or Part of the Project to which the Payment relates.

AA.3 If the cost of the Project exceeds the Project Funds We will not be liable to provide any additional Funds, and We are not liable for any recurrent costs in relation to infrastructure or facilities developed as part of an Approved Project.

BB. Program Delegate

BB.1 The Program Delegate is:

Name: Andrew Lalor

Office Address: Department of Education, Employment and Workplace Relations
Level 6, 14 Mort Street
Braddon, ACT 2600.

Postal Address: GPO Box 9880, CANBERRA ACT 2601

Fax: (02) 6123 5018

Phone: (02) 6240 8757

Email: Andrew.Lalor@deewr.gov.au

SCHEDULE 3 – PROJECT FUNDING RECIPIENTS AND APPROVED PROJECTS

| | Approved Project | Project Funding |
|---|---|-----------------|
| Canberra Institute of Technology | | |
| Reid Constitution Avenue Reid ACT 2612 | Refurbish Kitchen 1 (K126) | \$850,000 |
| Sutton Road 2620 | Construct Machinery Shed, Ablution block, Permanent Power and CIT Network access. | \$600,000 |
| Bruce Haydon Drive Bruce ACT 2617 | Replace Benches, Storage and shelving in six Laboratories to create more flexible teaching spaces. | \$600,000 |
| Fyshwick Canberra Avenue Fyshwick ACT 2609 | Fyshwick Trade Skills Centre upgrade including: Construct Mezzanine above Refrigeration Store, Construct Gas Training Room and Construct classroom above metals project area, D Block | \$550,000 |
| Bruce Haydon Drive Bruce ACT 2617 | 20 x 10 training shed with slab and sand well | \$250,000 |
| Southside Ainsworth Street Phillip ACT 2606 | Refurbish Auditorium and Install collapsible seating to create theatre for 90 students (D102) | \$323,526 |

THIS AGREEMENT is made on the 29th day of June 2009.

SIGNED, sealed and delivered for and on behalf of

THE COMMONWEALTH OF AUSTRALIA

by ~~Margaret McKinnon~~

Neil McAuslan

the Group Manager
of Youth and Industry Skills Group
of the Department of Education,
Employment and Workplace Relations

)
)
)
)
)
)
)

Neil McAuslan

on
behalf
of

In the Presence of:

[Signature]
.....

WITNESS

Andrew Lalor, Director TLE Fund

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

Signed, sealed and delivered by

Dr Colin Adrian
Chief Executive
Canberra Institute of Technology

[Signature]
)
)
)

In the Presence of:

L. Young
.....

WITNESS

Lequita Young, Exec Assistant

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

ATTACHMENT A – ACQUITTAL DECLARATION TEMPLATE

**Acquittal declaration for the
Teaching and Learning Capital Fund (TLCF) for VET**

Project name:

Australian Government grant amount: \$.....

Funding period

I confirm that all funding provided to the Canberra Institute of Technology by the Australian Government under the Better TAFE Facilities element of the TLCF (VET) has been expended in accordance with the agreement between the Canberra Institute of Technology and DEEWR for the purpose of the Better TAFE Facilities element of the TLCF (VET).

Signed:

Name:

[must be a director, the chief executive officer or the chief internal auditor of You]

Position:

Date: