

Funding Agreement

between the

**AUSTRALIAN LEARNING AND TEACHING COUNCIL
LIMITED**

ABN 30 109 826 628

and

HIGHER EDUCATION INSTITUTION

regarding funding for:

**Project title
(Ref: xxx-xxx)**

Text highlighted in green = text specific to individual Agreements

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Parties

AUSTRALIAN LEARNING AND TEACHING COUNCIL LIMITED ('Us', 'We' or 'Our'),
[ABN 30 109 826 628]

AND

HIGHER EDUCATION INSTITUTION [ABN ...], City, STATE, Postcode ('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

1. We are responsible for providing grants to the higher education sector and specifically to advance learning and teaching in higher education. Our objectives include the dissemination of good individual and institutional practice in learning and teaching in Australian higher education.
2. You are committed to helping Us fulfil Our responsibility to promote and advance learning and teaching in Australian higher education, specifically in the area of (program) through Your conduct of the Project in order to (Proposed Outcome).
(Optional Addition: include details of significant partnership eg University A and University B are partners in the Project)
3. We agree to provide Funding to You to manage the Project described in Annexure 1 on the terms and conditions of this Agreement.
4. We are required to ensure accountability for money We administer, and You are required to be accountable for all Funds provided by Us.
5. You agree to accept the Funding on the terms and conditions set out in this Agreement.

Schedule

A. Term of Agreement (clause 1)

- A.1 The Completion Date for this Agreement is is ##/month/200#.

B. Project (clause 2)

- B.1 The Project, as detailed in the Proposal (and amendments if any), Annexure 1 of this Agreement, will (insert project summary (objectives & outcomes, including key partner relationships – more detailed summary required)).

C. Project Period (clause 2)

- C.1 The Project commences on the date of finalising this Agreement and must be completed by # Month 200#.

D. Invoice Requirements (clause 3)

- D.1 We will issue recipient created tax invoices in relation to the Funding.
- D.2 You agree:
- (a) not to issue any tax invoices in relation to the Funding;
 - (b) that You are registered for GST; and
 - (c) that You will notify Us if You cease to be registered for GST prior to completion of the project.
- D.3 We will create and issue You with recipient created tax invoices when payment of the

Funding is due in accordance with item AA.1

E. Subcontractors (clause 7)

E.1 Not applicable

F. Specified Personnel (clause 8)

F.1 Not applicable

G. Assets (clause 9)

G.1 Not applicable

H. Reporting (clause 12)

H.1 A brief Progress Report must be provided at half yearly intervals if the project goes beyond six months.

A Year One Report, due ##/month/200#, must report on the deliverables and outcomes for Year One listed in the proposal found at Annexure 1. A statement of income and expenditure against the project budget in the proposal must be provided to Us with the Year One Report.

A Final Project Report is due date/month/year.

A full financial acquittal of the funding for the Project is due by date/month/year.

This must take the form of a detailed statement of income and expenditure for the Funding, and must include:

- (a) a statement that the Funding was expended for the Project and in accordance with this Agreement; and
- (b) a definitive statement as to whether the financial accounts are true and fair.

I. Our Confidential Information (clause 15)

Not applicable

K. Notices (clauses 8 and 31)

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

Name: (name)
Office Address: (address)
Postal Address: (Postal Address)
Phone: (Area code & number)
Fax: (Area code & number)
Email: ()

AA. Funding (clause 3)

AA.1 The total Funding for the Project is \$ inclusive of GST payable as follows:

Amount	Payable
\$ base grant plus \$ GST	Within one month of signing the contract
\$ base grant plus \$ GST	Within four weeks of receiving the Year One Report, due on date/month/year, provided the Project has satisfied the deliverables of Year One and is progressing satisfactorily to meet the Project outcomes.

AA.2 The total Funding referred to in item AA.1 includes GST of \$.

BB. Projects Manager (clauses 11 and 31)

BB.1 The Projects Manager is:

Name: Siobhan Lenihan
Office Address: 4-12 Buckland St, Chippendale, NSW 2008
Postal Address: PO Box 2375, Strawberry Hills, NSW 2012
Phone: 02 8667 8551
Fax: 02 8667 8515
Email: siobhan.lenihan@altc.edu.au

CC. Your Confidential Information (clause 15)

CC.1 Not applicable

THIS AGREEMENT is made on the _____ **day of**

SIGNED for and on behalf of

AUSTRALIAN LEARNING AND TEACHING COUNCIL LIMITED

by Professor Richard Johnstone)
the Executive Director)
of the Australian Learning and Teaching Council Ltd.)

.....

In the Presence of:

.....
WITNESS

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

EXECUTED BY)
(NAME OF UNIVERSITY IN FULL))

.....
Signature

.....
Full Name (Please print)

.....
Position

In the Presence of:

.....
WITNESS

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

General Terms and Conditions

1 Term of Agreement

- 1.1 This Agreement commences on the Date of this Agreement and, unless terminated earlier, it expires on the Completion Date as specified in item A of the Schedule.
- 1.2 We may agree to a request made by You to extend the Completion Date by up to six months. A request for an extension should be made by You, at least six months prior to the Completion Date, by Electronic Communication and as otherwise specified in clause 31.
- 1.3 If We approve an extension to the Completion Date, the dates for submission of the Final Report and financial acquittal, as specified in items C and H of the Schedule, will be extended by the same period.

2 Project

- 2.1 You must carry out the Project:
 - (a) at the times and in the manner specified in item B of the Schedule;
 - (b) within the Project Period; and
 - (c) in accordance with this Agreement, diligently, effectively and to a high professional standard.
- 2.2 The Funding must be expended by You only for the conduct of the Project in accordance with the terms of this Agreement.
- 2.3 We are not responsible for the provision of additional money to meet any expenditure in excess of the Funds.

3 Funding

- 3.1 Subject to compliance by You with this Agreement (including the invoicing requirements, if any, specified in item D of the Schedule), We will provide You with the Funding at the times and in the manner specified in item AA of the Schedule.
- 3.2 Without limiting Our rights, We may withhold or suspend any payment in whole or in part if You have not performed Your obligations under this Agreement.
- 3.3 If We exercise Our rights under clause 3.2, You must continue to perform any obligations under this Agreement, unless We agree otherwise in writing.
- 3.4 We will notify You immediately should We cease to be registered for GST purposes or become aware of any reason why registration may be cancelled or cease to satisfy any requirements of public ruling GSTR 2000/10.

4 Management of Funding

- 4.1 You must:
 - (a) ensure that the Funds are held in an account in Your name, and which You solely control, with a bank or credit union carrying on banking business in Australia;
 - (b) on request from Us, provide Us with necessary authority for Us to obtain all details relating to any use of the Funds in the account;
 - (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 an earlier termination of this Agreement, some or all of the Funding has not been:
 - (i) spent in accordance with this Agreement; or
 - (ii) acquitted to Our reasonable 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.
- 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 In all publications, promotional materials and activities relating to the Project and this Contract, You must acknowledge the financial and other support You have received from Us in such form and containing such information as specified here:
- (a) Support for the production of this report/publication/activity has been provided from the Australian Learning and Teaching Council Ltd, an initiative of the Australian Government Department of Education, Employment and Workplace Relations.
 - (b) The views expressed in this report/publication/activity do not necessarily reflect the views of the Australian Learning and Teaching Council Ltd.

- 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 You must not, without Our prior written approval, subcontract the performance of any obligations under this Agreement. In giving approval, We may impose terms and conditions reasonably required for the subcontractor to undertake any of the obligations under this Agreement.
- 7.2 The subcontractors We have approved at the Date of this Agreement, and any terms and conditions relating to their use, are identified in item E of the Schedule.
- 7.3 You are fully responsible for the performance of Your obligations under this Agreement, even if You may subcontract some or all of Your obligations.
- 7.4 Despite any approval given by Us under clause 7.1, 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.
- 7.5 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.
- 7.6 If We withdraw 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.
- 7.7 You must not enter into a subcontract under this Agreement with a subcontractor named by the Director of the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the *Equal Opportunity for Women in the Workplace Act 1999*.
- 7.8 If You are unable to provide acceptable subcontractors, We may terminate this Agreement under Clause 27.

8 Specified Personnel

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

8.4 If You are unable to provide acceptable replacement personnel, We may terminate this Agreement under clause 27.

9 Assets

9.1 You must not use the Funding to purchase or create any Asset, apart from those detailed in item G of the Schedule, without getting Our prior written approval. Our approval may be subject to conditions.

9.2 Unless it is specified in item G of the Schedule that We own the Asset then, subject to this clause 9, You own any Asset acquired with the Funding. If We own the Asset, clauses 9.4, 9.5 and 9.7 do not apply.

9.3 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 9, without Our prior written approval;
- (c) use reasonable efforts to safeguard all Assets against theft, loss, damage, or unauthorised use;
- (d) use reasonable efforts to maintain all Assets in good working order;
- (e) maintain all appropriate insurances, including self-insurance, for all Assets to their full replacement value, noting Our interest in the Asset under this Agreement, and provide satisfactory evidence of this on request from Us;
- (f) if required by law, maintain registration and licensing of all Assets;
- (g) be fully responsible for, and bear all risks relating to, the use or disposal of all Assets;
- (h) if specified in item G of the Schedule, maintain an Assets register for the purposes of the Project in the form and containing the details as described in item G of the Schedule; and
- (i) as and when requested by Us, provide copies of the Assets register to Us.

9.4 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.

9.5 If You fail to make payment as required by clause 9.4, within 20 business days of receiving written notice from Us:

- (a) You must pay Us the Interest on the amount from the date it was due, for the period it remains unpaid; and
- (b) the amount and Interest are recoverable by Us as a debt due to Us by You.

9.6 If any of the Assets are lost, damaged or destroyed, We may require You to reinstate the Assets including from the proceeds of any insurance monies received and this clause 9 continues to apply to the reinstated Assets. Any surplus from the proceeds of an insurance claim must be notified to Us and used and accounted for as Funding under this Agreement.

9.7 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.

10 Insurance

10.1 You must maintain:

- (a) workers' compensation insurance for an amount required by the relevant State or Territory legislation;
- (b) public liability insurance for \$10,000,000 (ten million dollars) or more per claim; and
- (c) professional indemnity insurance for \$1,000,000 (one million dollars) or more per claim.

10.2 When requested, You must provide Us, within 10 business days of the request, with certificates of currency of the insurance held in accordance with 10.1, or where We request, with other evidence satisfactory to Us that You have complied with Your obligation to insure.

11 Liaison and Monitoring

11.1 You must:

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

12 Reporting

12.1 (a) You must provide to Us, at the times and in the manner stated in item H of the Schedule, Reports of Your progress in undertaking the Project.

(b) The Final Report must be of sufficient quality to be published.

12.2 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,

12.3 You must provide Us with financial and other statements as specified in item H of the Schedule.

The statements referred to in clause 12.2 must

- (a) be certified by: the senior executive officer employed by You who has primary responsibility for managing Your audit functions, or a Certified Practising Accountant, or Chartered Accountant, or member of the National Institute of Accountants and who has Your delegation; and
- (b) contain the details, if any, described in item H of the Schedule;
- (c) be provided to the Projects Manager as specified in item H of the Schedule; and
- (d) at the other times specified in item H of the Schedule, if any.

12.4 We reserve the right to undertake an independent financial audit of the project.

13 Project Material

13.1 Ownership of and Intellectual Property Rights in all Project Material vests in Us upon creation.

13.2 We will publish all Project Material under the terms of the Creative Commons Attribution-Noncommercial-ShareAlike 2.5 Australia Licence.

Note: more information about this licence is available at <http://creativecommons.org/about/>

13.3 Subject to Clause 13.4, We grant You and partner institutions named in this Agreement a permanent, irrevocable, royalty-free, non-exclusive licence to use, copy, reproduce and adapt that Project Material anywhere in the world, and to sub-licence any of these rights.

13.4 Our agreement must be obtained prior to publishing any report required by Us in this Agreement.

13.5 This clause 13 does not affect ownership of any Intellectual Property Rights in any Material that is:

- (a) already in existence prior to the date of this Agreement; or
- (b) brought into existence other than for the purpose of performing this Agreement, ("Existing Material").

13.6 You grant Us a permanent, irrevocable, royalty-free, non-exclusive licence to use, copy, reproduce and adapt Existing Material that is:

- (a) incorporated in;
- (b) supplied with, or as part of; or
- (c) required to be supplied with, or as part of, the Project Material, anywhere in the world, and to sub-licence any of these rights, for Our purposes.

13.7 If a third party has Intellectual Property Rights in Existing Material incorporated, supplied with or required to be supplied with Project Material, You must arrange for the grant to Us of a licence to use the Intellectual Property Rights in that existing Material on the same terms as those set out in clause 13.5 above.

13.8 You must, 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 13.

13.9 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 and any Existing Material in accordance with this clause 13.

13.10 Without limiting any other provisions of this Agreement, You indemnify Us against any claims, demands, suits actions, losses costs, damages or other liability howsoever arising or incurred by Us in connection with a breach of the warranty set out in clause 13.9.

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

14 Commercialisation of Material Developed Under The Agreement

- 14.1. We will not commercialise any Project Material produced under this Agreement. You will not commercialise any Project Material produced under this Agreement without Our specific prior written permission.
- 14.2. In approving a request made under clause 14.1, We may impose such conditions as We consider are reasonable, but Our approval will not be unreasonably withheld.

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, including the material referred to at item I of the Schedule, 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 17.

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 16.3.
- 16.2 In this clause 16, "received" includes "collected".
- 16.3 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 Projects Manager;
- (c) to co-operate with reasonable demands or inquiries made by the Privacy Commissioner or the Projects Manager 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 Projects Manager, or delete or destroy those Records in the presence of a person authorised by the Projects Manager;
- (g) Your name being published in reports by the Privacy Commissioner;

You must immediately notify the Projects Manager if You become aware:

- (a) of a breach of Your obligations under this clause 16;
- (b) that a disclosure of Personal Information may be required by law; or
- (c) of an approach to You by the Privacy Commissioner or by a person claiming that their privacy has been interfered with.

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, the acquisition of Assets.

17.2 Subject to Your obligations under clause 16, Records made must be retained by You for 7 years after the end of the Project Period or as otherwise directed by Us.

18 Indemnity

18.1 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 reasonable 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.

- 18.2 Your liability to indemnify Us under this clause 18 will be reduced proportionally to the extent that any fault on Our part contributed to the relevant loss, damage, expense, or liability.
- 18.3 Our right to be indemnified under this clause 18 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.
- 18.4 In this clause 18, “fault” means any negligent or unlawful act or omission or wilful misconduct.

19 Conflict of Interest

- 19.1 You warrant that, to the best of Your knowledge after making diligent inquiries no Conflict exists or is likely to arise in the performance of Your obligations under this Agreement at the Date of this Agreement.
- 19.2 If during the term of this Agreement, any other 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.
- 19.3 If You fail to notify Us under this clause 19, or are unable or unwilling to resolve or deal with the Conflict as required, We may terminate this Agreement under clause 27.

20 Access to Premises and Records

- 20.1 You must at all reasonable times give the Auditor-General, the Privacy Commissioner, the Projects Manager:
- (a) reasonable access to:
 - (i) Your employees;
 - (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.
- 20.2 The rights referred to in clause 20.1 are subject to:
- (a) the provision of reasonable prior notice to You; and
 - (b) Your reasonable security procedures.
- 20.3 The requirement for access specified in clause 20.1 does not in any way reduce Your responsibility to perform Your obligations under this Agreement.

21 Negation of Employment and Partnership and Agency

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

21.2 You must not represent Yourself, and must ensure that Your employees, partners, agents or sub-contractors do not represent themselves, as being Our employees, partners or agents.

22 Entire Agreement, Variation and Severance

22.1 This Agreement records the entire agreement between the parties in relation to its subject matter.

22.2 Except for action either party is expressly authorised to take elsewhere in this Agreement, no variation of this Agreement is binding unless it is agreed in writing and signed by the parties.

22.3 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.

23 Waiver

23.1 If either party does not exercise (or delays in exercising) any rights under this Agreement, that failure or delay does not operate as a waiver of those rights.

23.2 A waiver by either party of any rights does not prevent the further exercise of any right.

23.3 Waiver of any provision of, or right under, this Agreement:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in the written waiver.

23.4 In this clause 23, 'rights' means rights or remedies provided by this Agreement or at law.

24 Assignment and Novation

24.1 You must not assign Your rights under this Agreement without prior written approval from Us.

24.2 You agree not to negotiate with any other person to enter into an arrangement that will require novation of this Agreement without first consulting Us.

25 Incorporation

25.1 You warrant that Your constitution is not inconsistent with this Agreement.

25.2 You must notify Us if You intend to amend Your constitution in a way which affects Your ability to comply with this Agreement.

25.3 If You alter Your constitution in a way which affects Your ability to comply with this Agreement, We may terminate this Agreement under clause 27.

26 Dispute Resolution

- 26.1 Subject to clause 26.3, the parties agree not to commence any legal proceedings in respect of any dispute arising under this Agreement, which cannot be resolved by informal discussion, until the procedure provided by this clause 26 has been used.
- 26.2 The parties agree that any dispute arising during the course of this Agreement is dealt with as follows:
- (a) the party claiming that there is a dispute will send the other party a written notice setting out the nature of the dispute;
 - (b) the parties will try to resolve the dispute through direct negotiation by persons who they have given authority to resolve the dispute;
 - (c) the parties have 10 business days from the receipt of the notice to reach a resolution or to agree that the dispute is to be submitted to mediation or some alternative dispute resolution procedure; and
- if:
- (i) there is no resolution of the dispute;
 - (ii) there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
 - (iii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 business days of the submission, or extended time as the parties may agree in writing before the expiration of the 15 business days,
- then, either party may commence legal proceedings.
- 26.3 This clause 26 does not apply if:
- (a) either party commences legal proceedings for urgent interlocutory relief;
 - (b) action is taken by Us under clauses 5, 27 or 28; or
 - (c) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the law by You.
- 26.4 Despite the existence of a dispute, both parties must (unless requested in writing by the other party not to do so) continue to perform obligations under this Agreement.

27 Termination With Costs and Reduction

- 27.1 We may, at any time by written notice to You, terminate this Agreement in whole or reduce the scope of this Agreement without prejudice to the rights, liabilities, or obligations of either party accruing prior to the date of termination. If this Agreement is terminated or reduced in scope We will only be liable for:
- (a) payments under the payment provisions of this Agreement that were due before the effective date of termination; and
 - (b) subject to clauses 27.3 and 27.4, any reasonable costs incurred by You and directly attributable to the termination or partial termination of this Agreement.
- 27.2 Upon receipt of a notice of termination or reduction in scope You must:
- (a) stop work as specified in the notice;
 - (b) take all available steps to minimise loss resulting from that termination and to protect Project Material; and
 - (c) continue work on any part of the Project not affected by the notice.

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

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

28 Termination For Default

28.1 Without limiting any other right either party has under this Contract or at law or in equity, We may immediately terminate this Agreement by giving written notice to You of the termination if:

- (a) We are satisfied that any statement made in Your application for Funding is incorrect, incomplete, false or misleading in a way which may have affected:
 - (i) the original decision to approve the Funding;
 - (ii) the terms and conditions of this Agreement; or
 - (iii) action taken by Us under this Agreement;
- (b) You fail to fulfil, or are in breach of any of Your obligations under this Agreement (including but not limited to Your obligations under clauses 8, 19 and 25), and You do not rectify the omission or breach within 10 business days of receiving a notice in writing from Us to do so;
- (c) You are unable to pay all Your debts when they become due;
- (d) if You are an incorporated body:
 - (i) You fail to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001*;
 - (ii) proceedings are initiated to obtain an order for Your winding up or any shareholder, member or director convenes a meeting to consider a resolution for Your winding up;
 - (iii) You come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* or equivalent provisions in other legislation, or an order has been made to place You under external administration; or
 - (iv) notice is served on You or proceedings are taken to cancel Your incorporation or registration or to dissolve You as a legal entity;
- (e) You cease to carry on a business relevant to the performance of the Project.

29 Compliance With Laws and Our Policies

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

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

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) 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;
- (c) giving false or misleading information is a serious offence under the *Criminal Code*;

- (d) 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;
- (e) 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;
- (f) You are aware of the provisions of section 79 of the *Crimes Act 1914* relating to official secrets;
- (g) 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.
- (h) You may be subject to the provisions of the *Trade Practices Act 1974* and the *Archives Act 1983*.

29.3 You must:

- (a) when using Our premises or facilities (including information systems), comply with Our reasonable directions and procedures relating to occupational health, safety;
- (b) ensure that person who will have access to official secrets within the meaning of section 79 of the *Crimes Act 1914* signs an acknowledgment that he or she is aware of the provisions of that section.
- (c) when dealings with Your employees, You must have regard to the *Workplace Relations Act 1996*, and obligations under relevant occupational health and safety laws.

30 Applicable Law and Jurisdiction

30.1 The laws of the Australian Capital Territory apply to the interpretation of this Agreement.

30.2 The parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect to any dispute under this Agreement.

31 Notices

31.1 A party giving notice under this Agreement must do so in writing or by Electronic Communication:

- (a) if given by You, marked for the attention of the Projects Manager specified in item BB of the Schedule; or
- (b) if given by Us, marked for the attention of the person specified in item K of the Schedule; and
- (c) hand delivered or sent by pre-paid post or Electronic Communication to the relevant address specified in either item BB of the Schedule or such other address as may be from time to time notified by Us (if given by You) or item K of

the Schedule or such other address as may be from time to time notified by You (if given by Us).

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

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

32 Survival of Clauses

32.1 These clauses survive the expiration or earlier termination of this Agreement: 4, 5, 9, 12, 13, 14, 15, 16, 17 and 18.

32.2 Clauses 6 and 20 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 Auditing Standards Board of the Australian Accounting Research Foundation and generally accepted audit practices to the extent they are not inconsistent with those standards;

'Completion Date' means the date specified in item A of the Schedule;

'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*;

'Funding' or **'Funds'** means the amount or amounts (in cash or kind) payable by Us under this Agreement by Us as specified in item AA of the Schedule, 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;

'Milestone' means a stage of completion of the Project set out in item B of the Schedule;

'Our Confidential Information' means information that:

- (a) is described in item I of the 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.

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

'Privacy Act' means the *Privacy Act 1988*. More information about the Privacy Act and the Information Privacy Principles is available at <http://www.privacy.gov.au/act/index.html> ;

'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;

'Project' means the activity described in item B of the Schedule, and includes the provision of Project Material specified in that item;

'Projects Manager' means the person for the time being performing the duties of the Projects Manager as specified in item BB of the Schedule or any other person specified by Us and notified in writing to You;

'Project Material' means all Material:

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

'Project Period' means

- (a) the period specified in item C of the Schedule during which the Project must be completed; or
- (b) if this Agreement is terminated early, the period ending on the day on which the Agreement terminates.

'Project Proposal' means the proposal attached at Annexure 1 and described in item B of the Schedule.

'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 in item H of the Schedule;

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

'Us', 'We' and **'Our'** includes the officers, delegates, employees and agents of the Australian Learning and Teaching Council Limited, and Our successors;

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

'Your Confidential Information' means information that is described in item CC of the Schedule;

33.2 In this Agreement, unless the contrary intention appears:

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

33.3 The Schedule (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.

**Annexure 1
Project Proposal**

Add Project Title (& any agreed amendments)