

Funding Deed

between the

COMMONWEALTH OF AUSTRALIA

as represented by the

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

and

**State of South Australia, as represented by the
Department of Further Education, Employment, Science
and 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

STATE OF SOUTH AUSTRALIA as represented by the Department of Further Education, Employment, Science and Technology ABN 16 692 317 206 of 11-29 Waymouth Street, Adelaide SA 5000 ('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.

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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 Non-reduction of infrastructure funding

- 3.1 You acknowledge that funds provided by Us to You under this agreement are provided on the basis that infrastructure funding by Your state or territory has not and will not be reduced as a result of Your receipt of funding from Us under the Program.

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, and must ensure that Project Funding Recipients do 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.

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- 8.2 Unless it is specified in item H of Schedule 1 that We own the Asset then, subject to this clause 8, Project Funding Recipients 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 ensure that Project Funding Recipients:
- (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 a Project Funding Recipient sells or otherwise disposes 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 any Project Funding Recipient does not carry out an Approved Project in accordance with this agreement You must ensure that the Project Funding Recipient deals with Assets as We, at Our sole discretion, direct in writing.

9 Insurance

- 9.1 You warrant that You are self-insured and that this arrangement will, for as long as any obligations remain in connection with the Project, include insurance as specified in item I of Schedule 1 and ensure that Project Funding Recipients have the insurance specified in item I.
- 9.2 You must notify Us in writing immediately if You cease to be self-insured and immediately take out the insurance specified in item I.1 of Schedule 1. You must also, when requested, provide Us, within 10 business days of the request, with satisfactory evidence that You have complied with Your obligation to insure and ensure that Project Funding Recipients have the insurance specified in item I.2.

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, or ensure that Project Funding Recipients provide to Us progress Reports at the times and in the manner stated in item J of Schedule 1.
- 11.2 You must complete and provide to Us the acquittal declaration template at Attachment A to this agreement by 31 July 2010. Any unspent, uncommitted or unsatisfactorily acquitted funds must be repaid to Us in accordance with clause 6 of this agreement.

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.

13.3 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 13.2(a) will not apply.

13.4 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 0 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 0 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 0, "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 0, 'rights' means rights or remedies provided by this agreement or at law.

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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 0, 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 0 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 0 does not apply if:
- (a) either party commences legal proceedings for urgent interlocutory relief;
 - (b) action is taken by Us under clauses 6, 0, 0 or 0; 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.

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.

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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 (b) 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 0 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 0 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 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;

'**Eligible TAFE**' means a TAFE specified as being eligible in the Program Guidelines.

'**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.

'**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;

'**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;

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

'Project Funding Recipient' means an Eligible TAFE to which You provide Project Funds for the purpose of an Approved Project in accordance with this agreement.

'Project Funding' means a part of the Funds which You must provide to Project Funding Recipients 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 to You by a Project Funding Recipient 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 or by a Project Funding Recipient.

'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.

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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 consists of the management by You of Project Funds for Approved Projects in accordance with this Agreement, including the Program Guidelines. You must undertake the Project in accordance with this agreement within the Project Period.
- C.2 You must ensure that Project Funding is only provided to Project Funding Recipients to enable them to carry out Approved Projects.
- C.3 You must ensure that the Project Funding is expended by the Project Funding Recipient only for the Approved Project. This includes but is not limited to ensuring that Project Funding is not used as security to obtain, or comply with, any form of loan, credit, payment or other interest; or for the preparation of, or in the course of, any litigation.
- C.4 The Project Funding Recipients, Approved Projects and amount of the Project Funds for each Approved Project are set out in Schedule 3 of this agreement. You must ensure that each Project Funding Recipient completes each relevant Approved Project by 30 June 2010, in accordance with:
- (a) the Guidelines;
 - (b) the Project Submission or Implementation Plan for the relevant Approved Project including the Budget and Milestones in the Project Submission or Implementation Plan, whichever of the Project Submission or Implementation Plan is applicable;
 - (c) Schedule 3 of this agreement; and

- (d) to a high professional standard.
- C.5 You must obtain the agreement of each Project Funding Recipient that We are not responsible for the provision of additional money to meet any expenditure in excess of the Project Funds.
- C.6 You must monitor the performance of Approved Projects by Project Funding Recipients and inform Us immediately in writing if a Project Funding Recipient is not performing an Approved Project in accordance with this agreement.
- C.7 In the event of You becoming aware that a Project Funding Recipient is not performing an Approved Project in accordance with this agreement You must assist the relevant Project Funding Recipient to develop strategies and interventions to rectify any difficulties in fully performing the Approved Project. If required by Us, you must not provide any further Funds to a Project Funding Recipient if in Our view at Our absolute discretion the Project Funding Recipient is not performing an Approved Project in accordance with this deed, until the non-compliance is remedied to Our satisfaction if the non-compliance can be remedied or until otherwise notified by Us.
- C.8 You must provide support to Project Funding Recipients to undertake Approved Projects including assisting them, to the level they require, to develop a schedule of works, or if applicable an Implementation Plan, and in project management.
- C.9 You must ensure that Project Funding Recipients liaise 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.10 You must inform Us by email or in writing of any proposed material variation to Approved Projects and ensure that Project Funding Recipients notify You of any proposed material variation. 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.11 You must ensure that Project Funding Recipients allow Us an equivalent degree of access to their premises as that specified in clause 13 of this agreement, during the term of this agreement and for seven years after the end of this agreement.
- C.12 You must ensure that all Project Funding Recipients, in carrying out Approved Projects, 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 of this agreement.

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- C.13 You must ensure that You are entitled to immediately terminate any legally binding arrangement You have with Project Funding Recipients for the purpose of Approved Projects, or to reduce the scope of such an arrangement, in circumstances which are equivalent to those set out in clauses 20 and 21 of this agreement.
- C.14 You must ensure that You are entitled to require, within 20 business days of written notice from You, repayment of Project Funding from Project Funding Recipients where some or all of the Project Funding has not been spent for the Approved Project to which the Project Funding relates, or acquitted to Our or Your satisfaction, or where an overpayment has occurred. You must ensure that Your entitlement in this regard survives indefinitely. If directed by Us within the circumstances specified in this item C.14, You must immediately take all necessary steps to recover Project Funding from Project Funding Recipients and, if required by Us, repay that Project Funding to Us. Amounts payable by You to Us in accordance with this item C.14 are a debt due by You to Us.
- C.15 You must ensure that all Project Funding Recipients undertake any construction involved in Approved Projects in a manner which maximises the training opportunities for trainees and apprentices:
- C.16 You must ensure that any legally binding arrangements between You and Project Funding Recipients, and between Project Funding Recipients and their subcontractors, do not contain any terms which are inconsistent with this agreement.
- C.17 You must enter into a legally enforceable arrangement with each Project Funding Recipient for the purpose of Your obligations under this item C, which requires the Project Funding Recipient to do all things which, under this item C, You must ensure that it does, and which confers on You all rights which this item C requires You to ensure that You have.
- C.18 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.19 You must provide to Us, or ensure that Project Funding Recipients 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.20 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.

C.21 You must ensure that all Approved Projects for which an Implementation Plan must be developed are undertaken in accordance with the corresponding Implementation Plan, (and not the Project Submission where there is any inconsistency between the Implementation Plan and the Project Submission) which We approve.

C.22 Notwithstanding item C.21, Project Funding Recipients 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)

Not applicable.

G. Acknowledgement and Publication (clause 7)

G.1 You must ensure that Project Funding Recipients hold opening ceremonies for Approved Projects and that:

- (a) the Deputy Prime Minister is be invited to all opening ceremonies;
- (b) Project Funding Recipients contact DEEWR to arrange an Official Recognition ceremony through the TLCF (VE1) website at: www.deewr.gov.au/tlcfvet;
- (c) Project Funding Recipients provide the Deputy Prime Minister with at least two months notice of any openings and public events relating to Approved

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Projects;

- (d) Project Funding Recipients 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) Project Funding Recipients 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 Project Funding to the Project Funding Recipient, including the amount of the Project Funds given to the Project Funding Recipient and the title and a brief description of the Approved Project.

G.3 You must ensure that Project Funding Recipients::

- (a) acknowledge Our funding of Approved Projects in their 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 TILCF 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 their 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 TILCF (VET) website at www.dccswr.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 ensure that Project Funding Recipients maintain an Assets register recording all Assets purchased or created for the Approved Project, and that the Project Funding

Recipient provides 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 warrant that Your self-insurance arrangements include the following insurance:

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

I.2 You must ensure that Project Funding Recipients (which do not include You) maintain:

- (a) Workers' compensation insurance for an amount required by the relevant State or Territory legislation;
- (b) Public liability insurance for \$10,000,000 (10 million dollars) or more per claim;
- (c) Insurance for all Assets purchased or created using Project Funding to enable replacement of the Asset; and
- (d) Insurance for claims arising from use of the Assets for \$10,000,000 (10 million dollars) or more per claim.

J. Reporting (clause 0)

J.1 You must provide to Us, or ensure that Project Funding Recipients provide to Us, monthly reporting on all Approved Projects 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. You must ensure that any information provided by Project Funding Recipients for the purpose of monthly reporting is accurate. 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
- f. other matters specified on the template.

J.2 You must provide to Us, or ensure that Project Funding Recipients provide to Us,

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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, or ensure that Project Funding Recipients 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, or ensure that Project Funding Recipients 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 require Project Funding Recipients to sign, by a date specified by Us, any declaration as to their use of Project Funding which We provide as a condition of Your receiving instalments of the Funding.

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/freeczing_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.

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- 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 and ensure that Project Funding Recipients 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 made by any of the Project Funding Recipients 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 by any of the Project Funding Recipients 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 and each Project Funding Recipient 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 and those of each Project Funding Recipient 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 and each of the Project Funding Recipients will 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 and each of the Project Funding Recipients with the Code and the Guidelines. You must obtain the consent of each Project Funding Recipient to the publication or disclosure of information under this clause.
- K.3.6. You must ensure that neither You nor any Project Funding Recipient appoints 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 each Project Funding Recipient complies 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 David Royle
Office Address: Level 4, 11-29 Waymouth Street, Adelaide SA 5000
Postal Address: GPO Box 320, Adelaide SA 5001
Fax: (08) 8226 3071
Phone: (08) 8226 2445
Email: royle.david2@saugov.sa.gov.au

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SCHEDULE 2 Our Obligations

AA. Funding (clause 4)

AA.1 The maximum Funds payable under this agreement is \$14,634,504. Subject to the terms of this agreement, We will pay You the Funds, as follows:

- a. \$9,512,427.60 (65% of the Funds) by 13 July 2009;
- b. \$4,390,351.20 (30%) of the Funds) on 31 December 2009 and upon successful completion of all Your obligations under this agreement up to that date; and
- c. \$731,725.20 (5% of the Funds) on 30 June 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 an Approved 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.

AA.4 If any of the events specified in item AA.5 occur in respect of a Project Funding Recipient, We may by notice to You immediately terminate Our approval of the corresponding Approved Project, in which case:

- (a) You must immediately take all reasonable steps to minimise Your obligations to pay Project Funding to that Project Funding Recipient; and
- (b) Our obligation to pay Funding to You under this agreement will immediately cease following Our notice to You in accordance with this item AA.4 except for remaining amounts payable by You to the Project Funding Recipient notwithstanding You having complied with item AA.4 (a).

AA.5 For the purpose of item AA.4, the circumstances in which We may exercise Our rights under item AA.4 are if:

- (a) One or more of the following circumstances apply to a Project Funding Recipient:

- (1) It is unable to pay all its debts when they become due;

- (2) If it is an incorporated body:
- (I) It fails 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 its winding up or any shareholder, member or director convenes a meeting to consider a resolution for its winding up;
 - (III) It comes 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 it under external administration; or
 - (IV) Notice is served on it or proceedings are taken to cancel its incorporation or registration or to dissolve it as a legal entity; or
- (3) It ceases to carry on a business relevant to the performance of an Approved Project.
- (a) A Project Funding Recipient sells or otherwise disposes of the Asset during the Project Period (which must be with Our prior written consent and subject to any conditions We may impose).
 - (b) In Our view, a Project Funding Recipient is in breach of any of the obligations specified in Schedule 1 item C as obligations to be imposed on the Project Funding Recipient, or a report or declaration in relation to the relevant Approved Project required to be provided to Us under this agreement has not been provided to Us by the due date for the report, or is not to Our satisfaction.
 - (c) An Implementation Plan required to be provided has not been provided to Our satisfaction by 31 August 2009.

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BB. Program Delegate

BB.1 The Program Delegate is:

Name: Andrew Lalor
Office Address: Department of Education, Employment
and Workplace Relations
Level 6, 14 Mott Street, Braddon, ACT 2600.
Postal Address: GPO Box 9880, CANBERRRA ACT 2601
Fax: (02) 6123 5018
Phone: (02) 6240 8757
Email: Andrew.Lalor@deewr.gov.au

SCHEDULE 3 - PROJECT FUNDING RECIPIENTS AND APPROVED PROJECTS

| Project Funding Recipient | Approved Project | Project Funding |
|---|--|-----------------|
| TAFE SA North | | |
| Regency Campus 137-163 Days Road Regency Park SA 5010 | Refurbishment of Hospitality Training Area | \$5,000,000 |
| Tea Tree Gully Campus 100 Smart Road Modbury SA 5092 | Refurbishment of Printing and Technology Training Area | \$3,000,000 |
| TAFE SA South | | |
| Adelaide City Campus 120 Currie Street Adelaide SA 5000 | Refurbishment of unused areas to include fashion and footwear, business studies and community services programs. | \$4,000,000 |

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| Project Funding Recipient | Approved Project | Project Funding |
|--|---|-----------------|
| TAFE SA Regional | | |
| Whyalla Campus 141 Nicholson Avenue Whyalla SA 5608 | Install a lift to comply with disability standards | \$257,000 |
| Mount Barker Dumas Street Mount Barker SA 5251 | Install managed lighting systems | \$250,000 |
| Mount Gambier Wireless Road West Mount Gambier SA 5290 | Install managed lighting systems | \$135,000 |
| Ceduna Campus LT 26 Decres Bay Road Ceduna SA 5690 | Machine guarding to increase the operational safety of industrial machines. | \$27,504 |
| Cooper Pedy Campus LT 1 and 2 Hurchison Street Cooper Pedy SA 5723 | Machine guarding to increase the operational safety of industrial machines. | \$67,000 |

| Project Funding Recipient | Approved Project | Project Funding |
|--|---|-----------------|
| TAFE SA Regional (continued) | | |
| Kadina Campus 1A Doswell Terrace Kadina SA 5554 | Machine guarding to increase the operational safety of industrial machines. | \$74,000 |
| Port Augusta Campus 9-39 Carlton Parade Port Augusta SA 5700 | Machine guarding to increase the operational safety of industrial machines. | \$210,000 |
| Port Lincoln Campus 2 London Street Port Lincoln SA 5606 | Machine guarding to increase the operational safety of industrial machines. | \$87,000 |
| Port Pirie Campus Mary Elie Street Port Pirie SA 5540 | Machine guarding to increase the operational safety of industrial machines. | \$111,000 |
| Roxby Downs Campus Richardson Place Roxby Downs SA 5725 | Machine guarding to increase the operational safety of industrial machines. | \$72,000 |

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| Project Funding Recipient | Approved Project | Project Funding |
|---|---|-----------------|
| TAFE SA Regional (continued) | | |
| Whyalla Campus 141 Nicolson Avenue Whyalla SA 5608 | Machine guarding to increase the operational safety of industrial machines. | \$268,000 |
| Yorketown Campus 1 School Road Yorketown SA 5576 | Machine guarding to increase the operational safety of industrial machines. | \$48,000 |
| Barossa Valley Campus Old Kapunda Road Nuriootpa SA 5355 | Machine guarding to increase the operational safety of industrial machines. | \$77,000 |
| Berri Campus LT 13 Fenwick Road Berri SA 5345 | Machine guarding to increase the operational safety of industrial machines. | \$139,000 |
| Millicent Campus Mt Burr Road Millicent SA 5280 | Machine guarding to increase the operational safety of industrial machines. | \$48,000 |
| Mt Barker Campus Dumas Street Mount Barker SA 5251 | Machine guarding to increase the operational safety of industrial machines. | \$12,000 |

| Project Funding Recipient | Approved Project | Project Funding |
|--|---|-----------------|
| TAFE SA Regional (continued) | | |
| Mt Gambier Campus Wireless Road West Mount Gambier SA 5290 | Machine guarding to increase the operational safety of industrial machines. | \$380,000 |
| Naracoorte 19 Gordon Street Naracoorte SA 5271 | Machine guarding to increase the operational safety of industrial machines. | \$43,000 |
| Roseworthy University of Adelaide Building F3 Roseworthy SA 5371 | Machine guarding to increase the operational safety of industrial machines. | \$18,000 |
| Urrbrae 505 Fullarton Road Netherby SA 5062 | Machine guarding to increase the operational safety of industrial machines. | \$11,000 |

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ATTACHMENT A – ACQUITTAL DECLARATION TEMPLATE

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

STA

Project name:

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

Funding period

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

Signed:

Name: [should be the Director of the area which manages the TLCF (VET) Program]

Position:

Date: