



Trade Training Centres
in Schools Program



Trade Training Centres in Schools Program

Funding Agreement for Support Services and Ten Year Plan

BETWEEN THE

Commonwealth of Australia as represented by the Department of
Education, Employment and Workplace Relations
ABN 63 578 775 294

AND

New South Wales as represented by the Department of Education and
Training
ABN 40 300 173 822

under the Commonwealth's *Trade Training Centres in Schools Program*.

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Funding Agreement made on

10 / 3 2009

Parties

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

New South Wales as represented by and acting through **Department of Education and Training** ABN 40 300 173 822 of 35 Bridge Street, Sydney NSW 2000 ('You or Your')

Recitals

- A. The Commonwealth is committed to improving the quality of schooling offered to secondary students and better supporting young people to make a successful transition from school to work or further education and training. To further this commitment, the Commonwealth proposes to provide funding for the implementation of the Trade Training Centres in Schools Program ('the Program') to improve the quality of industry recognised vocational education and training, assist in the delivery of high quality trade training in schools meeting skills needs, and support the achievement of increasing the proportion of students achieving Year 12 or an equivalent qualification to 85% by 2015 and 90% by 2020.
- B. The Program is an important element of the Commonwealth Government's 'Education Revolution' and it is intended to make available \$2.5 billion over 10 years to enable all secondary schools to apply for funding of between \$500,000 and \$1.5 million for Trade Training Centres. Trade Training Centres are being established to help increase the proportion of students achieving Year 12 or an equivalent qualification.
- C. An important step in increasing the proportion of students achieving Year 12 or equivalent qualification is to ensure students have access to high quality, relevant education and training opportunities that continue to engage them and encourage them to complete their studies. The Program is intended to help address national skills shortages in traditional trades and emerging industries by improving the relevance, responsiveness and capability of trade training programs in secondary schools.
- D. The Trade Training Centres in Schools Program Guidelines ('the Guidelines') set out the arrangements for the administration and delivery of the Program.
- E. It is recognised that the long term success of the Program will be built on a strong partnership between the Australian Government and State and Territory governments. As such, the spirit of this Agreement encompasses the principles and objectives outlined in the Partnership Arrangements. This includes a shared commitment to the Program and the Program Objectives, a collaborative approach to the development and implementation of the Program, and complementary roles to ensure the quality and sustainability of Trade Training Centres established under the Program. ~~It is recognised that, at this stage, Your agreement is only in relation to participation in Phase One of Round One of the Program.~~
- F. The Australian Government and State and Territory governments have agreed to share the cost of providing Trade Training Centres in Schools Support Services in each State and Territory to assist schools in developing submissions for Program funding ('Funding Applications'). As a result of this commitment, We agree to provide Support Services Funding to You, subject to the terms and conditions of this Agreement.
- G. We are required by law and policy to ensure accountability for the Funding, and You are required to be accountable for all Funding received under this Agreement.
- H. You accept the Funding on the terms and conditions of this Agreement.

The parties agree

1. Provision of Support Services

- (a) You undertake to honour the Partnership Arrangements by providing the Support Services to assist Schools and engage those Schools in the Program.
 - (b) You undertake to provide the Support Services:
 - (i) so as to uphold the spirit and intentions of the Partnership Arrangements;
 - (ii) in a manner which is responsive to local needs and circumstances; and
 - (iii) so as to ensure the furtherance of the Program Objectives.
-

2. Ten Year Plan

2.1 Ten Year Plan

- (a) Both parties to this Agreement acknowledge that the development of the Ten Year Plan is part of the Partnership Arrangements.
- (b) You undertake to work collaboratively with Us to develop a Ten Year Plan for engaging Your Schools in the Program, particularly in regional and remote areas.

2.2 Annual Updated Ten Year Plan

You agree to provide Us with an updated Ten Year Plan each year for ten (10) years as identified in Item B1.3

2.3 Timeframe, Format and Content

- (a) You agree to provide Us with the initial Ten Year Plan and the updated Ten Year Plan in accordance with the timeframe set out in Item B1 of the Schedule.
 - (b) The Ten Year Plan, and the updated Ten Year Plan, will be in the format and contain the content set out in Item B2 of the Schedule, unless We otherwise agree in writing.
-

3. Funding for Support Services

3.1 Payment

Subject to Your compliance with this Agreement and sufficient funds being available for the Program, We will provide the Support Services Funding set out in Item C1 of the Schedule to You in accordance with the timeframe set out in that Item.

3.2 Your contribution

You agree that You will match the Support Services Funding which We provide, by providing funding for the provision of the Support Services in the amounts set out in Item C2 of the Schedule, in accordance with the timeframe set out in that Item.

3.3 We may defer, suspend, reduce or withhold payments

Without limiting any other rights We may have under this Agreement, or at general law, We may defer, suspend, reduce or withhold all or part of a Support Services Funding payment until You have performed to Our satisfaction the obligation to which the payment relates.

3.4 Spending the Support Services Funds

- (a) You agree to spend the Support Services Funding in accordance with this Agreement.
- (b) You agree to only spend the Support Services Funding on the provision of the Support Services.
- (c) Without limiting clause 3.4(b), You agree that You will not use the Support Services Funding:
 - (i) as security to obtain, or comply with, any form of loan, credit, payment or other interest;
 - (ii) for the preparation of, or in the course of, any litigation; or
 - (iii) to meet Recurrent Costs associated with the ongoing operation of Trade Training Centres.

3.5 Management of the Funds

- (a) You agree that You will identify income and expenditure relating to the Support Services Funding separately within your accounting records so that at all times the Support Services Funding is identifiable and ascertainable.
- (b) You agree that You will keep financial Records relating to the Support Services to enable:
 - (i) all income and expenditure related to the Support Services to be identified in Your accounts;
 - (ii) the preparation of financial statements in accordance with Australian Accounting Standards; and
 - (iii) the audit of those Records in accordance with Australian Auditing Standards.

3.6 No additional funding

We are not responsible for the provision of any additional funding to You to meet any expenditure on the Support Services in excess of the Support Services Funding, or otherwise.

3.7 Recovery of amounts

- (a) Without limiting any other clause in this Agreement, You agree that We may recover from You any amount of Funding that You have:
 - (i) not spent;
 - (ii) spent other than in accordance with this Agreement; or
 - (iii) not acquitted to Our satisfaction

- (b) as at the Date of Expiration or date of earlier termination of this Agreement, You agree that We may recover from You an amount equivalent to any amount of Funding that You have not matched pursuant to Your obligation to do so at clause 3.2 as at the Date of Expiration or date of earlier termination of this Agreement.
- (c) Any amount owed to Us under this Agreement, including an amount owed to Us pursuant to clause 3.7(a) will, without prejudice to any other rights available to Us under this Agreement or at law or in equity, be recoverable to Us as a debt due to Us by You without further proof of the debt by Us being necessary.
- (d) Without limiting clause 3.7(c), any amount owed to Us under this Agreement is recoverable by Us by off-setting that amount against other amounts owed to You under this Agreement or under any other agreement between Us and You.

4. Term of Agreement

This Agreement commences immediately after the later date of this Agreement or the date after which the Overarching Funding Agreement has been executed and ends on the Date of Expiration.

5. Subcontracting

You are fully responsible for the performance of Your obligations under this Agreement, even if You subcontract some or all of Your obligations.

6. Insurance

6.1 Types of Insurance

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

- (a) public liability for not less than \$10 million;
- (b) workers' compensation as required by law;
- (c) compulsory third party and comprehensive insurance for any motor vehicles You acquire with the Support Services Funding; and
- (d) professional indemnity insurance for not less than \$5 million.

6.2 Your compliance through self-insurance

We acknowledge that Your participation in the New South Wales Government's Treasury Managed Fund will be considered as compliance with the insurance obligations as outlined in clause 6.1(a).

7. Monitoring and Liaison

7.1 We may conduct monitoring activities

Without limiting any other provision of this Agreement, You acknowledge and agree that We may conduct a range of monitoring activities to verify that the Support Services are being conducted in accordance with this Agreement, that Your provision of the Support Services uphold the intentions of the Partnership Arrangements, that the Support Services are responsive to local needs and circumstances, and that there has been proper and efficient use of Funds and that the Program Objectives are being achieved.

7.2 Liaison

You agree to:

- (a) assist Us by liaising with and providing information to the Program Delegate, or a person nominated by the Program Delegate, as reasonably required by the Program Delegate;
- (b) ensure that You comply with all reasonable requests, directions, or monitoring requirements received from the Program Delegate;
- (c) without limiting clauses 7.2(a) or 7.2(b), assist Us in undertaking Program evaluation activities where We request; and
- (d) advise the Program Delegate in writing about any relevant matters that might affect Your ability to meet Your obligations under this Agreement.

8. Financial Accountability

- (a) You agree to give the Program Delegate, on or before 31 August 2009, or such other date as the Program Delegate determines, an acquittal statement ('**Final Acquittal Statement**') that contains, as a minimum, information and content that:
 - (i) verifies that You have spent the Support Services Funding provided in accordance with this Agreement, or otherwise reports on any amount of the Support Services Funding which remain unspent;
 - (ii) evidences Your expenditure in respect of the Support Services Funding provided; and
 - (iii) specifies any other matters required by Us for accountability purposes, which We request are included in the Final Acquittal Statement at least 5 Business Days before the Final Acquittal Statement is due.
- (b) The Final Annual Acquittal statement must be prepared in accordance with Australian Accounting Standards.

9. Guidelines

You agree that You will comply with the Guidelines, as varied from time to time, as they are relevant, in Your performance of each School Project and this Agreement. The Guidelines will be reviewed for each annual funding round. We will consult with You in relation to proposed changes to be made to the Guidelines if those changes would impact on your obligations.

10. Record Keeping

10.1 Keeping records

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

10.2 Keeping copies of all Reports, records and account books

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

11. Access to Premises and Records

11.1 Access to Premises and Records

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

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

11.2 Notice

- (a) The rights referred to in clause 11.1 are subject to:
 - (i) the provision of reasonable prior notice to You; and
 - (ii) Your reasonable security procedures.
- (b) If a matter is being investigated which, in the opinion of a member of the National Investigations Unit in the Department, or any person authorised in writing by the Secretary, may involve an actual or apprehended breach of the law, clause 11.2(a) does not apply.

11.3 Policies for protecting children and young people

In exercising Our rights under this clause, We acknowledge and agree to act in a way that is consistent with Your policies for protecting and supporting children and young people.

12. Project Material

12.1 Ownership of Intellectual Property Rights in Project Material

Subject to this clause 12, ownership and Intellectual Property Rights in Project Material vest immediately in You.

12.2 Licensing of Intellectual Property Rights in Project Material

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

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

12.3 Third party licence

- (a) If a third party has Intellectual Property Rights in existing Material incorporated or supplied with Reports, You agree to arrange for the grant to Us of a licence to that existing Material in the same terms as set out in clause 12.2(a).
- (b) If a third party has Intellectual Property Rights in existing Material incorporated or supplied with other Project Material, You agree to arrange for the grant to Us of a licence to that existing Material in the same terms as set out in clause 12.2(b).

12.4 You agree to give effect to this clause

You agree to, if requested by Us to do so, bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 12.

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

You warrant that You are entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Project Material in accordance with this clause 12.

12.6 Consent to performance of Specified Acts

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

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

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

13. Disclosure of Information

13.1 Disclosure of Confidential Information

- (a) Subject to clause 13.3,
 - (i) You agree not to, without Our prior written approval, disclose any of Our Confidential Information to a third party; and
 - (ii) We must not, without Your prior written approval, disclose any of Your Confidential Information to a third party.
- (b) In giving written approval to disclosure, a party may impose conditions as it thinks fit, and the other party agrees to comply with the conditions.

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

- (a) We may at any time request that You arrange for any person engaged in, or in relation to, the performance or management of this Agreement to give written undertakings, in a form required by Us, relating to the non-disclosure of Our Confidential Information.
- (b) If You receive a request under clause 13.2(a), You agree that You will arrange for all undertakings to be given.

13.3 No breach where information required to be disclosed

- (a) The obligations on the parties under this clause 13 will not be breached if information:
 - (i) is disclosed by Us or You to the responsible Minister;
 - (ii) is disclosed by Us or You, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia or a State or Territory of Australia;
 - (iii) is authorised or required by law to be disclosed; or
 - (iv) is in the public domain otherwise than due to a breach of this clause 13.
- (b) Nothing in this clause 13 limits Your obligations under clause 10.

13.4 Information in School Funding Applications

To avoid doubt, nothing in this clause 13 will prevent You providing to Us any relevant information supplied to You by a School as part of its Funding Application or otherwise provided by a School when seeking approval for funding for a Project under the Program.

14. Taxes, Duties and Government Charges

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

15. Indemnity

15.1 You agree to indemnify Us

You agree to indemnify Us against any:

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

arising from:

- (i) any act or omission by You, or any of Your employees, agents, or subcontractors in connection with this Agreement, where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, or expense;

- (ii) any breach by You or any of Your employees, agents, or subcontractors of obligations or warranties under this Agreement;
- (iii) any use or disclosure by You, Your officers, employees, agents or subcontractors of Personal Information held or controlled in connection with this Agreement; or
- (iv) the use by Us of the Project Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights (including moral rights) in Project Material.

15.2 Proportional reduction of liability

Your liability to indemnify Us under this clause 15 will be reduced proportionately to the extent that any fault on Our part contributed to the relevant loss, damage, expense, or liability.

15.3 Our right to be indemnified is additional to other rights

Our right to be indemnified under this clause 15 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.

15.4 Definition of "fault"

In this clause 15, "fault" means any negligent or unlawful act or omission or wilful misconduct.

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

- (a) This Agreement records the entire agreement between the parties in relation to its subject matter.
- (b) Except for action We are expressly authorised to take elsewhere in this Agreement, no variation of this Agreement is binding unless it is agreed in writing and signed by the parties.
- (c) If a court or tribunal says any provision of this Agreement has no effect or interprets a provision to reduce an obligation or right, this does not invalidate, or restrict the operation of, any other provision.
- (d) Where reference is made to a document which is or will be attached to this Agreement and such document is not attached, the validity and effect of such document and of this Agreement will not be affected by the non-attachment.

17. Waiver

- (a) If any party does not exercise (or delays in exercising) any rights under this Agreement, that failure or delay does not operate as a waiver of those rights.
- (b) A waiver by any party of any rights does not prevent the further exercise of any right.
- (c) Waiver of any provision of, or right under, this Agreement:
 - (i) must be in writing signed by the party entitled to the benefit of that provision or right; and
 - (ii) is effective only to the extent set out in the written waiver.

- (d) In this clause 17 'rights' means rights or remedies provided by this Agreement or at law.

18. Assignment and Novation

- (a) You must not assign Your rights under this Agreement without prior written approval from Us.
- (b) You agree not to negotiate with any other person to enter into an arrangement that will require novation of this Agreement without first consulting Us.

19. Dispute Resolution

19.1 Dispute resolution procedure

The parties agree that any dispute arising during the course of this Agreement is dealt with as follows:

- (a) the party claiming that there is a dispute will send the other party a written notice setting out the nature of the dispute;
- (b) the First Level Representatives for each party will meet as soon as possible but in any case within 21 Business Days from the date of the notice provided in paragraph (a) to try to resolve the dispute through direct negotiation;
- (c) if the parties cannot resolve the dispute under clause 19.1(b) they must as soon as possible refer the dispute to the Second Level Representatives who will endeavour to resolve the dispute within a further 21 Business Days or such other period as is agreed to by the parties;
- (d) if the parties cannot resolve the dispute under clause 19.1(c) they must as soon as possible refer the dispute to the Senior Representatives who will endeavour to resolve the dispute within a further 21 Business Days or such other period as is agreed to by the parties;

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

19.2 Where clause does not apply

This clause 19 does not apply:

- (a) if either party commences legal proceedings for urgent interlocutory relief; or
- (b) if action is taken by Us under clauses 3.3, 11, 20 or 21.

19.3 Parties must continue to perform obligations

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

20. Termination of this Agreement With Costs and Reduction

20.1 We may terminate or reduce scope of Agreement

We may, at any time by written notice to You, terminate this Agreement in whole or reduce the scope of this Agreement without prejudice to the rights, liabilities, or obligations of either party accruing prior to the date of termination. If this Agreement is terminated or reduced in scope We will only be liable for:

- (a) payments under the payment provisions of this Agreement that were due before the effective date of termination; and
- (b) subject to clauses 20.4 and 20.5, any reasonable costs incurred by You and directly attributable to the termination or partial termination of this Agreement.

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

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

- (a) stop work as specified in the notice;
- (b) take all available steps to minimise loss resulting from that termination and to protect Project Material; and
- (c) continue work on any part of the Support Services not affected by the notice.

20.3 Our right to give directions

We reserve the right to give You directions in respect of the termination or reduction in scope process under this clause 20 and You agree to comply with such directions.

20.4 Liability to pay abates proportionately to reduction in obligations

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

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

We will not be liable to pay compensation for loss of prospective profits for a termination or reduction in scope under this clause 20 or loss of any benefits that would have been conferred on You had the termination or reduction not occurred.

21. Termination of this Agreement for Default

We may 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, and You do not rectify the omission or breach within 10 Business Days of receiving a notice in writing from Us to do so; or
- (b) any other provision of this Agreement gives Us a right terminate this Agreement.

22. Compliance With Laws

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

23. Applicable Law and Jurisdiction

- (a) The laws of the Australian Capital Territory apply to the interpretation of this Agreement.
- (b) The parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect to any dispute under this Agreement.

24. Notices

24.1 Giving notices

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

- (a) if given by You, marked for the attention of the Program Delegate specified in Item E1 of the Schedule;
- (b) if given by Us, marked for the attention of the person specified in Item E2 of the Schedule; and

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

24.2 Receiving notices

A notice given under clause 24.1 is taken to be received:

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

25. Survival of Clauses

- (a) All clauses which by their nature survive the expiration or earlier termination of this Agreement will survive the expiration or earlier termination of this Agreement, including without limitation clauses 2.2, 2.3, 3.7, 12, 13, 15 and 20.3.
- (b) Clause 10.2 applies during this Agreement and for 7 years from the expiration of this Agreement or its earlier termination.

26. Dictionary

In this Agreement, unless the contrary intention appears:

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

'**Agreement**' means this document including the Schedules any documents incorporated by reference by the clauses or the Schedule;

'**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*;

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

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

'**Date of Expiration**' means the date on which You provide Us with the Final Acquittal Statement;

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

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

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

'**Final Acquittal Statement**' means the Report described in clause 8(a) of this Agreement;

'**First Level Representatives**' means the persons specified, or the persons holding the positions specified in respect of You and Us at Item F1 of the Schedule;

'**Funding Application**' means an application for Program funding submitted by a School as described in Recital F;

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

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

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

'**Item**' means an item of any Schedule;

'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) is described in Item D1 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;

'Overarching Funding Agreement' means the document entitled Overarching Funding Agreement with State/Territory Governments between the Commonwealth and New South Wales;

'Partnership Arrangements' means the document entitled *Partnership Arrangements between the Commonwealth and State and Territory Governments*;

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

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

'Program Delegate' means the person for the time being performing the duties of the office of the Department specified in Item E1 of the Schedule or any other person specified by the Secretary and notified in writing to You;

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

'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 along with the Material referred to in paragraph (a); or
- (c) copied or derived from Material referred to in paragraphs (a) or (b);

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

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

'Report' means Project Material that is provided to Us for reporting purposes including the Final Acquittal Statement;

'Schedule' means the schedule to this Agreement;

'Schools' means all schools in Your State or Territory;

'Second Level Representatives' means the persons specified, or the persons holding the positions specified in respect of You and Us at Item F2 of the Agreement Schedule;

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

'Senior Representatives' means the persons specified, or the persons holding the positions specified in respect of You and Us at Item F3 of the Agreement Schedule;

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

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

'Support Services' means the services which You agree to provide pursuant to this Agreement, as set out at Item A of the Schedule;

'Support Services Funding' or **'Support Services Funds'** means the amount or amounts payable by Us under this Agreement as set out at Item C1 of the Schedule and interest earned on that amount;

'Ten Year Plan' means the ten year plan to be developed by You in conjunction with Us in accordance with clause 2 of this Agreement;

'Term of this Agreement' has the meaning set out in clause 4;

'Trade Training Centre' means a trade training centre for a School the construction of which we have provided funding for under the Program;

'Us', 'We' and 'Our' includes the Commonwealth's officers, delegates, employees and agents, and Our successors; **'Your Confidential Information'** means information that is described in Item D2 of the Agreement Schedule; and

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

27. Interpretation

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

(b) The Schedule (and annexures and documents incorporated by reference, if any) forms part of this Agreement.

(c) In the event of any conflict or inconsistency between any part of:

- (i) the terms and conditions contained in the clauses of this Agreement;
- (ii) the Schedule;
- (iii) the annexures, if any;
- (iv) documents incorporated by reference, if any; and
- (v) the Guidelines,

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



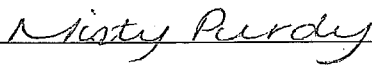
Executed as an agreement.

Signed for and on behalf of the Commonwealth of Australia

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



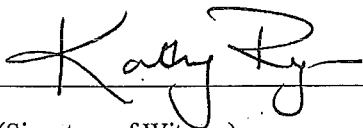
(Signature of Witness)



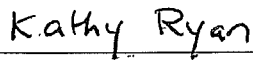
(Name of Witness in full)

Signed for and on behalf of New South Wales

by Mr Michael Coutts-Trotter, Director General, represented by and acting through the **Department of Education and Training ABN 40 300 173 822**, in the presence of:



(Signature of Witness)



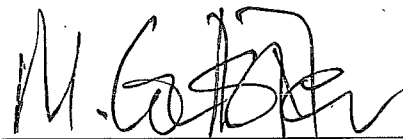
(Name of Witness in full)



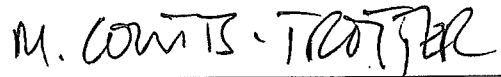
(Signature of Departmental Representative)



(Name of Departmental Representative)



(Signature of State/Territory Representative)



(Name of State/Territory Representative)

SCHEDULE

Item A Support Services (Clause 1)

A1 Engagement with Schools

A1.1 The Commonwealth and the New South Wales have agreed to work together to support the achievement of the Program Objectives. You agree to provide the Support Services set out in this Item A in furtherance of those Program Objectives.

A1.2 In providing the Support Services You are expected to undertake proactive engagement with all Schools, particularly in regional or remote areas, including in the initial stages of the Program.

A1.3 You agree that You will also provide advice to all Schools as required by Us in relation to labour market trends, industry skills need, including information on training activities across New South Wales and information on the Program.

A2 Development of Funding Applications

A2.1 During the development of Funding Applications by Schools, You agree to assist by:

- (a) promoting the Program to School communities and other local stakeholders, including industry and employers;
- (b) working with Your Schools and non-government Schools where appropriate) to jointly develop submissions for Funding Applications involving consortia of schools;
- (c) contributing knowledge of local environments, to ensure that applications put forward each round of funding address Your State or Territory, regional and local needs and build appropriate partnerships that ensure efficiency of investment is maximised;
- (d) managing expectations within Your jurisdiction about the likely funding for different types of submissions (equipment and minor upgrade of facilities; and major capital works), noting that there will be a competitive process for each round of the Program;
- (e) ensuring applications from Your Schools comply with all relevant laws and policies and that arrangements are in place to meet Occupational Health and Safety, insurance and workplace compensation requirements; and
- (f) facilitating partnerships between Schools and with industry, employers and the training sector where proposals for regional skills centres or shared facilities are being developed.

A3 Assessment of Funding Applications

A3.1 During the assessment of Funding Applications by Us, You agree to assist Us by:

- (a) providing advice to Us, as We require, on applications from Schools that:
 - (i) indicates whether the application aligns with Your State or Territory's skills priorities, engages appropriate local/regional bodies and stakeholders and avoids duplication of existing infrastructure;

- (ii) helps identify those Schools with greatest need and capacity to benefit, to ensure funds are targeted appropriately, including identifying recent investments in trade training facilities; and
- (b) for Your Schools, providing a further assessment that indicates the degree of support for proposals and confirms their viability, including:
 - (i) indicating whether New South Wales supports the relevant proposal and if so or if not, on what basis; and
 - (ii) details regarding any problems or issues that New South Wales consider arises with respect to the relevant proposal.

A4 Assistance After Assessment Period

After the assessment of Funding Applications by Us, You agree to further assist Us by undertaking such further activities as We may reasonably request in relation to the Program, including:

- (a) where necessary, in conjunction with Us, providing or passing on feedback to any of Your Schools which were unsuccessful in their applications for funding under the Program; and
- (b) working with those of Your Schools which were successful in their applications for funding under the Program to help Us complete project specific schedules for the successful projects.

Item B Ten Year Plan (Clause 2)

B1 Timeframe

B1.1 You agree to work collaboratively with Us to develop a Ten Year Plan and to use Your best endeavours to provide Us with an initial draft of the Ten Year Plan on or before 31 March 2009.

B1.2 We will provide feedback on the initial draft of Ten Year Plan prior to its finalisation and You agree to incorporate such feedback into the initial draft and to provide Us with a finalised Ten Year Plan within 20 Business Days of the date on which We provide such feedback, or within such timeframe as We otherwise request.

B1.3 You agree to provide Us with an updated Ten Year Plan on or before the anniversary of the date in Item B1.1 above, each year for 10 years after the Date of this Agreement.

B2 Format and Content

B2.1 You agree to provide Us with the Ten Year Plan and each updated Ten Year Plan, in accordance with a guidance document to be developed by Us and provided to You.

B2.2 The parties agree that the Ten Year Plan and each updated Ten Year Plan will include at least the following:

- (a) strategies for engaging Schools in regional and remote areas;
- (b) strategies to promote the Program within Your State or Territory;

- (c) an estimate of the number of Your Schools that will apply in each year of the Program, including strategies for ensuring an equitable spread of applications across the life of the program;
- (d) strategies to assist in managing funds over the life of the Program;
- (e) linkages with other relevant programs and initiatives conducted by Your State or Territory;
- (f) strategies to support Schools' engagement with industry; and
- (g) facilitation of partnerships between Schools, industry and the training sector.

B2.3 You agree to provide Us with an electronic copy of the Ten Year Plan, as well as the updated Ten Year Plan, in Word Format. Where We request, You agree to also provide Us with a signed hard copy of the Ten Year Plan or the updated Ten Year Plan (as the case may be) within 10 Business Days of the due date for the Ten Year Plan or of the updated Ten Year Plan (as the case may be), to the following address:

Branch Manager
 Trade Training Centres Taskforce
 Location 12M53
 GPO Box 9880
 Canberra ACT 2601

30/10/09

Item C Support Services Funding (Clause 3)

C1 Support Services Funding to be provided to You

C1.1 Subject to Your compliance with this Agreement and sufficient funds being available for the Program, We will provide You with a total of ~~\$382,500~~ in Support Services Funding.

\$765,000

C1.2 We will pay You the Support Services Funding as follows:

\$306,000 ~~80%~~ within 30 days of execution of this Agreement; and
\$306,000 within 30 days of execution of the Agreement variation which increased the total funding to *\$765,000*; and
~~20%~~ *\$153,000* upon Your provision, and Our acceptance of, the Ten Year Plan.

C2 Your contribution

C2.1 You must match the Support Services Funding We provide, by providing funding towards the Support Services as follows:

~~\$382,500~~ *\$765,000* over the 2008/09 and 2009/10 financial years

C3 Invoices

C3.1 Invoices forwarded by You must be correctly addressed and include the:

- (a) Your name and ABN;
- (b) name of Program Delegate;
- (c) Agreement number or date of execution;
- (d) funds to be invoiced; and
- (e) bank account details for payment of the invoice by electronic funds transfer.

MJD

Item D Confidential information (Clause 13)

D1 Our Confidential Information

Our Confidential Information includes the following:
Not Applicable

D2 Your Confidential Information

Your Confidential Information is:
Not Applicable

Item E Program Delegate and Address for Notices (Clauses 7.2 and 24)

E1 Program Delegate

Name/Position: Ms Regina Camara, A/g Branch Manager, Trade Training Centres Taskforce, Lifting Educational Outcomes Group, Department of Education, Employment and Workplace Relations
Postal Address: Location 12M53, GPO Box 9880
CANBERRA ACT 2601
Fax: (02) 6123 5247
Phone: (02) 6240 5498
Email: regina.camara@deewr.gov.au

E2 Your Representative and Address for Notices

Name: Mr Michael Hyam
Postal Address: NSW DET, Vocational Education in Schools Directorate
Level 1, 1 Oxford Street
DARLINGHURST NSW 2010
Phone: (02) 9244 5035
Fax: (02) 9244 5020
Email: michael.hyam@det.nsw.edu.au

Item F Representatives for Dispute Resolution (Clause 19)

F1 First Level Representatives

DEEWR:

Name/Position: Ms Laura Santini, Director, NSW, ACT and Program Governance Section, Trade Training Centres Taskforce, Lifting Educational Outcomes Group, Department of Education, Employment and Workplace Relations
Postal Address: Location 12M53, GPO Box 9880
CANBERRA ACT 2601
Phone: (02) 6240 9461
Fax: (02) 6123 5340
Email: laura.santini@deewr.gov.au

MIT

State or Territory:

Name: Mr Michael Hyam
Postal Address: NSW DET, Vocational Education in Schools Directorate
Level 1, 1 Oxford Street
DARLINGHURST NSW 2010
Phone: (02) 9244 5035
Fax: (02) 9244 5020
Email: michael.hyam@det.nsw.edu.au

F2 Second Level Representatives

DEEWR:

Name/Position: Ms Regina Camara, A/g Branch Manager, Trade Training Centres
Taskforce, Lifting Educational Outcomes Group, Department of
Education, Employment and Workplace Relations
Postal Address: Location 12M53, GPO Box 9880
CANBERRA ACT 2601
Fax: (02) 6123 5247
Phone: (02) 6240 5498
Email: regina.camara@deewr.gov.au

State or Territory:

Name/Position: Mr Des Gorman, GM, Learning and Development, Office of Schools
NSW DET
Postal Address: Level 2, 35 Bridge Street
SYDNEY NSW 2000
Phone: (02) 9561 8919
Fax: (02) 9561 1207
Email: des.gorman@det.nsw.edu.au

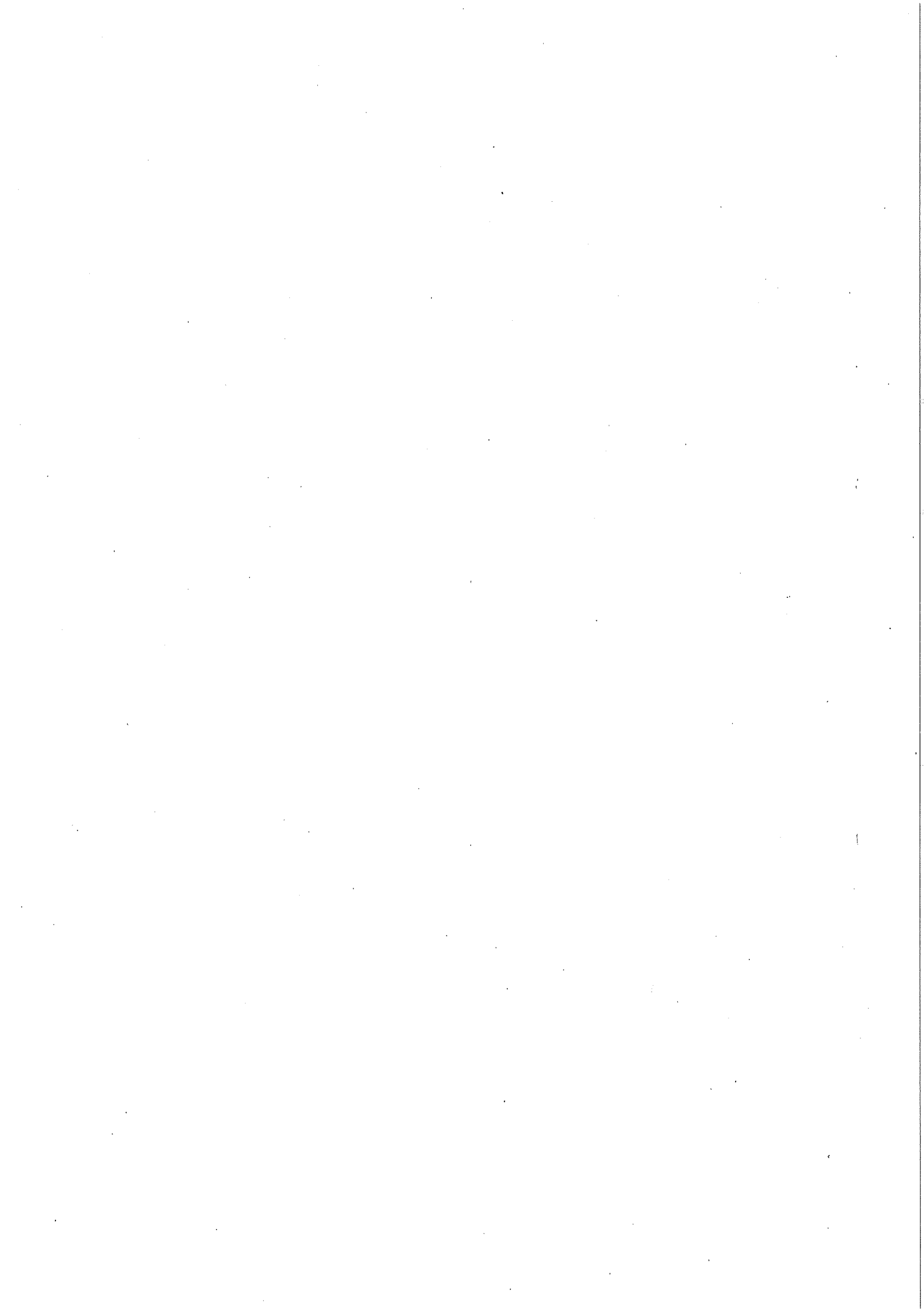
F3 Senior Representatives

DEEWR:

Name/Position: Ms Rebecca Cross, Group Manager, Lifting Educational Outcomes
Group, Department of Education, Employment and Workplace Relations
Postal Address: Location 140, GPO Box 9880
CANBERRA ACT 2601
Fax: (02) 6123 6227
Phone: (02) 6240 8753
Email: rebecca.cross@deewr.gov.au

State or Territory:

Name/Position: Mr Trevor Fletcher, Deputy Director General Schools, Office of Schools
NSW DET
Postal Address: Level 2, 35 Bridge Street
SYDNEY NSW 2000
Phone: (02) 9561 8416
Fax: (02) 9561 1840
Email: trevor.fletcher@det.nsw.edu.au



THIS FUNDING AGREEMENT VARIATION is made on 17 April 2009
BETWEEN the

COMMONWEALTH OF AUSTRALIA represented by the Department of
Education, Employment and Workplace Relations [ABN 63 578 775 294]

AND

New South Wales as represented by the Department of Education and Training
[ABN 40 300 173 822].

BACKGROUND:

- A. The parties entered into an agreement dated 10 March 2009 ("the Principal Support Services and Ten Year Plan Agreement").
- B. The parties now wish to amend the Principal Support Services and Ten Year Plan Agreement.
- C. The Principal Support Services and Ten Year Plan Agreement requires that a variation be in writing and signed by both parties.

IT IS AGREED as follows:

1. Unless the contrary intention appears, words used in this variation have the same meaning as in the Principal Support Services and Ten Year Plan Agreement.

2. At the end of **RECITAL E**, delete the following sentence:

"It is recognised that, at this stage, Your agreement is only in relation to participation in Phase One of Round One of the Program."

3. At **Item C1 [Support Services Funding to be provided to You]** in the Schedule, delete Subitems C1.1 and C1.2 in their entirety and substitute the following:

C1.1 Subject to Your compliance with this Agreement and sufficient funds being available for the Program, We will provide You with a total of \$765,000 in Support Services Funding.

C1.2 We will pay You the Support Services Funding as follows:

\$306,000 within 30 days of execution of this Agreement; and

\$306,000 within 30 days of the execution of the agreement variation which increased the total funding to \$765,000; and

\$153,000 upon Your provision, and Our acceptance of, the Ten Year Plan.

4. At Item C2 [Your contribution] in the Schedule, delete the figure "382,500" in subitem C2.1 and substitute the figure "765,000".

SIGNED for and on behalf of)
THE COMMONWEALTH OF AUSTRALIA)
by Ms Rebecca Cross)
the Group Manager) *Rincos*
of Lifting Education Outcomes Group)
of the Department of Education, Employment and)
Workplace Relations) DATE *17 April 2009*

In the Presence of:

[Signature])
.....)
WITNESS) DATE *17/4/09*
LAURA SANTINI, Public servant)
Full name and occupation or profession of witness (Please print)

SIGNED for and on behalf of
NEW SOUTH WALES
By Mr Michael Coultts-Trotter, Director General, represented by and acting
through the
Department of Education and Training

[Signature])
.....)
Signature) DATE *8.4.09*

.....
Full Name (Please print)
.....
Position

In the Presence of:

Petra Kathagen)
.....)
WITNESS) DATE *8/4/09*
Full name and occupation or profession of witness (Please print)

