



Australian Government

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

Funding Agreement

between the

COMMONWEALTH OF AUSTRALIA

as represented by the

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

and

Australian Chamber of Commerce and Industry
ABN 85 008 391 795

regarding funding for

The Productivity Education and Training Fund

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Initials

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Initials

cc
JK

Parties

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

AND

Australian Chamber of Commerce and Industry ('You' or 'Your')

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

Purpose

A. The Department operates the Productivity Education and Training Fund (the PET Fund) under which funding is available to peak employer and employee organisations to create a long term program of education and skills development to support cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians.

This objective is consistent with and promotes the Australian Government's policy objectives as detailed in the Fair Work Act 2009.

B. You are committed to helping achieve the program, through Your conduct of the Project that encompasses:

- the role that co-operative and consultative processes and policies play in generating improved productivity at the workplace and practical measures that give effect to these issues;
- providing skills to employers on productivity improvement such as, measurement of productivity, work organisation, the balance between work and life and the sharing of productivity gains across the workplace and economy;
- the role that productivity issues play in enterprise bargaining;
- the importance of leadership in building safe, fair and productive workplaces, how managers can contribute to good leadership in workplaces, and training leaders;
- the continuing successful operation of the workplace relations system.

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 it expires on the Completion Date, unless terminated under clause 28 (Termination for Default) or by written agreement between the parties.
- 1.2 The Project commences on the Date of this Agreement and must be completed by 30 June 2017.

2 Project

- 2.1 The Productivity Education and Training Fund (the PET Fund) makes funding available to peak employer and employee organisations to create a long term program of education and skills development to support cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians.
- 2.2 The Project will create a long term program of education and skills development to support the Purpose of the funding.
- 2.3 You must carry out the Project:
- a) within the Project Period; and
 - b) in accordance with this agreement , diligently, effectively and to a high professional standard.
- 2.4 The Funding must be expended by You only for the Project.
- 2.5 You must not act in a way that may bring the Project into disrepute.
- 2.6 We are not responsible for the provision of additional money to meet any expenditure in excess of the Funds.

3 Funding

- 3.1 The total Funding for the Project is \$5,500,000 inclusive of GST.
- 3.2 Subject to sufficient funds being available for the Project, and compliance by you with this agreement, We will provide You with the Funding at the times and in the manner specified in the below table:

| Amount | Payable |
|-------------|---|
| \$2,750,000 | on execution of the Funding Agreement. |
| \$2,750,000 | By 30 August 2012, subject to Us and You agreeing to project milestones and deliverables. |

- 3.3 The amount specified in clause 3.1 includes GST of \$500,000.
- 3.4 Subject to acceptance by Us, the due date for payment is 30 days after delivery of a correctly rendered invoice to Us.
- 3.5 Invoices forwarded by You must be correctly addressed and include the:
- c) title of Project;
 - d) Your name and ABN;
 - e) name of Program Delegate;
 - f) agreement number or date of execution;
 - g) fees and expenses to be invoiced (including a description of the deliverables or milestones that the invoice relates to); and
 - h) bank account details for payment of the invoice by electronic funds transfer.
- 3.6 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.
- 3.7 The Funding must be expended by You only for the Project.
- 3.8 Any interest earned by You on the Funds must be used diligently and for the sole purpose of the Project outlined in clause 1. Unless We agree otherwise in writing, any interest earned on the Funds must be spent by You on the Project, or repaid to Us within 30 days of the expiry or earlier termination of this agreement.
- 3.9 You must not act in a way that may bring the Project into disrepute.
- 3.10 We are not responsible for the provision of additional money to meet any expenditure in excess of the Funds.

4 Management of Funding

- 4.1 You must:
- a) ensure that the Funds are held in an account or accounts in Your name, and which You solely control, with a bank or credit union carrying on banking business in Australia; ensure that the account or accounts referred to at clause 4.1(a) are:
 - (i) established solely to account for and administer, Funding provided by Us to You under this agreement; and
 - (ii) separate from Your other operational accounts;
 - b) on request from Us, provide Us and the authorised deposit-taking institution with an authority for Us to obtain all details relating to any use of the account; and

- c) identify the receipt and expenditure of the Funds separately within Your accounting Records so that at all times the Funds are identifiable and ascertainable.
- 4.2 You must keep financial Records relating to the Project to enable:
- a) all income and expenditure related to the Project to be identified in Your accounts;
 - b) the preparation of financial statements in accordance with Australian Accounting Standards; and
 - c) the audit of those Records in accordance with Australian Auditing Standards.
- 4.3 You must not use the Funds:
- a) as security to obtain, or comply with, any form of loan, credit, payment or other interest; or
 - b) for the preparation of, or in the course of, any litigation.

5 Repayment of Funding

- 5.1 If:
- a) at any time, an overpayment occurs, including where an invoice is found to have been incorrectly rendered after payment; or
 - b) at the Completion Date (or if this agreement is terminated earlier, the date of termination) some or all of the Funding has not been:
 - (i) spent in accordance with this agreement; or
 - (ii) acquitted to Our satisfaction,then this amount must be repaid to Us within 20 business days of a written notice from Us, or dealt with as directed in writing by Us.
- 5.2 An overpayment may be recovered from You, including by offsetting that overpayment against any amount subsequently due to You under this agreement or any other arrangement between You and Us or between You and the Commonwealth generally.
- 5.3 If an overpayment is not repaid to Us, Interest is payable on the amount after the expiry of the 20 business days notice referred to in clause 5.1, until the amount is paid in full.
- 5.4 Any amount owed to Us under clause 5.1 and any Interest owed under clause 5.3, is recoverable by Us as a debt due to Us by You without further proof of the debt by Us.
- 5.5 An adjustment note must be provided to Us if required by the GST Act, including where You repay some or all of the Funding to Us.

6 Acknowledgment and Publicity

- 6.1 You must, in all presentations, seminars and the like in relation to the Project , verbally acknowledge the financial support You have received from the Australian Government.
- 6.2 We reserve the right to publicise and report on the awarding of Funding to You, including the amount of the Funds given to You and the title and a brief description of the Project.

7 Subcontracting

- 7.1 It is acknowledged that the delivery of the Project will require the extensive involvement of subcontractors. You are fully responsible for the performance of Your obligations under this agreement, even if You subcontract some or all of Your obligations.
- 7.2 You must not, without Our prior written approval, subcontract the performance of any obligations under this agreement.
- 7.3 Our approval for a subcontracting arrangement will not be unreasonably withheld. In giving approval, We may impose terms and conditions as We think fit. You acknowledge that the conditions of any approval We give under this clause 7 includes the condition that you enter into a contract with the Subcontractor which reflects the terms of this agreement.
- 7.4 Where We request you to do so, You must provide a copy of all documents related to your engagement of the subcontractor.
- 7.5 Despite any approval given by Us under clause 7.2, You are responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that the work meets the requirements of this agreement.
- 7.6 We may revoke Our approval of a subcontractor on any reasonable ground by giving written notice to You. On receipt of the notice You must, at Your own cost, promptly cease using that subcontractor and arrange their replacement with personnel or another subcontractor acceptable to Us.
- 7.7 If We revoke Our approval of a subcontractor, You remain liable under this agreement for the past acts or omissions of Your subcontractors as if they were current subcontractors.
- 7.8 You must not enter into a subcontract under this agreement with a subcontractor named by the Director of the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the Equal Opportunity for Women in the Workplace Act 1999.

- 7.9 You must comply, and must ensure that Your subcontractors comply, with all relevant requirements of the Fair Work Principles as set out in the Fair Work Principles User Guide (available at www.deewr.gov.au/fairworkprinciples), including by:
- a) complying with all applicable workplace relations, occupational health and safety, and workers' compensation laws;
 - b) informing Us of any adverse court or tribunal decision for a breach of workplace relations law, occupational health and safety laws, or workers' compensation laws made against You (or a subcontractor) during the term of this agreement and any remedial action You (or a subcontractor) have taken, or propose to take, as a result of the decision;
 - c) providing Us with any information We reasonably require to confirm that You (and any subcontractors engaged by You) are complying with the Fair Work Principles; and
 - d) participate in all compliance activities associated with Your legal obligations, including those arising under the Fair Work Principles. Compliance activities may include responding to requests for information and/or audits undertaken by the Commonwealth, its nominees and/or relevant regulators.

8 Assets

- 8.1 You must not use the Funding to purchase or create any Asset without getting Our prior written approval. You must provide a list of any Assets You propose to purchase or create during the relevant project period for Our approval. Our approval may be subject to conditions. Clauses 8.3 to 8.7 apply only to Assets purchased or created with the Funding.
- 8.2 Unless it is specified in Our written approval that We own the Asset then, subject to this clause 8, You own any Asset acquired with the Funding. If We own the Asset, clauses 8.4, 8.5 and 8.6 do not apply.
- 8.3 During the Project Period You must:
- a) use any Asset in accordance with this agreement and for the purposes of the Project;
 - b) not encumber or dispose of any Asset, or deal with or use any Asset other than in accordance with this clause 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) maintain an Assets register; and
 - i) as and when requested by Us, provide copies of the Assets register to Us.
- 8.4 We may require You to pay to Us a proportion of the market value of an Asset which is equivalent to Our contribution to the purchase of the Asset:
- a) if You sell or otherwise dispose of the Asset during the Project Period (which must be with Our prior written consent and subject to any conditions We may impose); or
 - b) on completion of the Project Period or earlier termination of this agreement.
- 8.5 If You fail to make payment as required by clause 8.4, within 30 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 On completion of the Project or earlier termination of this agreement We may require You to deal with Assets as We may, at Our sole discretion, direct in writing.

9 Insurance

- 9.1 You must, for as long as any obligations remain in connection with the Project, have insurance as follows:
- a) workers' compensation insurance for an amount required by the relevant State or Territory legislation; and
 - b) public liability insurance for \$10,000,000 (ten million dollars) or more per claim.
- 9.2 When requested, You must provide Us, within 10 business days of the request, with evidence satisfactory to Us that You have complied with Your obligation to insure.

10 Liaison and Monitoring

10.1 You must:

- a) liaise with and provide information to the Program Delegate, or a person nominated by the Program Delegate, as reasonably required by the Program Delegate; and
- b) comply with all reasonable requests, directions, or monitoring requirements received from the Program Delegate.

11 Reporting

11.1 You must provide Us with the Reports listed below within the timeframes specified as follows:

- a) By 31 July of each year, or by an agreed later date, a summary report of the activities undertaken for the previous financial year and an outline of planned activities for the current financial year.
- b) By 31 January and 31 July of each year in relation to each six-monthly period (i.e. January to June and July to December):
 - (i) a certification by Your chief executive officer, Your chief internal auditor or one of Your board members that the funding was used in accordance with this agreement; and
 - (ii) a detailed statement of income and expenditure in respect of the funding, which must include a definitive statement as to whether the first-mentioned statement is true and fair and a statement of the balance of the account or accounts referred to at Clause 4.1
- c) Statutory company reports for each financial year for the duration of the funding period.
- d) If requested by Us, You must provide a hard copy, or electronic access to a source from which We can download a copy, of each publication that You produce utilising program funds.

11.2 At the completion of the Project, You will provide a final report detailing achievements against the agreed milestones and deliverables for the Project.

11.3 Unless clause 11.7 applies, You must provide Us with:

- a) a certificate that all Funding received was expended for the Project and in accordance with this agreement;
- b) an audited detailed statement of income and expenditure in respect of the Funding, which must include a definitive statement as to whether the financial

accounts are true and fair, and a statement of the balance of Your account or accounts referred to in clause 4.1; and

- c) an audit statement that the Funding was expended for the Project and in accordance with this agreement.

11.4 The certificate referred to in clause 11.3a) and the audits referred to in clause 11.3b) and c) must:

- a) contain the details, if any, described in clause 11.9; and
- b) be provided to the Program Delegate within one month of the end of the Project Period, or by an agreed later date.

11.5 The certificate referred to in clause 11.3 must be provided by Your chief executive officer, chief internal auditor or a board member.

11.6 Subject to clause 11.7, the audits referred to in clause 11.3b) and c) must:

- a) comply with the Australian Auditing Standards; and
- b) be carried out by a person who is:
 - (i) registered as a company auditor under the *Corporations Act 2001*, or a member of the Institute of Chartered Accountants in Australia (who is entitled to use the letters CA or FCA), or of CPA Australia (who is entitled to use the letters CPA or FCPA) or the Institute of Public Accountants (IPA) (who is entitled to use the letters MIPA or FIPA); and
 - (ii) not a principal, member, shareholder, officer or employee of You (Your holding company or a subsidiary of You or Your holding company).

11.7 If You are audited by the Auditor-General or a State or Territory Auditor-General:

- a) for the entire term of this agreement; and
- b) the Funding is included in the income and expenditure which is subject to the audit,

then, instead of the certificate and audits referred to in clause 11.3, You may provide Us with:

- (i) a detailed statement of income and expenditure for the Funding, which must include a definitive statement as to whether the financial accounts are true and fair, and a statement of the balance of Your account referred to in clause 4.1; and
- (ii) statement that the Funding was expended for the Project and in accordance with this agreement.

11.8 The statements referred to in clause 11.7 b)(i) and (ii) must

- a) be certified by:
 - (i) Your chief executive officer; and
 - (ii) the senior executive officer employed by You who has primary responsibility for managing Your audit functions; and
 - (iii) be delivered at the times and in the manner specified in clause 11.4.

12 Governance Framework

12.1 Within 30 days of the execution of this agreement, You must provide the Program Delegate with:

- a) the means by which the monitoring of payments of funding received under the agreement and of the progress in developing and carrying out the Project, will occur;
- b) the means by which the risks of mismanagement or fraud associated with the funds will be addressed;
- c) the means by which you will manage subcontractors, including reporting, risk management, monitoring of payments of funding received under the agreement and of the progress in developing and carrying out the Project;
- d) a list of the managerial personnel who will be responsible for implementing the Project, including the management of the funding, and the responsibilities of those personnel in relation to the Project; and
- e) details of a Project Manager who will be Your point of contact in relation to this agreement and who is responsible for accepting notices on Your behalf.

13 Commonwealth Material

- 13.1 We acknowledge that as at the date of this agreement, We do not anticipate that there will be any Commonwealth Material for the purposes of this clause.
- 13.2 All Commonwealth Material must not be altered without our written permission.
- 13.3 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.
- 13.4 You must keep safely and maintain Commonwealth Material You have been given for the purposes of this agreement.
- 13.5 You must return or destroy all Commonwealth Material remaining in Your possession at the end of this agreement unless We consent in writing to You retaining the Commonwealth Material.

14 Project Material

Ownership

14.1 Subject to this clause 14.4, You own the Project Material and the Intellectual Property Rights in Project Material immediately on their creation.

14.2 The Excluded Material and the Excluded IPR may be owned by You or a third party.

Licences

14.3 You must grant to Us (or arrange for the grant to Us of) a permanent, irrevocable, free, world wide, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit the Intellectual Property Rights in the Project Material and the Excluded Material for any purpose.

14.4 If You are unable to obtain a licence on the terms referred to in clause 14.3, you must arrange for the grant to Us of a licence to exercise the Excluded IPR and notify Us in writing of the proposed terms of the licence. Where We agree in writing to the proposed terms, You must set out the terms of the licence in the relevant project plan.

Use of Project Material

14.5 If you are an Author (either the sole or a joint Author) of any Project Material or Excluded Material, You consent to the performance of the Specified Acts by Us or any person licensed by Us to use, reproduce, adapt and exploit that Project Material or Excluded Material.

14.6 You agree:

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

General

14.7 You must comply with any request that We make of You at any time to bring into existence, sign, execute or otherwise deal with any document that may be necessary or desirable to give effect to this clause 14.

14.8 You warrant that You are entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Project Material in accordance with this clause 14.

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

15 Disclosure of Information

15.1 Subject to clause 15.5:

- a) You must not, without Our prior written approval, disclose any of Our Confidential Information to a third party; and
- b) We must not, without Your prior written approval, disclose any of Your Confidential Information to a third party.

15.2 In giving written approval to disclosure, a party may impose conditions as it thinks fit, and the other party agrees to comply with the conditions.

15.3 We may at any time require You to arrange for any person engaged in, or in relation to, the performance or management of this agreement to give written undertakings, in a form required by Us, relating to the non-disclosure of Our Confidential Information.

15.4 If You receive a request under clause 15.3, You must promptly arrange for all undertakings to be given.

15.5 The obligations on the parties under this clause 15 will not be breached if information:

- a) is disclosed by Us to the responsible Minister;
- b) is disclosed by Us, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- c) is authorised or required by law to be disclosed; or
- d) is in the public domain otherwise than due to a breach of this clause 15.

15.6 Nothing in this clause 15 limits Your obligations under clause 16 or clause 19.

16 Protection of Personal Information

16.1 You agree:

- a) to comply with the Information Privacy Principles when doing any act or engaging in any practice in relation to Personal Information for the purposes of this agreement, as if You were an agency as defined in the Privacy Act; and
- b) to deal with Personal Information received, created or held by You for the purposes of this agreement only to fulfil Your obligations under this agreement and in accordance with any conditions or restrictions specified in writing by us.

16.2 An act done or a practice engaged in by You or a subcontractor to meet (directly or indirectly) an obligation under this agreement:

- a) is authorised by this clause 16 for the purposes of sub-sections 6A(2) and 6B(2) of the Privacy Act even if the act or practice is inconsistent with a National

Privacy Principle or an approved privacy code (as defined in the Privacy Act) that applies to You or the subcontractor; but

- b) is subject to the other obligations in this agreement including this clause 16.

16.3 In this clause 16, "received" includes "collected".

16.4 In relation to Personal Information received, created or held by You for the purposes of this agreement, You agree:

- a) not to use or disclose Personal Information to engage in a practice that would breach section 16F of the Privacy Act, unless the use or disclosure is necessary to meet (directly or indirectly) an obligation under this agreement;
- b) not to transfer Personal Information outside Australia, or to allow parties outside Australia to have access to it, without the prior written approval of the Program Delegate;
- c) to co-operate with reasonable demands or inquiries made by the Privacy Commissioner or the Program Delegate in relation to the management of Personal Information;
- d) to ensure that any person who You allow to access Personal Information is made aware of, and undertakes in writing, to observe the Information Privacy Principles;
- e) to comply with policy guidelines laid down by Us or issued by the Privacy Commissioner from time to time relating to the handling of Personal Information;
- f) if requested by Us, at the end of this agreement, to return all Records containing Personal Information to the Program Delegate, or delete or destroy those Records in the presence of a person authorised by the Program Delegate;
- g) Your name being published in reports by the Privacy Commissioner;
- h) You must immediately notify the Program Delegate if You become aware:
 - (i) of a breach of Your obligations under this clause 16;
 - (ii) that a disclosure of Personal Information may be required by law; or
 - (iii) of an approach to You by the Privacy Commissioner or by a person claiming that their privacy has been interfered with.

Note: more information about the Privacy Act and the Information Privacy Principles is available at <http://www.privacy.gov.au/act/index.html>.

17 Records

17.1 You must make full and accurate Records of the conduct of the Project including progress against the Milestones (if any), the receipt and use of Funding (in accordance

with Australian Accounting Standards), the acquisition of Assets and the creation of Intellectual Property Rights in Project Material.

17.2 Subject to Your obligations under clause 17, Records must be retained by You for 7 years after the end of the Project Period.

18 Audit and Inspection

18.1 The Minister shall be entitled to audit the monies expended from the grant and for that purpose You must:

- a) permit access to and copying of its financial and other records relevant to the grant by any person duly authorised by the Minister;
- b) answer any inquiries relevant to the grant put to it by any person duly authorised by the Minister;
- c) assist any person duly authorised by the Minister in the conduct of the audit; and
- d) make available such of its staff as are able to answer any inquiries by any person duly authorised by the Minister.

18.2 You must, if requested by the decision maker or representative, provide the Commonwealth Auditor General or their representative with access to accounting records and documentation in respect of funds granted under this grant. This includes accessing and copying appropriate financial and other records of any organisations sub-contracted by You to undertake any activities funded by Us under this agreement.

19 Access to Premises and Records

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

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

19.2 The rights referred to in clause 19.1 are subject to:

- a) the provision of reasonable prior notice to You; and
 - b) Your reasonable security procedures.
- 19.3 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 19.2a) will not apply.
- 19.4 The requirement for access specified in clause 19.1 does not in any way reduce Your responsibility to perform Your obligations under this agreement.

20 Indemnity

- 20.1 You agree to indemnify Us against any:
- a) loss or liability incurred by Us;
 - b) loss of or damage to Our property; or
 - c) loss or expense incurred by Us in dealing with any claim against Us, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by Us;
- arising from:
- (i) any act or omission by You, or any of Your employees, agents, or subcontractors in connection with this agreement, where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, or expense;
 - (ii) any breach by You or any of Your employees, agents, or subcontractors of obligations or warranties under this agreement;
 - (iii) any use or disclosure by You, Your officers, employees, agents or subcontractors of Personal Information held or controlled in connection with this agreement; or
 - (iv) the use by Us of the Project Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights (including moral rights) in Project Material.
- 20.2 Your liability to indemnify Us under this clause 20 will be reduced proportionately to the extent that any fault on Our part contributed to the relevant loss, damage, expense, or liability.
- 20.3 Our right to be indemnified under this clause 20 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.
- 20.4 In this clause 20, "fault" means any negligent or unlawful act or omission or wilful misconduct.

21 Conflict of Interest

- 21.1 You warrant that, to the best of Your knowledge after making reasonable inquiries, at the Date of this Agreement no Conflict exists or is likely to arise in the performance of Your obligations under this agreement.
- 21.2 If during the term of this agreement, a Conflict arises, or is likely to arise, You must:
- a) immediately notify Us in writing of that Conflict and of the steps You propose to take to resolve or otherwise deal with the Conflict;
 - b) make full disclosure to Us of all relevant information relating to the Conflict; and
 - c) take steps as We may, if We choose to, reasonably require to resolve or otherwise deal with that Conflict.
- 21.3 If You fail to notify Us under this clause 21, or are unable or unwilling to resolve or deal with the Conflict as required, We may terminate this agreement under clause 28.

22 Negation of Employment, Partnership and Agency

- 22.1 You will not, by virtue of this agreement, be or for any purpose be deemed to be Our employees, partners or agents.
- 22.2 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.

23 Entire Agreement, Variation and Severance

- 23.1 This agreement records the entire agreement between the parties in relation to its subject matter.
- 23.2 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.
- 23.3 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.

24 Waiver

- 24.1 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.
- 24.2 A waiver by either party of any rights does not prevent the further exercise of any right.
- 24.3 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.
- 24.4 In this clause 24, 'rights' means rights or remedies provided by this agreement or at law.

25 Assignment and Novation

- 25.1 You must not assign Your rights under this agreement without prior written approval from Us.
- 25.2 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.

26 Incorporation

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

27 Dispute Resolution

- 27.1 Subject to clause 27.3, the parties agree not to commence any legal proceedings in respect of any dispute arising under this agreement, which cannot be resolved by informal discussion, until the procedure provided by this clause 27 has been used.
- 27.2 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.

27.3 This clause 27 does not apply if:

- a) either party commences legal proceedings for urgent interlocutory relief;
- b) action is taken by Us under clauses 5, 19 or 28; or
- c) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the law by You.

27.4 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.

28 Termination For Default

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

- a) You fail to fulfil, or are in breach of any of Your obligations under this agreement (including but not limited to Your obligations under clauses 21 and 26), and You do not rectify the omission or breach within 30 days of receiving a notice in writing from Us to do so, unless the notice specifies a shorter period (of not less than 10 business days);
- if:
- b) You fail to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001*;
 - c) proceedings are initiated to obtain an order for Your winding up or any shareholder, member or director convenes a meeting to consider a resolution for Your winding up;
 - (i) You come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* or equivalent provisions in other legislation, or an order has been made to place You under external administration; or
 - (ii) notice is served on You or proceedings are taken to cancel Your incorporation or registration or to dissolve You as a legal entity; or
 - d) You cease to carry on a business relevant to the performance of the Project.

29 Compliance With Laws and Our Policies

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

- a) all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or local authority; and
- b) Our policies notified by Us to You in writing as listed in clauses 29.2 and 29.3 below.

Compliance with Laws

29.2 You acknowledge that:

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

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

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

Compliance with Policies

29.3 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.

30 Applicable Law and Jurisdiction

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

31 Notices

- 31.1 A party giving notice under this agreement must do so in writing or by Electronic Communication as follows:
 - a) if given by You, marked for the attention of Jeff Willing, Branch Manager, Building Industry and Programs Branch, Department of Education Employment and Workplace Relations
Office Address: Level 1, 50 Marcus Clarke Street, ACT 2601
Postal Address: GPO Box 9880 Canberra, ACT, 2601
Fax: (02) 6276 7640 Phone: (02) 6240 1988
Email: jeff.willing@deewr.gov.au
 - b) if given by Us, marked for the attention of Jenny Lambert, Director – Employment, Education and Training, Australian Chamber of Commerce and Industry
Office Address: Level 3, Commerce House, 24 Brisbane Avenue, Barton, ACT, 2600

Postal Address: PO Box 6005, Kingston, ACT, 2604
Fax: 02 6273 3286
Phone: 02 6273 2311 and 0418 277 919
Email: jenny.lambert@acci.asn.au

31.2 A notice given under clause 31.1 must be hand delivered or sent by pre-paid post or Electronic Communication to the address of the other party as specified in clause 31.1.

31.3 A notice given under clause 31.1 is taken to be received:

- a) if hand delivered, on delivery;
- b) if sent by pre-paid post, 5 business days after the date of posting; or
- c) if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* if a notice was being given under a law of the Commonwealth.

32 Survival of Clauses

32.1 These clauses survive the expiration or earlier termination of this agreement: 4, 5, 10, 11, 13, 14, 15, 16, 17 and 20.

32.2 Clauses 6 and 19 apply during this agreement and for 7 years from the end of this agreement.

33 Interpretation

33.1 In this agreement, unless the contrary intention appears:

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

‘**Asset**’ means any item of tangible property which has a value of over \$5,000 inclusive of GST, but does not include Project Material;

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

‘**Australian Accounting Standards**’ refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the *Australian Securities and Investments Commission Act 2001*;

‘**Australian Auditing Standards**’ refers to the standards prepared by the Australian Government Auditing and Assurance Standards Board created by section 227A of the *Australian Securities and Investments Commission Act 2001* and generally accepted audit practices to the extent they are not inconsistent with those standards;

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

'Commonwealth Coat of Arms' means the Commonwealth Coat of Arms as set out at *It's an Honour – Commonwealth Coat of Arms* available at <http://www.itsanhonour.gov.au/coat-arms/index.cfm>;

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

'Completion Date' means: the day after You have done all that You are required to do under this agreement to Our satisfaction;

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

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

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

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

'Excluded Material' means any Material, specified as such in a project plan, in which Intellectual Property Rights are owned by You or a third party;

'Funding' or **'Funds'** means the amount or amounts (in cash or kind) payable by Us under this agreement as specified in clause 3 of this agreement, including interest earned on that amount;

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

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

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

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

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

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

'Our Confidential Information' means information that:

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

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

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

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

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

'Project' means the activity described at clause 2 of this agreement, and includes the provision of Project Material specified in that item;

'Project Material' means;

- a) any Material produced by, or for, You in carrying out Your obligations under this agreement; and
- b) any other Material incorporated in, or supplied with, or as part of the Material referred to in paragraphs (a);

'Project Period' means:

- a) the period specified at clause 1.2 of this agreement during which the Project must be completed; or
- b) if this agreement is terminated early, the period ending on the day on which the agreement terminates;

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

'Report' means Project Material that is provided to Us for reporting purposes on matters including the use of the Funding, whether or not Milestones have been achieved, progress reports and evaluations of the Project or obligations of this agreement, as stipulated at clause 14 of this agreement;

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

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

- a) using, reproducing, adapting or exploiting all or any part of the Project Material, with or without attribution of authorship;
- b) supplementing the Project Material with any other Material; or

- c) using the Project Material in a different context to that originally envisaged;
but does not include false attribution of authorship;
'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;

33.2 In this agreement, unless the contrary intention appears:

- a) words in the singular include the plural and vice versa;
- b) words importing a gender include the other gender;
- c) a reference to a person includes a partnership and a body whether corporate or otherwise;
- d) clause headings or words in bold format are inserted for convenience only, and have no effect in limiting or extending the language of provisions;
- e) all references to dollars are to Australian dollars;
- f) a reference to legislation is to legislation, including any successor legislation, of the Commonwealth, as amended from time to time;
- g) an uncertainty or ambiguity in the meaning of a provision of this agreement will not be interpreted against a party just because that party prepared the provision;
and
- h) where a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning.

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

33.4 In the event of any conflict or inconsistency between any part of:

- a) the terms and conditions contained in the clauses of this agreement;
- b) the schedules
- c) the annexures, if any;
- d) documents incorporated by reference, if any,

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

33.5 For the avoidance of doubt, no right or obligation in this agreement is to be read or understood as limiting Your rights to enter into public debate or criticism of Us.

Initials

RC
PF

