

*Trade Training Centres
in Schools Program*



Trade Training Centres in Schools Program

Overarching Funding Agreement with State/Territory Governments

BETWEEN THE

Commonwealth of Australia as represented by the Department of Education,
Employment and Workplace Relations

ABN 63 578 775 294

AND

Australian Capital Territory as represented by the Department of Education
and Training

ABN 71 506 957 312

Under the Commonwealth's *Trade Training Centres in Schools Program*

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Parties

Commonwealth of Australia, as represented by and acting through the **Department of Education, Employment and Workplace Relations ABN 63 578 775 294** of 16-18 Mort St, Braddon ACT 2601 ('Department', 'Us', 'We' or 'Our')

Australian Capital Territory as represented by and acting through the **Department of Education and Training ABN 71 506 957 312** of 220 Northbourne Avenue, Braddon ACT 2601 ('You or Your')

Recitals

- A. The Commonwealth is committed to improving the quality of schooling offered to secondary students and better supporting young people to make a successful transition from school to work or further education and training. To further this commitment, the Commonwealth proposes to provide funding for the implementation of the Trade Training Centres in Schools Program ('**the Program**') to improve the quality of industry recognised vocational education and training, assist in the delivery of high quality trade training in schools meeting skills needs, and support the achievement of increasing the proportion of students achieving Year 12 or an equivalent qualification to 85% by 2015 and 90% by 2020.
- B. The Program is an important element of the Commonwealth Government's 'Education Revolution' and it is intended to make available \$2.5 billion over 10 years to enable all secondary schools to apply for funding of between \$500,000 and \$1.5 million for Trade Training Centres. Trade Training Centres are being established to help increase the proportion of students achieving Year 12 or an equivalent qualification.
- C. An important step in increasing the proportion of students achieving Year 12 or an equivalent qualification is to ensure students have access to high quality, relevant education and training opportunities that continue to engage them and encourage them to complete their studies. The Program is intended to help address national skills shortages in traditional trades and emerging industries by improving the relevance, responsiveness and capability of trade training programs in secondary schools.
- D. The Trade Training Centres in Schools Program Guidelines ('**the Guidelines**') set out the arrangements for the administration and delivery of the Program.
- E. It is recognised that the long term success of the Program will be built on a strong partnership between the Australian Government and State and Territory governments. The partnership arrangements encompass a shared commitment to the Program and the Program Objectives, a collaborative approach to the development and implementation of the Program, and complementary roles to ensure the quality and sustainability of Trade Training Centres.
- F. A school which is administered by or on behalf of You ('**School**'), or clusters of such Schools, may submit a funding application to Us under the Program to establish new Trade Training Centres or to upgrade existing facilities ('**Funding Application**'). Where We approve such a Funding Application, We will provide funding to You for the conduct of the Trade Training Centre project set out in the approved Funding Application.
- G. We are required by law and policy to ensure accountability for the Funding, and You are required to be accountable for all Funding received under this Agreement.
- H. You accept the Funding on the terms and conditions of this Agreement.

The parties agree

Part A Partnership Arrangements and Collaboration

1. Partnership Arrangements and Collaboration

- (a) Both parties agree and acknowledge that the partnership arrangements agreed between them are set out in the document entitled *Partnership Arrangements between the Commonwealth and State and Territory Governments* (**Partnership Arrangements**) and that both parties will use their best endeavours to honour those Partnership Arrangements.
- (b) Both parties commit to act cooperatively and collaboratively together, in good faith, to achieve the Program Objectives.

Part B School Projects

2. How this Part B Works

- (a) This Part B of this Agreement sets out the terms on which We agree to fund and You agree to undertake School Projects, or ensure School Projects are undertaken, for the purposes of the Program.
- (b) Where We approve a Funding Application from a School to undertake a School Project, We both agree to document the required particulars and information for that School Project by completing a Project Specific Schedule.
- (c) Once completed and signed by the parties, a Project Specific Schedule will become part of this Agreement and will be attached at Schedule 3. We agree to fund, and You agree to undertake, or ensure is undertaken, a School Project in accordance with the terms of this Part B, and Part C, of this Agreement and with the Project Specific Schedule for that School Project.

Part B1 The Capital Works Period

3. Planning, Design and Approvals

3.1 Planning and design of the Works

You agree that You will be responsible for the planning and design of the Capital Works for each School Project and you will ensure all documents necessary to complete the planning and design of the Capital Works for each School Project are properly developed and are fit for purpose. You agree to provide copies of any such documents to Us upon Our request.

3.2 Approvals

You agree that You will ensure all Approvals for:

- (a) the construction of the Capital Works for each School Project; and
- (b) the use of the Capital Works for the Designated Use set out in Item B2 of the Project Specific Schedule for each School Project,

are obtained, and You agree to deliver a copy of each Approval to Us upon Our request.

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4. Performance of the Capital Works for the Trade Training Centre

4.1 Commencement of Capital Works

You agree to commence the Capital Works, or to ensure the Capital Works are commenced, for each School Project on or before the relevant Date for Commencement of Capital Works for that School Project unless We otherwise agree in Writing , or unless commencement is prevented by a Force Majeure Event.

4.2 Your obligations about performance of Capital Works

You agree to ensure the Capital Works for each School Project are carried out:

- (a) in accordance with the terms and conditions of this Agreement;
- (b) in accordance with the Approvals for the Capital Works;
- (c) to help Us achieve the Program Objectives;
- (d) in accordance with the Project Specific Schedule for that School Project;
- (e) diligently, effectively and to a high professional standard; and
- (f) so as to ensure that the completed Trade Training Centre will be fit for the Designated Use set out in Item B2 of the Project Specific Schedule for that School Project, during the Designated Use Period.

4.3 Acceptance of risk for the Capital Works

You accept all risks in respect of the conduct and completion of the Capital Works for each School Project including, without limitation, all risks of and associated with the design, construction and completion of the Capital Works for that School Project, including in relation to any budget over-runs.

4.4 Construction Standards

You agree to ensure that:

- (a) all aspects of the Capital Works for each School Project are undertaken by qualified tradespeople or professionals who are registered with relevant Australian State or Territory accreditation bodies to the extent that such bodies exist to regulate the activities of members of that particular trade or profession;
- (b) all activity relating to the Capital Works for each School Project is carried out in accordance with the requirements and standards of all Statutory Requirements applicable to the building, construction and fit out of the Site; and
- (c) the Capital Works comply with the requirements of the Building Code of Australia and all relevant standards of Standards Australia.

4.5 Requirements for Practical Completion of Capital Works

In order to achieve Practical Completion, the Capital Works for each School Project must be:

- (a) complete and free from errors, defects or omissions except for errors, defects or omissions that:
 - (i) are of a minor nature;
 - (ii) the immediate making good of which is not reasonably practicable;
 - (iii) the existence of which or the making good of which will not significantly inconvenience users of the Site or the Capital Works for the Designated Use; and
 - (iv) which do not cause any legal or physical impediment to the use and occupation of the Site and the Capital Works for the Designated Use; and
- (b) fit for use for the Designated Use.

4.6 Date for Practical Completion of Capital Works

- (a) You agree to ensure Practical Completion of the Capital Works for each School Project is achieved on or before the Date for Practical Completion for Capital Works, except where Practical Completion of the Capital Works is prevented by a Force Majeure Event.
- (b) You agree to notify Us in Writing when Practical Completion of the Capital Works for a School Project has been achieved.

4.7 Relevant Documentation

Where We request, You agree to provide Us with evidence satisfactory to Us that Practical Completion of the Capital Works for each School Project has been achieved and that the Trade Training Centre is fit for the Designated Use for that School Project.

4.8 Force Majeure

- (a) Where a Force Majeure Event occurs which has affected, or which You consider is reasonably likely to affect, Your ability to ensure that the Capital Works for a School Project are:
 - (i) commenced by the Date for Commencement of Capital Works for that School Project; or
 - (ii) completed by the Date for Practical Completion for Capital Works for that School Project,

You agree that You will:

- (iii) notify Us of the Force Majeure Event and its affect or likely affect on the Practical Completion of the Capital Works; and
- (iv) take all reasonable steps, and use Your best endeavours, to overcome the effects of the Force Majeure Event and ensure the Capital Works for that School Project are commenced, or completed, as the case may be.

5. Project Leader

5.1 Project Leader

- (a) The Project Leader for each School Project will be specified in Item A4 of the Project Specific Schedule for that School Project.
- (b) You agree to ensure that the Project Leader or the Project Leader's nominee performs the role and undertakes the key tasks set out in Item A5 of the Project Specific Schedule for that School Project.

5.2 Replacement Project Leader

- (a) Where the Project Leader for a School Project is unable to undertake activities on the School Project, You agree to notify Us at the earliest reasonable opportunity. You agree to provide a replacement Project Leader for a School Project at the earliest reasonable opportunity.
- (b) Where requested by Us You agree to provide Us with full details of any proposed replacement Project Leader for a School Project.

6. The National Code of Practice for the Construction Industry (the Code) and the associated Australian Government Implementation Guidelines (the Guidelines).

6.1 Clause definitions

In this clause:

'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;

'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 the Department of Employment and Workplace Relations. A copy of the Guidelines appears on the Internet at www.workplace.gov.au/building;

'the Model Tender Documents' means the model tender documents in the Model Tender and Contract Documentation issued under the Code and the Guidelines. A copy of the Model Tender and Contract Documentation appears on the Internet at www.workplace.gov.au/building;

'the Model Contract' means the model contract in the Model Tender and Contract Documentation issued under the Code and the Guidelines. A copy of the Model Tender and Contract Documentation appears on the Internet at www.workplace.gov.au/building;

'the Program Expenditure' means the Funding provided by Us to You for a School Project;

'the Project Parties' means all contractors, subcontractors, suppliers, consultants and employees who perform work in relation to the Project; and

'the Project' means the works to be executed through the Program Expenditure.

6.2 Compliance with the Code, Guidelines and this clause 6

- (a) Where the Program Expenditure results in construction and building activity, subject to the financial thresholds specified in the Guidelines You agree to comply, and ensure that the Project Parties comply, with the Code and Guidelines.
- (b) Clauses 6.3 - 6.6 only apply where You are required, under clause 6.2(a), to comply, and ensure that the Project Parties comply, with the Code and Guidelines.

6.3 Ensuring Requests for Tender and Contracts contain commitment to comply with the Code

You agree to ensure that:

- (a) all requests for tender in relation to the Project made by You or any of the Project Parties contain the commitment to apply the Code and Guidelines as set out in the Model Tender Documents; and
- (b) all contracts entered into in relation to the Project by You or any of the Project Parties contain the commitment to apply the Code and Guidelines as set out in the Model Contract.

6.4 Keeping Records and allowing Access

- (a) You shall maintain adequate records of compliance by You and each of the Project Parties with the Code and the Guidelines.
- (b) You shall permit the Commonwealth and those authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, full access to Your premises and records and the Project Parties to:
 - (i) inspect any work, material, machinery, appliance, article or facility;
 - (ii) inspect and copy any record relevant to the Project and works governed by this Agreement; and
 - (iii) interview any person,

as is necessary to allow validation of Your compliance with the Code and Guidelines.

- (c) Additionally, You shall agree that You and each of the Project Parties will agree to a request from the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, to produce a specified document within a specified period, in person, by fax or by post.

6.5 Publication of information in relation to compliance with the Code

The Commonwealth and those authorised by it may publish or otherwise disclose information in relation to compliance by You and the Project Parties with the Code and the Guidelines. You agree to obtain the consent of the Project Parties to the publication or disclosure of information under this clause.

6.6 No appointment where breach of sanction imposed by the Code Monitoring Group

You shall not appoint a subcontractor, consultant or material supplier in relation to the Project where the appointment would breach a sanction imposed by the Code Monitoring Group¹.

7. Subcontracting

7.1 Subcontracting

- (a) You agree to ensure that all subcontracts You enter into in respect of a School Project:
 - (i) are consistent with and will not limit or affect Your compliance with Your obligations, or Our rights, under this Agreement;
 - (ii) without limiting clause 7.1(a)(i) are consistent with any Approvals, and reflect the specifications set out in the Project Specific Schedule for that School Project; and
 - (iii) contain all terms that this Agreement requires those subcontracts to contain (whether expressly or impliedly).
- (b) If We request, You agree to provide to Us a copy of any subcontract entered into with respect to the Capital Works for a School Project, or otherwise provide Us with information about the identity of any subcontractors engaged on the Capital Works for a School Project.
- (c) If We request on reasonable grounds related to the conduct of a School Project or the Program, You agree to remove any subcontractor from work on the Capital Works for a School Project.
- (d) You agree that You remain responsible for the proper and efficient conduct of the Capital Works for a School Project despite entering into any subcontract with respect to the Capital Works for a School Project.

8. The Site

You warrant that, for each School Project:

- (a) the Site is, and will at all times be, fit for the purposes of carrying out the Capital Works and, on and from commencement of the Designated Use Period, fit for use for the Designated Use;
- (b) the undertaking of the Capital Works and the use of the Site for the Designated Use does not, and will not, infringe any condition of ownership or occupation of the Site;

¹ 'Code Monitoring Group' has the same meaning as is given to that term in the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, revised September 2005, reissued June 2006 available at www.workplace.gov.au/building

- (c) the use of the Site for the Capital Works and for the Designated Use for each School Project has not and will not infringe any Statutory Requirements; and
- (d) the Site (after completion of the Capital Works) will comply with all Australian Standards and any other standards or requirements which relate to the ongoing use of the Site for the purposes of this Agreement (including the Designated Use).

9. Assets

9.1 Using the Funding to acquire Assets

You agree that You will not use the Funding to acquire any Asset for a School Project, other than those Assets specified in Item E1 of the Project Specific Schedule for that School Project, without first obtaining Our approval in Writing.

9.2 You own the Assets

You will own or lease any Assets.

9.3 Obligations in regard to Assets

You agree that during the Term of this Agreement You will:

- (a) use the Assets only in accordance with this Agreement and for the Designated Use for the School Project;
- (b) hold all Assets securely and safeguard them against theft, loss, damage or unauthorised use;
- (c) keep all Assets in good working order;
- (d) without limiting clause 10, maintain all appropriate insurances for all Assets;
- (e) if required, maintain registration and licensing of all Assets;
- (f) be fully responsible for, and bear all risks relating to, the purchase, use or disposal of all Assets;
- (g) maintain a separate Assets register for each School Project which must adequately record the details of all Assets purchased or leased for that School Project and must include the information set out at Item E2 of the Project Specific Schedule; and
- (h) as and when requested by Us, provide copies of the Assets registers to Us.

9.4 Selling, disposing of or ceasing to use an Asset

During the applicable Designated Asset Use Period for an Asset, You agree not to, without Our written approval:

- (a) sell that Asset;
- (b) dispose of that Asset; or
- (c) cease to use that Asset for the Designated Use for the School Project.

9.5 Payment of proportion of value of Asset

- (a) If You do sell or dispose of an Asset during the Designated Asset Use Period:
 - (i) We may request You to pay Us a proportion of the market value of the Asset that is equivalent to the proportion of the purchase price of the Asset that was funded from the Funding; and
 - (ii) You agree to comply with any such request within 21 Business Days of the request being made.
- (b) If You do not pay Us an amount as required by clause 9.5(a) within the timeframe required by that clause:
 - (i) You agree to pay that amount to Us and must also pay Us Interest on the relevant amount from the date it was due, for the period it remains unpaid to Us; and
 - (ii) the relevant amount, and Interest owed, will be recoverable by Us as a debt due to Us by You.
- (c) Our rights under this clause 9.5 are in addition to, and do not limit in any way, our right to seek recovery of Funding under clause 15.6 where You sell, dispose of or cease to use an Asset for the Designated Use during the applicable Designated Asset Use Period for the School Project.

9.6 Assets which are lost, damaged or destroyed

If, during the applicable Designated Asset Use Period any of the Assets are lost, damaged or destroyed, You agree to reinstate the Assets including from the proceeds of the insurance and this clause 9 continues to apply to the reinstated Assets.

9.7 Items purchased with the Funding

Without limiting clause 9.1, You may only purchase an item for a School Project with the Funding provided by Us for that School Project where the purchase of such item is necessary for, and related to, that School Project.

10. Insurance

You agree to, for as long as any obligations remain in connection with this Agreement, have the following insurance:

- (a) public liability for not less than \$10 million;
- (b) workers' compensation as required by law;
- (c) compulsory third party and comprehensive insurance for any motor vehicles You acquire with the Funding;
- (d) professional indemnity insurance for not less than \$5 million; and
- (e) appropriate insurances for the conduct of the Capital Works for each School Project.

Part B2 Ongoing Operation of the Trade Training Centre

11. Commencement of Operation

11.1 Date for commencement

- (a) You agree to ensure that, for each School Project, the Trade Training Centre is operative on or before the Date for Commencement of the Trade Training Centre.
- (b) You agree to notify us in Writing when the Trade Training Centre is operative.

11.2 Meaning of "operative"

For the purposes of clause 11.1 and of this Agreement generally, for each School Project, the Trade Training Centre will be "operative" where:

- (a) a Certificate of Occupancy has been obtained in respect of the Capital Works;
- (b) the Trade Training Centre is staffed with appropriately qualified trainers or teachers;
- (c) the Approved Training Courses set out in Item B3 of the Project Specific Schedule for that School Project have commenced being delivered; and
- (d) one or more students are attending the Trade Training Centre.

12. Opening Ceremony, Acknowledgement, Branding and Publicity Requirements

12.1 Opening Ceremony, Acknowledgement, Branding and Publicity for Trade Training Centre

- (a) Without limiting clause 23, in respect of each School Project, You agree to comply with:
 - (i) the requirements in the Guidelines relating to holding an opening ceremony for the Trade Training Centre; and
 - (ii) the acknowledgement, and publicity requirements in the Guidelines.
- (b) You agree to comply with the branding requirements set out in the Branding Guidelines, for each School Project.

12.2 Use of the words Trade Training Centre

You agree to ensure that the words "*Trade Training Centre*" are used in the official title of each Trade Training Centre and in all public references to that Trade Training Centre.

12.3 No limitation of public debate or criticism

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.

13. Approved Training Courses

13.1 You agree to ensure Approved Training Courses are delivered

For each School Project, You agree to ensure that the Approved Training Courses set out in Item B3 of the Project Specific Schedule for that School Project are delivered during the Training Obligation Period.

13.2 Consultation process for changes to Approved Training Courses

- (a) Notwithstanding clause 13.1, where during the Training Obligation Period for a School Project You:
- (i) become unable to deliver; or
 - (ii) wish to vary
- the Approved Training Courses for that School Project, You agree to follow the Departmental Consultation Process.
- (b) Where, after You have followed the Departmental Consultation Process, We have agreed to an amendment to the Approved Training Courses, the parties agree to vary the relevant Project Specific Schedule to reflect the amended Approved Training Courses in accordance with clause 31(b).
- (c) To avoid doubt, Our decision whether or not to agree to an amendment to the Approved Training Courses for a School Project will be made in Our absolute discretion and We are not under any obligation to agree to an amendment.

14. Obligations during the Designated Use Period

14.1 Maintenance, upkeep and insurance obligations

At all times during the Designated Use Period for each School Project, You agree to, at Your own cost:

- (a) safeguard the Trade Training Centre and any associated equipment against loss, damage or unauthorised use;
- (b) maintain the Trade Training Centre in good condition;
- (c) reinstate the Trade Training Centre and any associated equipment if it is damaged or destroyed; and
- (d) without limiting clause 10, effect and maintain appropriate insurance in respect of the Trade Training Centre.

14.2 Designated Use Obligations

At all times during the Designated Use Period for each School Project, You agree to:

- (a) use the Trade Training Centre, or ensure the Trade Training Centre is used, for the Designated Use;

- (b) not use the Trade Training Centre, or permit the Trade Training Centre to be used, in a way that would impact negatively on the achievement of the Program Objectives or have the effect of preventing the Trade Training Centre being used for the Designated Use; and
- (c) not dispose of the Site or any part of the Site.

14.3 Priority of Designated Use

- (a) You may use a Trade Training Centre for purposes other than the Designated Use for that Trade Training Centre, but You agree to at all times ensure that the Designated Use is given priority over any other use.
- (b) You agree that you will not allow other uses of a Trade Training Centre where such a use would impact negatively on the achievement of the Program Objectives or have the effect of preventing that Trade Training Centre being used for the Designated Use for that Trade Training Centre.

14.4 Consultation process for change of use

- (a) Notwithstanding clauses 14.2 and 15.5(a), where during the Designated Use Period for a School Project, You consider You are, or are likely to become, unable to comply with the requirements in clause 14.2, You agree to follow the Departmental Consultation Process.
- (b) After You have followed the Departmental Consultation Process, We will take such action as We determine in Our absolute discretion, in relation to Your use of the Site and the Trade Training Centre.
- (c) To avoid doubt, nothing in this clause limits Our rights to recover Funding in accordance with clauses 15.5 and 18.3 or Our rights otherwise under this Agreement or at law.

14.5 Student Access obligations

- (a) For each School Project, You agree to ensure that each School (as listed in the relevant Project Specific Schedule) has access to and can continue to use the Trade Training Centre for the purposes and on the terms intended at the commencement of the Trade Training Centre throughout the Designated Use Period, except to the extent that a particular School notifies You or Us in writing that it does not require access to or use of the Trade Training Centre.

Part B3 Funding for the School Projects

15. Payment of the Funding for School Projects

15.1 Payment of Funding for School Projects to You

Subject to sufficient funds being available for the Program, and Your compliance with this Agreement and the relevant Project Specific Schedule, We will pay You, in respect of each School Project, the Funding set out in Item D1 of the Project Specific Schedule for that School Project at the times and in the manner set out in Item D2 of the Project Specific Schedule.

15.2 Forwarding of Funding by You to Schools (Major Capital Works)

In respect of Major Capital Works School Projects, You agree that You will only forward on, or release, Funding to a School for a School Project as follows:

- (a) You will only forward on, or release Payment 2 to a School where:
 - (i) You are satisfied that the School Project is progressing satisfactorily and that the Capital Works will commence by the Date for Commencement of the Capital Works; and
 - (ii) You have provided Us with a letter ('**Letter of Notification 1**') in which You notify Us that the School Project is progressing satisfactorily and that the Capital Works will commence by the Date for Commencement of the Capital Works.
- (b) You will only forward on, or release Payment 3 to a School where:
 - (i) You are satisfied that the Capital Works are progressing satisfactorily and that the Midpoint of Construction for the Capital Works has been reached;
 - (ii) You have provided Us with the Progress Report which includes a statement whereby you indicate that you are satisfied with the matters set out in clause 15.2(b)(ii); and
 - (iii) We have notified You in Writing that We have received and accepted the Progress Report.
- (c) You will only forward on, or release Payment 4 to a School where:
 - (iv) You are satisfied that the Practical Completion of the Capital Works has been achieved for the School Project; and
 - (v) You have provided Us with a letter ('**Letter of Notification 2**') in which You have notified Us that Practical Completion of the Capital Works has been achieved for the School Project;

15.3 Forwarding of Funding by You to Schools (Minor Capital Works or Equipment Only)

In respect of Minor Capital Works School Projects, or Equipment Only School Projects, You agree that You will only forward on, or release, Funding to a School for a School Project where You are satisfied that the School Project is progressing satisfactorily.

15.4 No provision of additional funds to meet project over-runs

- (a) You accept the risk of the actual cost of the design, construction and completion of the Capital Works for any School Project being greater than anticipated by You.
- (b) We will not, and are under no obligation to, provide any further or future funding of any kind to You in respect of any School Project, including where the actual cost of the design, construction and completion of the Capital Works for that School Project is greater than anticipated, or where You vary in any manner the Capital Works.

15.5 Our right to repayment of Funding where Trade Training Centre is not used for Designated Use

- (a) Where, in respect of a School Project, You have failed to comply with Your obligations at clause 14.2, We may recover from You an amount of Funding calculated in accordance with the formula set out in clause 15.5(b).
- (b) For the purposes of clause 15.5(a) the formula is as follows:

$$\text{Recoverable amount} = F - [F/20 \times Y]$$

where F is the total amount of Funding paid by Us for that School Project under this Agreement; and

Y is the number of completed years since the commencement of the Designated Use Period for that School Project, as at the time You first failed to comply with Your obligations at clause 14.2.

For the avoidance of doubt, where You first fail to comply with Your obligations under clause 14.2 within a year of the commencement of Designated Use Period for a School Project, We may recover the total amount of Funding paid by Us for that School Project under this Agreement in full.

15.6 Our right to repayment of Funding where Asset is not used for Designated Asset Use

- (a) Where:
 - (i) Item E2 of a Project Specific Schedule specifies that this clause 15.6 applies; and
 - (ii) You have breached clause 9.4,

We may, in Our absolute discretion, recover from You an amount of Funding calculated in accordance with the formula set out in clause 15.6(b), less any amounts recovered by Us under clause 9.5.

- (b) For the purposes of clause 15.6(a) the formula is as follows:

$$\text{Recoverable amount} = AF - [AF/DAUP \times Y]$$

where AF is the amount of Funding used to acquire the Asset for a School Project;

Y is the number of completed years since the date on which You first created, acquired or leased the Asset, as at the time You first failed to comply with Your obligations at clause 9.4; and

DAUP is the Designated Asset Use Period for that Asset or class of Asset.

15.7 Unspent School Project Funding at the end of a School Project

Where, as at the date on which You provide Us with the Final Acquittal Statement for a School Project, there remains Funding for that School Project which You have not spent (in this clause "**unspent School Project Funding**"):

- (a) Where You request, We may allow You to use that unspent School Project Funding for such other School Project as You require; or
- (b) We may recover from You the unspent School Project Funding.

Part B4 Reporting Requirements for the School Projects

16. Reporting requirements

16.1 You agree to provide Reports

- (a) For each School Project You agree to provide Us with the Reports set out in Item C of the relevant Project Specific Schedule by the dates set out in the Project Timeframe Table for that School Project or as otherwise set out in the relevant Project Specific Schedule.
- (b) If, in the Program Delegate's opinion, acting reasonably, either the form or the content of a Report is not adequate for Our purposes, the Program Delegate may request You to submit a revised Report. You agree that You will submit the revised Report within such time as We may reasonably request.

16.2 Final Acquittal Statement

- (a) For each School Project, You agree to, by the date set out in the Project Timeframe for that School Project, provide Us with a final acquittal statement ("**Final Acquittal Statement**"):
 - (i) verifying that You have spent the Funding provided for that School Project on the Capital Works for that School Project and in accordance with this Agreement;
 - (ii) setting out income and expenditure in respect of the Funding provided for that School Project; and
 - (iii) specifying any other matters required by Us for accountability purposes, which We request that You include in a Final Acquittal Statement 14 Business Days before the relevant Final Acquittal Statement is due.
- (b) The Final Acquittal Statement must be prepared in accordance with Australian Accounting Standards.

Part B5 Terminating School Projects

17. Terminating a School Project

17.1 Where We may terminate

We may terminate a School Project where:

- (a) We are satisfied that any statement made in the Funding Application for that School Project is incorrect, incomplete, false or misleading in a way which may have affected:
 - (i) the original decision to approve the Funding for that School Project; or
 - (ii) the terms and conditions of this Agreement or of the Project Specific Schedule; or
- (b) You fail to fulfil, or are in breach of any of Your obligations under this Agreement or the Project Specific Schedule relating to that School Project and You do not rectify the omission or breach within 10 Business Days of receiving a notice in Writing from Us to do so; or
- (c) any provision of this Agreement gives Us a right to terminate that School Project.

17.2 Consequences of termination

Where We terminate a School Project, this Agreement and all other School Projects will continue, subject to the terms and conditions of this Agreement, however We will not be obliged to make any further payments of Funding for that School Project to You, and any provisions of this Agreement that, by their nature, survive termination, will survive in respect of that School Project.

Part C General Provisions

18. Withholding, Repayment and Recovery of Funding

18.1 Repayment of Funding

- (a) Without limiting any other clause in this Agreement, You agree that We may recover from You any amount of Funding that You have not spent as at the Date of Expiration or date of earlier termination of this Agreement.
- (b) Without limiting any other clause in this Agreement, You agree that We may require You to repay an amount equivalent to any amount of Funding that You have:
 - (i) spent other than in accordance with this Agreement; or
 - (ii) not acquitted to Our satisfaction

at any time where We provide You with a notice in writing that You are required to repay such amount.

18.2 We may defer, suspend, reduce or withhold payments

Without limiting any other rights We may have under this Agreement, or at general law, We may defer, suspend, reduce or withhold all or part of a Funding payment:

- (a) until You have performed to Our satisfaction the obligation to which the Funding payment relates; or
- (b) where We form the reasonable opinion that the full payment is not properly required by You because of Funding surpluses or underspends.

18.3 Recoverable Amounts must be repaid or offset

- (a) Subject to clause 18.3(b), where any amount is recoverable by Us under this Agreement, including an amount recoverable under clause 15.7(b), ("**the Recoverable Amount**") You agree to pay the Recoverable Amount to Us in full within 21 Business Days of a request in Writing from Us to do so.
- (b) If We agree in Writing that You do not have to pay all or some of the Recoverable Amount to Us, then You do not have to pay Us that amount that We agree to; but
 - (i) We may recover all or some of the Recoverable Amount from You by offsetting the amount against any amount subsequently due to You under this Agreement, or any other arrangement or agreement between You and Us; or
 - (ii) We may request You in Writing to deal with all or some of the Recoverable Amount, and You agree to deal with such amount as We request.

18.4 Amounts unpaid are debts due to the Commonwealth

If:

- (a) You do not pay Us an amount owing under clause 18.3(a); or
- (b) We are not able to recover an amount that We wish to recover under clause 18.3(b)(i); or
- (c) You do not deal with an amount as We direct under clause 18.3(b)(ii);

then:

- (d) You agree to pay the amount arising under clauses 18.4(a), 18.4(b), or 18.4(c) to Us and must also pay Us Interest on such amount from the date it was due to be paid, or offset or dealt with as the case may be, and then for the period of time it remains unpaid to Us; and
- (e) the relevant amount, and Interest owed under clause 18.4(d), will be recoverable by Us as a debt due to Us by You.

19. Spending the Funding

19.1 You agree to only use the Funding for certain purposes

- (a) You agree to spend the Funding in accordance with this Agreement.
- (b) You may only spend the Funding for each School Project in accordance with the Project Budget for that School Project on:
 - (i) the conduct of the Capital Works for that School Project;
 - (ii) Project Management Costs associated with the Capital Works for that School Projects; and
 - (iii) subject to clause 9, the purchase of Assets for that School Project.

19.2 You may not use the Funding for any other purpose

- (a) You may not spend the Funding for any purposes other than those specified in clauses 19.1(b) and 19.1(b).
- (b) Without limiting clause 19.2(a), You may not spend the Funding:
 - (i) for the preparation of, or in the course of, any litigation;
 - (ii) to meet overhead costs associated with distributing the Funds; or
 - (iii) to meet Recurrent Costs associated with the ongoing operation of a Trade Training Centre.

20. Management of the Funding and Annual Acquittal Statement

20.1 Management of Funding

You agree to identify the receipt and expenditure of:

- (a) the Funds; and
- (b) the Funding for each School Project,

separately within Your accounting Records, and separately with respect to each School Project.

20.2 Annual Acquittal Statement

- (a) You agree to, by 1 August of each Financial Year for the Term of this Agreement, provide Us with an annual acquittal statement ('**Annual Acquittal Statement**'):
 - (i) verifying that You have spent the Funding provided in accordance with this Agreement;
 - (ii) setting out income and expenditure in respect of the Funding provided, separately for each School Project; and

- (iii) specifying any other matters required by Us for accountability purposes, which We request You to include in an Annual Acquittal Statement at least 5 Business Days before that Annual Acquittal Statement is due.
- (b) The Annual Acquittal Statement must be prepared in accordance with Australian Accounting Standards.

21. Term of this Agreement and Two Year Review

21.1 Term

This Agreement commences on the Date of this Agreement and ends on the Date of Expiration, unless terminated earlier in accordance with this Agreement or the law ('**Term of this Agreement**').

21.2 Two Year Review

- (a) The parties agree to (unless We otherwise determine), no later than two years after the Date of this Agreement, undertake a review of the operation and effectiveness of this Agreement ('**Two Year Review**'), including as relates to the achievement of the Program Objectives.
- (b) You agree to work collaboratively with Us in undertaking the Two Year Review, and You agree to assist Us by providing Us with information, Material and data as We may reasonably request.
- (c) The parties may determine, as a result of the Two Year Review to:
 - (i) vary this Agreement in which case the parties will vary the Agreement in accordance with clause 31(b);
 - (ii) develop some other form of arrangement with respect to the subject matter of this Agreement to replace this Agreement, in which case this Agreement will continue (unless terminated earlier in accordance with this Agreement or the law) until such time as that other arrangement is agreed and executed;
 - (iii) continue this Agreement; or
 - (iv) take such other action as the parties determine appropriate.

22. Monitoring and Liaison

22.1 We may conduct monitoring activities

Without limiting any other provision of this Agreement, You acknowledge and agree that We may conduct a range of monitoring activities to verify that activities with respect to the Program are being conducted in accordance with this Agreement, including that there has been proper and efficient use of Funds and that the Program Objectives are being achieved.

22.2 Liaison

- (a) You agree to:
- (i) assist Us by liaising with and providing information to the Program Delegate, or a person nominated by the Program Delegate, as reasonably required by the Program Delegate;
 - (ii) ensure that You comply with all reasonable requests, directions, or monitoring requirements received from the Program Delegate;
 - (iii) without limiting clauses 22.2(a)(i) or 22.2(a)(ii), assist Us in undertaking Program evaluation activities where We request; and
 - (iv) advise the Program Delegate in Writing about any relevant matters that might affect Your ability to meet Your obligations under this Agreement.
- (b) Without limiting clause 22.2(a)(iv), You agree that You will advise the Program Delegate in Writing about any proposed closure, or significant change in operations, of a School.

23. Guidelines

You agree that You will comply with the Guidelines, as they are relevant, in Your performance of each School Project and this Agreement.

24. Record Keeping

24.1 Keeping records

You agree to make full and accurate Records of the conduct of this Agreement and of each School Project including progress against the Milestones, the receipt and use of Funding, the acquisition of Assets and the creation of Intellectual Property Rights in Project Material.

24.2 Keeping copies of all Reports, records and account books

You agree to keep a copy of all Reports, records and account books in their original form for at least 7 years after the Date of Expiration or after the earlier termination of this Agreement.

25. Inspection and Access

25.1 Inspection

You agree that the Program Delegate, or any person authorised by the Program Delegate, may at any time inspect activities relating to this Agreement, including the Capital Works for any School Project.

25.2 Access to Premises and Records

You agree to at all reasonable times give the Auditor-General, the Privacy Commissioner, the Program Delegate, a member of the National Investigations Unit in the Department on production of photo identification, or any person authorised in Writing by the Secretary:

- (a) reasonable access to:
 - (i) Your employees;
 - (ii) Premises;
 - (iii) Material; and
- (b) reasonable assistance to:
 - (i) inspect Your activities;
 - (ii) locate and inspect Material; and
 - (iii) make copies of Material and remove those copies,

relevant to the School Projects and this Agreement.

25.3 Notice

- (a) The rights referred to in clauses 25.1 and 25.2 are subject to:
 - (i) the provision of reasonable prior notice to You; and
 - (ii) Your reasonable security procedures.
- (b) If a matter is being investigated which, in the opinion of a member of the National Investigations Unit in the Department, or any person authorised in Writing by the Secretary, may involve an actual or apprehended breach of the law, clause 25.3(a) will not apply.

26. Commonwealth Material

26.1 Ownership of Commonwealth Material

Ownership of all Commonwealth Material, including Intellectual Property Rights in that Material, remains vested at all times in Us but We grant You a licence to use, copy and reproduce that Material only for the purposes of this Agreement and in accordance with any conditions or restrictions specified in Item A of the Agreement Schedule.

26.2 Safekeeping of Commonwealth Material

You agree to keep safely and maintain Commonwealth Material You have been given for the purposes of this Agreement.

26.3 Dealing with Commonwealth Material at the end of the Agreement

You may retain or destroy all Commonwealth Material remaining in Your possession at the end of this Agreement, unless otherwise specified in Item A of the Agreement Schedule.

27. Project Material

27.1 Ownership of Intellectual Property Rights in Project Material

Subject to this clause 27, ownership and Intellectual Property Rights in Project Material vest immediately in You.

27.2 Licensing of Intellectual Property Rights in Project Material

You grant to Us a permanent, irrevocable, free, world wide, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit the Intellectual Property Rights:

- (a) in the Reports for any purpose; and
- (b) in other Project Material for purposes connected with the operation of the Agreement, or the conduct of the Program generally.

27.3 Third party licence

If a third party has Intellectual Property Rights in existing Material incorporated or supplied with Reports, You agree to arrange for the grant to Us of a licence in the same terms as set out in clause 27.2(a).

27.4 You agree to give effect to this clause

You agree to, if requested by Us to do so, bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 27.

27.5 Your warranty that You are entitled to deal with Intellectual Property Rights in the Project Material

You warrant that You are entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Project Material in accordance with this clause 27.

27.6 Consent to performance of Specified Acts

- (a) If You are the author of the Project Material, You consent to the performance of the Specified Acts by Us or any person licensed by Us to use, reproduce, adapt and exploit the Project Material.
- (b) You agree:
 - (i) to obtain from each author (other than You) of any Project Material a written consent to the performance of the Specified Acts (whether occurring before or after the consent is given) by Us or any person licensed by Us to use, reproduce, adapt and exploit the Project Material; and
 - (ii) upon request, to provide the executed original of each consent to Us.

27.7 You agree to provide Us with a copy of the Project Material

If requested by Us, You agree to provide Us with a copy of the Project Material in the form requested by Us.

28. Disclosure of Information

28.1 You agree not to disclose Our Confidential Information

- (a) Subject to clause 28.3,
 - (i) You agree not to, without Our prior written approval, disclose any of Our Confidential Information to a third party; and
 - (ii) We must not, without Your prior written approval, disclose any of Your Confidential Information to a third party.
- (b) In giving written approval to disclosure, a party may impose conditions as it thinks fit, and the other party agrees to comply with the conditions.

28.2 We may require undertakings relating to the non-disclosure of Our Confidential Information

- (a) We may at any time request that You arrange for any person engaged in, or in relation to, the performance or management of this Agreement to give written undertakings, in a form required by Us, relating to the non-disclosure of Our Confidential Information.
- (b) If You receive a request under clause 28.2(a), You agree that You will arrange for all undertakings to be given.

28.3 No breach where information required to be disclosed

- (a) The obligations on the parties under this clause 28 will not be breached if information:
 - (i) is disclosed by Us or You to the responsible Minister;
 - (ii) is disclosed by Us or You, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia or a State or Territory of Australia;
 - (iii) is authorised or required by law to be disclosed; or
 - (iv) is in the public domain otherwise than due to a breach of this clause 28.
- (b) Nothing in this clause 28 limits Your obligations under clause 25.

29. Taxes, Duties and Government Charges

We are not responsible for any taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Agreement.

30. Indemnity

30.1 You agree to indemnify Us

You agree to indemnify Us against any:

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

arising from:

- (i) any act or omission by You, or any of Your employees, agents, or subcontractors in connection with this Agreement, where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, or expense;
- (ii) any breach by You or any of Your employees, agents, or subcontractors of obligations or warranties under this Agreement;
- (iii) any use or disclosure by You, Your officers, employees, agents or subcontractors of Personal Information held or controlled in connection with this Agreement; or
- (iv) the use by Us of the Project Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights (including moral rights) in Project Material.

30.2 Proportional reduction of liability

Your liability to indemnify Us under this clause 30 will be reduced proportionately to the extent that any fault on Our part contributed to the relevant loss, damage, expense, or liability.

30.3 Our right to be indemnified is additional to other rights

Our right to be indemnified under this clause 30 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.

30.4 Definition of "fault"

In this clause 30, "fault" means any negligent or unlawful act or omission or wilful misconduct.

31. Entire Agreement, Variation, Severance and Attachment of Documents

- (a) This Agreement records the entire agreement between the parties in relation to its subject matter.
- (b) Except for action We are expressly authorised to take elsewhere in this Agreement, no variation of this Agreement (including of a Project Specific Schedule) is binding unless it is agreed in Writing and signed by the parties.
- (c) 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.
- (d) Where reference is made to a document which is or will be attached to this Agreement and such document is not attached, the validity and effect of such document and of this Agreement will not be affected by the non-attachment.

32. Waiver

- (a) If any 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.
- (b) A waiver by any party of any rights does not prevent the further exercise of any right.
- (c) Waiver of any provision of, or right under, this Agreement:
 - (i) must be in Writing signed by the party entitled to the benefit of that provision or right; and
 - (ii) is effective only to the extent set out in the written waiver.
- (d) In this clause 32 'rights' means rights or remedies provided by this Agreement or at law.

33. Assignment and Novation

- (a) You must not assign Your rights under this Agreement without prior written approval from Us.
- (b) 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.

34. Dispute Resolution

34.1 Dispute resolution procedure

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 First Level Representatives for each party will meet as soon as possible but in any case within 21 Business Days from the date of the notice provided in paragraph (a) to try to resolve the dispute through direct negotiation;
- (c) if the parties cannot resolve the dispute under clause 34.1(b) they must as soon as possible refer the dispute to the Second Level Representatives who will endeavour to resolve the dispute within a further 21 Business Days or such other period as is agreed to by the parties;
- (d) if the parties cannot resolve the dispute under clause 34.1(c) they must as soon as possible refer the dispute to the Senior Representatives who will endeavour to resolve the dispute within a further 21 Business Days or such other period as is agreed to by the parties;

and if after following the processes set out above there is no resolution of the dispute then the parties may submit the dispute to mediation or some other form of alternative dispute resolution procedure.

34.2 Where clause does not apply

This clause 34 does not apply:

- (a) if either party commences legal proceedings for urgent interlocutory relief;
- (b) if action is taken by Us under clauses 15.5, 15.6, 17, 18.1, 18.2, 25, 35 or 36; or
- (c) while the Departmental Consultation Process is being followed.

34.3 Parties must continue to perform obligations

Despite the existence of a dispute, the parties must (unless requested in Writing by the other party not to do so) continue to perform their obligations under this Agreement.

35. Termination of this Agreement With Costs and Reduction

35.1 We may terminate or reduce scope of Agreement

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 35.4 and 35.5, any reasonable costs incurred by You and directly attributable to the termination or partial termination of this Agreement.

35.2 Your obligations upon receipt of notice of termination or reduction in scope

Upon receipt of a notice of termination or reduction in scope You agree to:

- (a) stop work as specified in the notice;

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

35.3 Our right to give directions

We reserve the right to give You directions in respect of the termination or reduction in scope process under this clause 35 and You agree to comply with such directions.

35.4 Liability to pay abates proportionately to reduction in obligations

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.

35.5 We are not liable to pay compensation for loss of prospective profits

We will not be liable to pay compensation for loss of prospective profits for a termination or reduction in scope under this clause 35 or loss of any benefits that would have been conferred on You had the termination or reduction not occurred.

36. Termination of this Agreement for Default

We may terminate this Agreement by giving written notice to You of the termination if:

- (a) You have repeatedly (that is, on more than 5 occasions) failed to fulfil, or are in breach of any of Your obligations under this Agreement without having rectified those omissions or breaches within 10 Business Days of receiving a notice in Writing from Us to do so; or
- (b) We have terminated 3 or more School Projects for default under clause 17; or
- (c) any provision of this Agreement gives Us a right terminate this Agreement.

37. Compliance With Laws

You agree to, in carrying out Your obligations under this Agreement, comply with all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or local authority.

38. Applicable Law and Jurisdiction

- (a) The laws of the Australian Capital Territory apply to the interpretation of this Agreement.
- (b) 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.

39. Notices

39.1 Giving notices

A party giving notice under this Agreement agrees to do so in Writing:

- (a) if given by You, marked for the attention of the Program Delegate specified in Item C1 of the Agreement Schedule;
- (b) if given by Us, marked for the attention of the person specified in Item C2 of the Agreement Schedule; and

hand delivered or sent by pre-paid post or Electronic Communication to the address specified in the Schedule.

39.2 Receiving notices

A notice given under clause 39.1 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.

40. Survival of Clauses

- (a) All clauses which by their nature survive the expiration or earlier termination of this Agreement will survive the expiration or earlier termination of this Agreement, including without limitation clauses 15.5, 15.6, 18.1, 18.3, 18.4, 26, 27, 28, 29 and 35.3.
- (b) Clause 24.2 applies during this Agreement and for 7 years from the expiration of this Agreement or its earlier termination.

41. Dictionary

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*;

'Agreement' means this document including Schedules 1, 2 and 3, and any documents incorporated by reference by the clauses or the Schedules;

'Agreement Schedule' means Schedule 1 to this Agreement;

'Annual Acquittal Statement' means the Report described in clause 20.2 of this Agreement;

'Approval' means any licence, permit, consent, approval, determination, certificate or other requirement of any authority, body or other organisation having any jurisdiction in connection with the Capital Works for a School Project or the carrying out of Your activities or under any other applicable Statutory Requirement, which must be obtained or satisfied to:

- (a) carry out Your activities with respect to a School Project; or
- (b) occupy and use the completed Capital Works for a School Project;

'Approved Training Courses for a School Project' are those training courses which You agree to ensure are delivered at the Trade Training Centre, as set out in Item B3 of the Project Specific Schedule for that School Project;

'Asset' means any item of personal, real or incorporeal property, with a price or value of \$10,000 or more, inclusive of GST, and which has been created, acquired or leased wholly or in part with the Funding. However, Asset does not include any Capital Works or any building forming part of the Site, or part of such building, whether resulting from any Capital Works or otherwise;

'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*;

'Authority' includes any ministry, department, government, government or semi-governmental authority, agency, instrumentality, council, corporation or other legal entity with legislative authority;

'BCII Act' means the *Building and Construction Industry Improvement Act 2005*;

'Branding Guidelines' means the Trade Training Centres in Schools Program Branding Guidelines as amended by Us from time to time;

'Building Code of Australia' means the Building Code of Australia produced and maintained by the Australian Building Codes Board on behalf of the Australian Government and State and Territory Governments;

'Business Day' in relation to the doing of any action in a place, means any day other than a Saturday, Sunday, public or bank holiday in that place;

'Capital Works' for a School Project means the capital works, or minor upgrades of facilities, to be undertaken as part of that School Project which are summarised in Item A1 of the Project Specific Schedule for that School Project, and which will result in the completed Trade Training Centre for that School, and may include equipment purchase;

'Capital Works Period' for a School Project commences on the Date of this Agreement and ends on the Date for Commencement of Trade Training Centre;

'Certificate of Occupancy' means the certificate of occupancy or use issued by the proper Authority confirming that the Capital Works for any School Project comply with all Statutory Requirements, are according to the Approvals and are fit for occupancy and the Designated Use;

'Code' has the meaning set out in clause 6.1;

'Code Guidelines' has the meaning set out in clause 6.1;

'Code Monitoring Group' has the meaning set out in clause 6;

'Commonwealth' means the Commonwealth of Australia represented by and acting through the Department, and includes the officers, delegates, employees, other contractors and agents of the Commonwealth;

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

'Date of this Agreement' means the date written on the signature page of this Agreement, or 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;

'Date for Commencement of Capital Works' for a School Project means the date for commencement of the Capital Works set out in the Project Timeframe Table for that School Project or as otherwise notified to and agreed by Us in Writing;

'Date for Midpoint of Construction' for a School Project means the date by which the Midpoint of Construction of the Capital Works must be achieved, as set out in the Project Timeframe Table for that School Project; or as otherwise notified to and agreed by Us in Writing;

'Date for Commencement of Trade Training Centre' for a School Project means the date for commencement of the Trade Training Centre set out in the Project Timeframe Table for that School Project; or as otherwise notified to and agreed by Us in Writing;

'Date for Practical Completion of Capital Works' for a School Project means the date for Practical Completion of the Capital Works set out in the Project Timeframe Table for that School Project or as otherwise notified to and agreed by Us in Writing;

'Date of Expiration' means the earlier of the date on which the Designated Use Period expires in respect of the last School Project undertaken under this Agreement, or the date on which the last School Project undertaken under this Agreement is terminated;

'Department' means the Commonwealth Department of Education, Employment and Workplace Relations or such other Commonwealth Department as may be responsible from time to time for the administration of this Agreement;

'Departmental Consultation Process' means the process set out in Item D of the Agreement Schedule;

'Designated Asset Use Period' is 5 years for any computer equipment and 10 years for all other Assets;

'Designated Use' in respect of a School Project means the designated use specified in Item B2 of the Project Specific Schedule for that School Project;

'Designated Use Period' in respect of a School Project commences on the date on which the Trade Training Centre for that School Project is operative pursuant to clause 11.2 and ends on the day which is 20 years from that date;

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

'Equipment Only School Project' means a School Project in respect of which it is specified at Item A1 of the Project Specific Schedule for that School Project that it is an equipment only project;

'Final Acquittal Statement' for a School Project means the Report described in clause 16.2(a) of this Agreement;

'First Level Representatives' means the persons specified, or the persons holding the positions specified in respect of You and Us at Item D1 of the Agreement Schedule;

'Force Majeure Event' means a circumstance or event beyond Your reasonable control including acts of God, war or other hostility, national or international disaster, fire, explosion, power failure, strike or lockout, but does not include circumstances or events caused by acts or omissions of Your officers, employees, sub-contractors or agents;

'Funding' or **'Funds'** means the amount or amounts (in cash or kind) payable by Us under this Agreement including Interest earned on that amount;

'Funding Application' means an application for Program funding as described in Recital F;

'Guidelines' means the guidelines for the Program as described in Recital D, as amended by Us from time to time;

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

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

'Item' means an item of any Schedule;

'Letter of Notification 1' has the meaning given at clause 15.2(a)(ii);

'Letter of Notification 2' has the meaning given at clause 15.2(c)(v);

'Major Capital Works School Project' means a School Project in respect of which it is specified at Item A1 of the Project Specific Schedule for that School Project that it is a major capital works project;

'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;

'Midpoint of Construction' for a School Project means where You are satisfied, after having made reasonable enquiries, that the construction of the Capital Works is progressing satisfactorily and the Capital Works are half way (or more) completed;

'Milestone' for a School Project means a milestone for that School Project set out in the Project Timeframe Table for that School Project;

'Minor Capital Works School Project' means a School Project in respect of which it is specified at Item A1 of the Project Specific Schedule for that School Project that it is a minor capital works project;

'Our Confidential Information' means information that:

- (a) is described in Item B1 of the Agreement Schedule;
- (b) We identify, by notice in Writing to You after the Date of this Agreement, as confidential information for the purposes of this Agreement; or
- (c) You know or ought to know is confidential to Us;

'Partnership Arrangements' has the meaning specified in clause 1(a);

'Payment 2', **'Payment 3'** and **'Payment 4'** mean those payments of the Funds for a School Project which You will forward on to, or release to a School, as set out in the third column of the Project Timeframe Table for that School Project;

'Practical Completion' for the Capital Works for a School Project occurs when the requirements of clause 4.5 have been met in respect of those Capital Works;

'Premises' means premises occupied by You or where any obligation under this Agreement is undertaken;

'Program' means the *Trade Training Centres in Schools Program* as described in Recital A;

'Program Delegate' means the person for the time being performing the duties of the office of the Department specified in Item C1 of the Agreement Schedule or any other person specified by the Secretary and notified in Writing to You;

'Program Objectives' means the Program objectives as set out in section 1.2 of the Guidelines or as notified by Us to You from time to time;

'Progress Report' for a School Project means the Report which You must provide pursuant to Item C1 of the Project Specific Schedule for that School Project;

'Project Budget' for a School Project means the budget set out in Item D4 of the Project Specific Schedule for that School Project;

'Project Leader' for a School Project means the person specified at Item A4 of the Project Specific Schedule for that School Project;

'Project Management Costs' means the costs necessarily involved with the project management of the Capital Works for a School Project and includes costs for design and development, tender and contract documentation, project management fees and building application fees;

'Project Material' means all Material:

- (c) brought into existence for the purpose of performing this Agreement;
- (d) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a); or
- (e) copied or derived from Material referred to in paragraphs (a) or (b);

'Project Specific Schedule' for a School Project means a completed Template Project Specific Schedule which has been executed by the parties and which is attached to and forms part of, this Agreement;

'Project Timeframe Table' for a School Project means the timeframe table set out in Item A3 of the Project Specific Schedule for that School Project;

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

'Recurrent Costs' for a School Project means all costs involved in the ongoing use of the Trade Training Centre for the Designated Use and includes costs of consumables, repairs, maintenance or replacement of items, electricity and phone usage, staff training, salaries of persons employed at the Trade Training Centre, security costs, insurance of equipment and facilities and transportation;

'Report' means Project Material that is provided to Us for reporting purposes including the Final Acquittal Statement and reports set out in Item C of any Project Specific Schedule;

'Schedule' means any schedule to this Agreement;

'Schools' means schools which are conducted by or on behalf of You;

'School Project' means a Trade Training Centre project in respect of which We have approved a Funding Application from a School, the details of which are or will be set out in the Project Specific Schedule for that School Project;

'Second Level Representatives' means the persons specified, or the persons holding the positions specified in respect of You and Us at Item D2 of the Agreement Schedule;

'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;

'Senior Representatives' means the persons specified, or the persons holding the positions specified in respect of You and Us at Item D3 of the Agreement Schedule;

'Site' for a School Project means the site described in Item A2 of the Project Specific Schedule for that School Project where the Capital Works is being carried out, and any item which is affixed to that site;

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

- (a) using, reproducing, adapting or exploiting all or any part of the Project Material, with or without attribution of authorship;
- (b) supplementing the Project Material with any other Material;
- (c) using the Project Material in a different context to that originally envisaged;
- (d) but does not include false attribution of authorship;

'Standards Australia' means the organisation of that name recognised through a Memorandum of Understanding with the Commonwealth Government as the peak non-government standards development body in Australia;

'Statutory Requirements' means all:

- (a) laws applicable to the Capital Works for a School Project or the carrying out of Your activities, including Acts, ordinances, regulations, by-laws and other subordinate legislation; and
- (b) Approvals (including any condition or requirement under them);

'Template Project Specific Schedule' means the template version of the Project Specific Schedule which is set out at Schedule 2 to this Agreement and which is to be completed in respect of each School Project so as to form the Project Specific Schedule for that School Project;

'Term of this Agreement' has the meaning set out in clause 21.1;

'Trade Training Centre' means the trade training centre set out at Item B1 of the Project Specific Schedule for a School Project, which will be established on completion of the Capital Works;

'Training Obligation Period' for a School Project commences on the Date for Commencement of Trade Training Centre and continues for 10 years or for the life of the Program, whichever is longer;

'Training Package' means a nationally endorsed set of competency standards and qualification requirements;

'Two Year Review' means the review to be conducted under clause 21.2;

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

'Writing' means writing or Electronic Communication; and

'Your Confidential Information' means information that is described in Item B2 of the Agreement Schedule

42. Interpretation

- (a) In this Agreement, unless the contrary intention appears:
- (i) words in the singular include the plural and vice versa;
 - (ii) words importing a gender include the other gender;
 - (iii) a reference to a person includes a partnership and a body whether corporate or otherwise;
 - (iv) clause headings or words in bold format are inserted for convenience only, and have no effect in limiting or extending the language of provisions;
 - (v) all references to dollars are to Australian dollars;
 - (vi) unless stated otherwise, a reference to legislation is to legislation of the Commonwealth, as amended from time to time;
 - (vii) 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
 - (viii) 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.
- (b) The Schedule (and annexures and documents incorporated by reference, if any) forms part of this Agreement.
- (c) In the event of any conflict or inconsistency between any part of:
- (i) the terms and conditions contained in the clauses of this Agreement;
 - (ii) the Schedules;
 - (iii) the annexures, if any;
 - (iv) documents incorporated by reference, if any; and
 - (v) the Guidelines,

then the material mentioned in any one of paragraphs (i) to (v) above has precedence over material mentioned in a subsequent paragraph, to the extent of any conflict or inconsistency.

Executed as an agreement.

Signed for and on behalf of **Commonwealth of Australia**

by Ms Rebecca Cross, Group Manager, Schools – Lifting Educational Outcomes Group, represented by and acting through the **Department of Education, Employment and Workplace Relations ABN 63 578 775 294**, in the presence of:

Misty Purdy

(Signature of Witness)

Misty Purdy

(Name of Witness in full)

Signed for and on behalf of the **Australian Capital Territory**

by Ms Janet Davy, A/g Chief Executive, represented by and acting through the **ACT Department of Education and Training ABN 71 506 957 312**, in the presence of:

L. Bell-Towers

(Signature of Witness)

Lynn Bell-Towers

(Name of Witness in full)

Rm Cross

(Signature of Departmental Representative)

Rebecca Cross

(Name of Departmental Representative)

J. Davy

(Signature of State/Territory Representative)

Janet Davy

(Name of State/Territory Representative)

W J