



Your Ref xxxxxx
Our Ref xxxxxx

Name
Job title
Organisation
Address lines
Suburb STATE Postcode

Dear [Name]

Funding Agreement For [*Name Of Project] Under The Youth Development and Support Program

The Australian Government's *Youth Development and Support Program* ('the Program') is providing funding to support eligible non-government, not-for-profit organisations to deliver a range of community based projects for Young People, aged between 12 and 25, across Australia. Successful projects will provide Young People with opportunities to develop and build on their skill capacity and encourage engagement and participation with government through building strong local community connections.

Through this Program, I am pleased to offer [name of funding recipient and ABN if applicable] a Funding Agreement to the value of **\$0.00 (inclusive/exclusive of GST)** to deliver [name of project ("the Project") and details of the project to be undertaken by the Recipient]. You will use these funds to implement the activities associated with this Project.

Schedule 1 sets out details of the proposed Project. Schedule 2 sets out Our Terms and Conditions for the Funding. Schedule 3 sets out the requirements and process for Working with Children or Vulnerable People.

The Guidelines for this Program are available at www.youth.gov.au. You should monitor the website regularly for any changes.

The Funding is to be used for the Project as described in Schedule 1, and is subject to Your compliance with the requirements of the Funding Agreement and this letter.

The Funding Agreement between You and the Commonwealth consists of this letter, signed and dated by both parties, Schedule 1, Schedule 2, Schedule 3 and the Annexures (if any). These documents form the entire Agreement relating to the Funding and can only be varied by written agreement between both parties.

We have attached the Funding Agreement in duplicate. If You agree to undertake the Project under the terms and conditions set out, You should:



1. sign both copies of the letter where indicated and have Your signature witnessed by another person; and
2. initial at the bottom of each page of both copies of Schedules 1, 2 and 3.

You must return both copies of the Funding Agreement to this office, marked to my attention as The Branch Manager, Office for Youth. This proposal lapses if You do not return the signed and unaltered documents to me within 20 business days of the date of this letter.

The Funding Agreement will commence when the Commonwealth signs and dates the endorsement at the end of this letter. One original copy of the Funding Agreement will be returned to You for Your records. You must not make any commitments in anticipation of the Funding until You have confirmation from Us that We have signed the attached copy of the endorsement.

In the event of any conflict or inconsistency between this letter, Schedule 1, Schedule 2, Schedule 3 or any Annexures, then the material mentioned first has precedence over later mentioned material, to the extent of any conflict or inconsistency.

Please contact me on (02) [\[insert telephone number\]](#) if You have any questions.

Yours sincerely

[\[insert name\]](#)
Branch Manager
Office for Youth
Youth and Industry Skills Group
Department of Education, Employment and Workplace Relations

[\[*date\]](#)

Note: this letter is to be signed and returned to DEEWR with both the initialled copies of the Schedules.

[*include following endorsement at the end of the letter]

[*insert name of recipient] is prepared to undertake the Project described on the terms and conditions set out in this letter and the attached Schedules.

[*Choose the appropriate signature block for the recipient from the alternatives below and delete the others.

Where Recipient is a Company use the following]

EXECUTED BY)
{*Company Name})

.....
Signature

.....
Signature

.....
Full Name (Please print)

.....
Full Name (Please print)

.....
Position (insert Director or Secretary)
In the Presence of:

DIRECTOR
Position
In the Presence of:

.....
WITNESS

.....
WITNESS

.....
Please print full name and occupation or profession of witnesses above.

[*Where Recipient is a sole trader or partnership use the following]

SIGNED by)
{*recipient's full name, or if a partnership)
state the full names of all the partners})

In the Presence of:

.....
WITNESS

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

[*Where Recipient is an incorporated association use the following]

The COMMON SEAL of
{*insert full name of the incorporated association}
was affixed in accordance with its Articles of Association.

.....
Signature

.....
Full Name (Please print)

.....
Position
who by signing certifies that they have the authority to do so

In the Presence of:

.....
WITNESS

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

SIGNED for and on behalf of)
THE COMMONWEALTH OF AUSTRALIA)
by [*Official's Name])
the [*Official's Title])
of [*Official's Workplace])
of the Department of Education, Employment)
and Workplace Relations,)

In the Presence of:

.....
WITNESS

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

Date of this Funding Agreement:/...../.....

[The person signing on behalf of DEEWR will date the Funding Agreement.]

Initials
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Schedule 1 Project Details

Part A: Your Obligations

A. Term of Agreement (clause 1)

A.1 The Completion Date for this Agreement is 31 August 2010.

B. Program and Guidelines (clause 2)

B.1 The Australian Government's *Youth Development and Support Program* ('the Program') is funding for eligible non-government, not-for profit organisations to deliver a range of community based, small-scale projects that will provide development opportunities for Young People between the age of 12 and 25 years. The applicable guidelines are the *Youth Development and Support Program 2009-2010 Funding Round Guidelines* ('the Guidelines').

B.2 The Program aims to:

- inspire Young People in Australia to recognise and achieve their full potential;
- support the development of Young People and their transitions to independence and adulthood;
- encourage Young People to be active citizens and participate in initiatives such as the Australian Youth Forum;
- develop the promotion of positive perceptions of Young People and assist with their active participation in the community as respected young citizens; and
- inspire and encourage Young People to engage with government and community, and help them to develop skills and connections within their communities.

C. Project (clause 2)

C.1 You must undertake the Project within the Project Period, or earlier where specified. In delivering the Project, you must:

- (a) [insert brief description of Project from the Application]; and
- (b) provide opportunities for the Minister for Early Childhood Education, Childcare and Youth, or their representative, and/or an officer from Us to attend any significant event, including but not limited to launches, presentation of awards and public forums, which is undertaken as part of this Project.

C.2 By **12 February 2010** You must have:

- (a) ...; and
- (b) provided an interim report.

C.3 By **4 June 2010** You must have:

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- Example Only -

- (a) ...; and
- (b) provided a final project report.

C.4 Use of Funding

- (a) You may only use Program funding for events or activities that relate directly to Young People participating in the Project as discussed in Item C1 of this Schedule. These could include:
 - (i) materials and equipment directly related to the provision of services to the participants; and
 - (ii) **[Project products and deliverables as identified in the Application]**.
- (b) You must not use Program funding for:
 - (i) costs not directly and specifically related to the Project (including but not limited to staff wages; staff training; accommodation expenses for Your organisation including rent, landscaping, gardening or cleaning; utility expenses, purchase, rent or maintenance of computers or other office equipment; insurance, motor vehicle or other transport costs;
 - (ii) retrospective costs, including costs incurred in the preparation of Your application for funding under the Program;
 - (iii) covering any current or past shortfalls in funding, sponsorship, income, ticket sales or other forms of revenue; or
 - (iv) costs associated with capital projects (i.e. construction or refurbishment).

Completion of the Project

- C.5 If the Project remains incomplete as at 30 June 2010, You must complete the Project in accordance with this agreement. For the avoidance of doubt this item survives the expiry of the Completion Date.

D. Project Period (clause 2)

- D.1 The Project Period commences on the Date of this Agreement and ends on 30 June 2010.

E. Invoice Requirements (clause 3)

- E.1 Invoices forwarded by You must be correctly addressed and include the:
- (a) title of Project;
 - (b) Your name and ABN;
 - (c) name of Program Delegate;
 - (d) Agreement number or date of execution;

- (e) fees and expenses to be invoiced (including a description of the deliverables or milestones that the invoice relates to); and
 - (f) bank account details for payment of the invoice by electronic funds transfer.
- E.2 Where the invoice relates to a taxable supply made under this Agreement the invoice must comply with the requirements for a tax invoice, as defined in the GST Act.

F. Bank Accounts (clause 4)

F.1 [To be determined according to the value of the Project]

G. Acknowledgement and Publication (clause 6)

G.1 You must acknowledge the financial and other support that has been received from Us for the Project, in all publications, promotional materials and activities relating to this Project.

G.2 In all publications, promotional materials and activities relating to the Project, there must be acknowledgement of the financial and other support received from Us for the Project by the following words:

“This event / activity / report / publication / production (use the appropriate reference) has been undertaken / produced (use the appropriate reference) as a project funded by the Youth Development and Support Program that is managed by the Department of Education, Employment and Workplace Relations.”

G.3 You must ensure that the imprint page on all publications developed under this Agreement includes the following statement:

“The views expressed in this document are those of the author/project team and do not necessarily reflect the views of the Australian Government or State and Territory Governments” or

*“The views and opinions expressed in this document are those of the **[Your organisations’s name]** and do not necessarily reflect the views of the Australian Government or State and Territory Governments.”*

G.4 You must provide to Us, for Our records, one electronic copy and two publication quality hard copies of any final publications which You must develop in accordance with this Agreement.

H. Insurance (clause 8)

H.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;
- (c) **[*professional indemnity insurance may be required depending on the**

nature of the Project].

I. Reporting and Monitoring Requirements (clause 9)

I.1 Reporting

You must provide Us with the following reports:

Report	Due Date
Interim Progress Report	12 February 2010
Final Report	4 June 2010
Financial Acquittal	Within 30 days of receipt of final payment
Any other written or verbal reports regarding the Project specified by Us.	By a date We reasonably specify to You.

I.2 Interim Progress Report

You are required to provide an Interim Progress Report (maximum five pages) which must include as a minimum:

- (a) the identification of any difficulties encountered in the implementation and delivery of the Project and what actions have been put in place to overcome those difficulties;
- (b) a description of the impact of the Project to date and a general assessment of the effectiveness of the Project;
- (c) an interim statement of income, commitments and expenditure for the Funds; and
- (d) any other matter relevant to the Project We notify to You more than a week before the report is due.

I.3 Final Report

You must provide a Final Report (maximum ten pages) which must include, but is not limited to, the following information:

- (a) the outcomes of the Project and any issues, internal or external, which may have impacted on Your ability to achieve expected targets and what measures were put in place to overcome these issues;
- (b) the benefits, direct and indirect, to Young People who participated in the Project;
- (c) the number of Young People assisted by participating in the Project;
- (d) the number of Young People and their level of involvement in the governance of the Project;

- (e) how the organisation supported and trained Young People as decision makers and Project leaders;
- (f) feedback from Young People involved in the Project;
- (g) a qualitative assessment of the impact of the Project on Young People's attitudes and behaviours;
- (h) the amount of other funds (i.e. own source funding or that received from Project Partners) spent on the Project, its source and how it was used;
- (i) a small evaluation of the Project and a qualitative assessment of the strengths and weaknesses of the Project;
- (j) how the Project facilitated community participation and to what extent has it strengthened the community;
- (k) what measures have been developed and/or implemented to make the Project sustainable in the long term; and
- (l) any other matter relevant to the Project We notify to You more than a week before the report is due.

I.4 Financial Report

- (a) You are required to submit statements, certificates or other documentation showing expenditure against all Items detailed in the Funding Agreement by the due date as specified in Item I of this Schedule.
- (b) You must provide a financial acquittal that verifies the amount of Program funding received has been fully committed and expended for the purposes of the Project. All unspent funds, including any GST component paid on unspent funds, must be returned to us.

J. Commonwealth Material (clause 10)

J.1 Not applicable.

K. Project Material (clause 11)

K.1 Not applicable.

L. Compliance with Laws and Policies (clause 22)

Compliance with Laws

L.1 You acknowledge that:

- (a) You may have obligations under the *Equal Opportunity for Women in the Workplace Act 1999* and You must comply with those obligations;
- (b) when dealing with Your employees, You must comply with the *Workplace Relations Act 1996*, and obligations under relevant occupational health and safety laws;

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- Example Only -

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

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

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

Compliance with Policies

L.2 You must:

- (a) when using Our premises or facilities including information systems, comply with Our reasonable directions and procedures relating to occupational health and safety, environmental management and security (which You acknowledge may change during the term of this Agreement); and
- (b) ensure that any person who will have access to official secrets within the meaning of section 79 of the *Crimes Act 1914* signs an acknowledgment that he or she is aware of the provisions of that section.

Working with Children or Vulnerable People Checks

L.3 You must comply with the Working with Children or Vulnerable People Checks specified in Schedule 3. If You do not comply with Schedule 3 We may immediately terminate this agreement.

M. Notices (clause 24)

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

Name: [*insert]
Office Address: [*insert]
Postal Address: [*insert]
Fax: [*insert]
Phone: [*insert]
Email: [*insert]

Part B: Our Obligations

N. Funding (clause 3)

N.1 The total Funding for the Project is \$[*state total payable amount] inclusive of GST payable by the following instalments:

Amount	Payable
\$[*amount]	80% of the Funds will be paid to You upon execution of this Agreement and within 30 days of the delivery of a correctly rendered invoice.
\$[*amount]	20% of the Funds will be paid to You upon successful completion of all Your obligations under this Agreement and within 30 days of the delivery of a correctly rendered invoice.

N.2 The Funding includes GST of \$[*state sum]

N.3 Subject to acceptance by Us, the date for payment is 30 days after delivery of a correctly rendered invoice to Us and after delivery of the Project or part of the Project to which the payment relates.

N.4 If the cost of the Project exceeds the Funds We are not liable to provide any additional Funds.

O. Program Delegate (clause 24)

O.1 The Program Delegate is:

Name: [*insert delegate details]

Office Address: [[*insert]

Postal Address: [*insert]

Fax: [*insert]

Phone: [*insert]

Email: [*insert]

Schedule 2 Terms and Conditions

Note: this Agreement uses a number of words which are defined in the glossary in clause 26.1. Defined terms start with a capital letter, eg, Asset.

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.

2. Project

2.1 You must carry out the Project:

- (a) at the times and in the manner specified in Item C of Schedule 1;
- (b) within the Project Period; and
- (c) in accordance with this Agreement (and any applicable Guidelines), diligently, effectively and to a high professional standard.

2.2 You must not act in a way that may bring the Project into disrepute.

2.3 The Funding must be expended by You only for the Project.

3. Funding

3.1 Subject to sufficient funds being available for the Program, and compliance by You with this Agreement (including the invoicing requirements, if any, specified in Item E of Schedule 1), We will provide You with the Funding at the times and in the manner specified in Item N of Schedule 1.

3.2 Without limiting Our rights, We may withhold or suspend any payment in whole or in part, if:

- (a) You have not performed Your obligations under this Agreement; or
- (b) You have outstanding or unacquitted money under any arrangement (whether contractual or statutory) with Us.

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.

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) if specified in Item F of Schedule 1, this must be an account which is:
 - (i) established solely to account for and administer, Funding provided by Us to You under this Agreement; and

- (ii) separate from Your other operational accounts;
 - (c) on request from Us, provide Us and the authorised deposit-taking institution with an authority for Us to obtain all details relating to any use of the account; and
 - (d) 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 and receipt and expenditure of the Funding to enable You to comply with Your obligations under this Agreement.
- 4.3 You must not use the Funds:
- (a) to purchase any Asset;
 - (b) as security to obtain, or comply with, any form of loan, credit, payment or other interest; or
 - (c) for the preparation of, or in the course of, any litigation.

5. Repayment of Funding

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

6. Acknowledgment And Publicity

- 6.1 You must, in all publications, promotional and advertising materials, public announcements and activities by You or on Your behalf in relation to the Project, or

any products, processes or inventions developed as a result of the Project, acknowledge the financial and other support You have received from Us, in the manner set out in Item G of Schedule 1.

- 6.2 You must ensure that all advertisements, promotional activities and any other public relations matters in relation to this Agreement are consistent with the requirements set out in Item C or Item G of Schedule 1 and the Guidelines (if any).

7. Subcontracting

- 7.1 You must not subcontract the performance of any obligations under this Agreement.

8. Insurance

- 8.1 You must, for as long as any obligations remain in connection with the Project, have insurance as specified in Item H of Schedule 1.
- 8.2 When requested, You must provide Us, within 10 business days of the request, with evidence satisfactory to Us that You have complied with Your obligation to insure.

9. Reporting

- 9.1 You must provide to Us progress Reports at the times and in the manner stated in Item I of Schedule 1 of Your progress in undertaking the Project.
- 9.2 Unless clause 9.6 applies, You must provide Us with:
- (a) a certificate that all Funding received was expended for the Project and in accordance with this Agreement;
 - (b) an audited detailed statement of income and expenditure in respect of the Funding, which must include a definitive statement as to whether the financial accounts are true and fair, and a statement of the balance of Your account referred to in clause 4.1; and
 - (c) an audit statement that the Funding was expended for the Project and in accordance with this Agreement.
- 9.3 The certificate referred to in clause 9.2(a) and the audits referred to in clause 9.2(b) and (c) must:
- (a) contain the details, if any, described in Item I of Schedule 1;
 - (b) be provided to the Program Delegate within one month (or other period specified in Item I of Schedule 1) of the end of the Project Period; and
 - (c) at the other times specified in Item I of Schedule 1, if any.
- 9.4 The certificate referred to in clause 9.2(a) must be provided by the person specified in Item I of Schedule 1 or, if no person is specified, by Your chief executive officer, chief internal auditor or board member.

9.5 Subject to clause 9.6, the audits referred to in clause 9.2(b) and (c) must:

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

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

- (a) for the entire term of this Agreement;
- (b) the Funding is included in the income and expenditure which is subject to the audit,
- (c) then, instead of the certificate and audits referred to in clause 9.2, You may provide Us with:
 - (i) a detailed statement of income and expenditure for the Funding, which must include a definitive statement as to whether the financial accounts are true and fair, and a statement of the balance of Your account referred to in clause 4.1; and
 - (ii) statement that the Funding was expended for the Project and in accordance with this Agreement.

9.7 The statements referred to in clause 9.6(i) and (ii) must be certified by:

- (a) Your chief executive officer; and
- (b) the senior executive officer employed by You who has primary responsibility for managing Your audit functions.

10. Commonwealth Material

10.1 Ownership of all Commonwealth Material, including Intellectual Property Rights in that Material, remains vested at all times in Us but We grant You a licence to use, copy and reproduce that Material only for the purposes of this Agreement and in accordance with any conditions or restrictions specified in Item J of Schedule 1.

11. Project Material

Ownership

11.1 Subject to this clause 11, You Own the Project Material and the Intellectual Property

Rights in Project Material immediately on their creation.

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

Licences

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

11.4 If You are unable to obtain a licence on the terms referred to in clause 11.3, you must arrange for the grant to Us of a licence to exercise the Excluded IPR on the terms set out in Item K of Schedule 1.

General

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

12. Disclosure Of Information

12.1 You acknowledge that We give no undertakings to keep confidential this Agreement or any information provided by You to Us under this Agreement.

13. Protection of Personal Information

13.1 You agree to comply with the information privacy principles contained section 14 of the *Privacy Act 1988* 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 that Act.

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

14. Records

14.1 You must make full and accurate Records of the conduct of the Project, including the receipt and use of Funding (in accordance with Australian Accounting Standards).

14.2 Records must be retained by You for 7 years after the end of the Project Period.

15. Access to Premises and Records

15.1 You must at all reasonable times give the Commonwealth Auditor-General, the Office of the Privacy Commissioner established by the *Privacy Act 1988*, the Program Delegate, a member of the Investigations Branch in the Department on production of photo identification, or any person authorised in writing by the Secretary:

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

15.2 The rights referred to in clause 15.1 are subject to:

- (a) the provision of reasonable prior notice to You; and
- (b) Your reasonable security procedures.

15.3 If a matter is being investigated which, in the opinion of a member of the Investigations Branch in the Department, or any person authorised in writing by the Secretary, may involve an actual or apprehended breach of the law, clause 15.2(a) will not apply.

15.4 The requirement for access specified in clause 15.1 does not in any way reduce Your responsibility to perform Your obligations under this Agreement.

16. Indemnity

16.1 You agree to indemnify Us against any:

- (a) loss or liability incurred by Us;
- (b) loss of or damage to Our property; or
- (c) loss or expense incurred by Us in dealing with any claim against Us, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by Us, arising from:
 - (d) 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;
 - (e) any breach by You or any of Your employees, agents, or subcontractors of obligations or warranties under this Agreement;
 - (f) any use or disclosure by You, Your officers, employees, agents or subcontractors of Personal Information held or controlled in connection with this Agreement; or
 - (g) 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.

16.2 Your liability to indemnify Us under this clause 16 will be reduced proportionately to the extent that any fault on Our part contributed to the relevant loss, damage, expense, or liability.

- 16.3 Our right to be indemnified under this clause 16 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.
- 16.4 In this clause 16, “fault” means any negligent or unlawful act or omission or wilful misconduct.

17. Conflict Of Interest

- 17.1 You warrant that, to the best of Your knowledge after making reasonable inquiries, at the Date of this Agreement no Conflict exists or is likely to arise in the performance of Your obligations under this Agreement.
- 17.2 If during the term of this Agreement, a Conflict arises, or is likely to arise, You must:
- (a) immediately notify Us in writing of that Conflict and of the steps You propose to take to resolve or otherwise deal with the Conflict;
 - (b) make full disclosure to Us of all relevant information relating to the Conflict; and
 - (c) take steps as We may, if We choose to, reasonably require to resolve or otherwise deal with that Conflict.
- 17.3 If You fail to notify Us under this clause 17, or are unable or unwilling to resolve or deal with the Conflict as required, We may terminate this Agreement under clause 21.

18. Negation Of Employment, Partnership And Agency

- 18.1 You will not, by virtue of this Agreement, be or for any purpose be deemed to be Our employees, partners or agents.
- 18.2 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.

19. Waiver

- 19.1 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.
- 19.2 A waiver by either party of any rights does not prevent the further exercise of any right.
- 19.3 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.
- 19.4 In this clause 19, ‘rights’ means rights or remedies provided by this Agreement or at

law.

20. Assignment

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

21. Termination

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

- (a) We are satisfied that any statement made in Your application for Funding is incorrect, incomplete, false or misleading in a way which may have affected:
 - (i) the original decision to approve the Funding;
 - (ii) the terms and conditions of this Agreement; or
 - (iii) action taken by Us under this Agreement;
- (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 clause 17), 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) if You are an individual, You become bankrupt or enter into a scheme of arrangement with creditors;
- (f) You cease to carry on a business relevant to the performance of the Project; or
- (g) We consider it appropriate in the circumstances to do so.

21.2 You must comply with any requirements in Our notice of termination.

21.3 If We terminate this Agreement under clause 21.1(g) 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 clause 21.4, any reasonable costs incurred by You and directly attributable to the termination or partial termination of this Agreement.

21.4 We will not be liable to pay compensation for loss of prospective profits for a termination or reduction in scope under this clause 21 or loss of any benefits that would have been conferred on You had the termination or reduction not occurred.

22. Compliance With Laws And Our Policies

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

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

including those listed in Item L of Schedule 1.

23. Applicable Law And Jurisdiction

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

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

24. Notices

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

- (a) if given by You, marked for the attention of the Program Delegate specified in Item O of Schedule 1; or
- (b) if given by Us, marked for the attention of the person specified in Item M of Schedule 1; and
- (c) hand delivered or sent by pre-paid post or Electronic Communication to the address of the other party specified in the schedule.

24.2 A notice given under clause 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

25.1 These clauses survive the expiration or earlier termination of this Agreement: 4, 5, 9, 10, 11, 12, 13, 14 and 16.

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Initials

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- Example Only -

25.2 Clauses 6 and 15 apply during this Agreement and for 7 years from the end of this Agreement.

26. Interpretation

26.1 In this Agreement, unless the contrary intention appears:

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

‘**Agreement**’ means the letter about the Project from Us as signed and dated by the parties, Schedule 1, Schedule 2 and Schedule 3 to the letter and any annexures;

‘**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 section 7 of 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;

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

‘**Completion Date**’ means:

- (a) the date specified in Item A of Schedule 1; or
- (b) if no date is specified, the day after You have done all that You are required to do under this Agreement to Our satisfaction;

‘**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 Agreement by Us when We signed it (after signature by You), and if no date is written there, then the date on which the Agreement is signed by Us (after signature by You);

‘**Electronic Communication**’ has the same meaning as it has in section 5 of the *Electronic Transactions Act 1999* (Cth);

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

'Excluded Material' means any Material specified under the heading 'Excluded Material' in Item K of Schedule 1;

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

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

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

'Guidelines' refers to the guidelines for the Program, if any, as described in Item B of Schedule 1;

'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;

'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 C of Schedule 1;

'Program' means the part of Our operations specified in Item B of Schedule 1 under which We are able to give the Funding to You;

'Program Delegate' means the person for the time being performing the duties of the office of the Department specified in Item O of Schedule 1 or any other person specified by the Secretary and notified in writing to You;

'Project' means the activity described in Item C of Schedule 1, which aims to fulfil one or more of the goals of the Program, and includes the provision of Project Material;

'Project Material' means;

- (a) any Material specified under the heading 'Project Material' in Item K of Schedule 1;
- (b) any other Material produced by, or for, You in carrying out Your obligations under this Agreement; and
- (c) any other Material incorporated in, or supplied with, or as part of the Material referred to in paragraphs (a) and (b);

but does not include Excluded Material;

'Project Period' means:

- (a) the period specified in Item D of Schedule 1 during which the Project must be completed; or
- (b) if this Agreement is terminated early, the period ending on the day on which the Agreement terminates;

'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 I of Schedule 1;

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

'Us', 'We' and **'Our'** includes Our officers, delegates, employees and agents, and Our successors;

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

'Young People' means people aged 12-25.

26.2 In this Agreement, unless the contrary intention appears:

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

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

Schedule 3 Working with Children or Vulnerable People Checks

1. In this schedule unless the contrary intention appears:

‘**AFP**’ means the Australian Federal Police;

‘**Contact with Children or Vulnerable People**’ means contact with an individual or contact with a group (whether that contact is supervised or not) where the individual, or at least one member of the group, is under the age of 18 years, or contact with a person or people who may be unable to take care of themselves, or are unable to protect themselves against harm or exploitation by reason of age, illness, trauma or disability, or any other reason and includes both physical and non-physical contact, including over the internet, via telephone, or any other form of communication;

‘**National Police Check**’ means a national criminal history check undertaken by the AFP;

‘**Teacher**’ means a person who is a teacher in a school and who is involved in the delivery of the Project because they are a teacher teaching in a school.
2. You must ensure that any individual (other than a Teacher) who is involved in providing the Services/Project for You or on Your behalf who will have Contact with Children or Vulnerable People undergoes a National Police Check, including all individuals engaged by Your subcontractors to provide the Services/Project. In addition, You must comply with relevant State/Territory legislation requiring screening for persons who work with children.
3. Where a National Police Check has been obtained in relation to an individual prior to there being a requirement for that individual to undergo a National Police Check in accordance with this Schedule, that previous National Police Check may be used for the purposes of this Schedule provided that:
 - (a) it is no more than 12 months old;
 - (b) it has been obtained for the purpose of establishing suitability for a position working with children (e.g. in relation to a State based check or as part of an employer’s requirements); and
 - (c) the individual in question consents to You disclosing to Us the information contained in the National Police Check.
4. National Police Checks must be completed prior to individuals coming into Contact with Children or Vulnerable People. The cost of obtaining relevant National Police Checks is to be borne by You. In all cases where the individual’s identity and criminal history is unable to be verified, You must advise the individual that the matter will be referred to Us for further consideration, and refer the matter to Us for Our consideration.

5. You must provide Us with an original or, if provided by a State authority which holds the original a certified true copy of any National Police Check which shows a conviction registered or charge pending in relation to an individual. The suitability of such individuals to participate in the Project will be determined by Us. **You must not allow an individual whose National Police Check reveals a conviction or charge pending to have Contact with Children or Vulnerable People in relation to the Services/Project without written authorisation from Us.**
6. Records of all National Police Checks must be maintained and all documentation must be made available and accessible for viewing by Us in accordance with clause 13 of this agreement.
7. You must ensure that any person who undergoes a National Police Check in accordance with the requirements of this agreement is informed in writing that the results of that National Police Check may be passed on to Us for the purposes of assessing whether We will consent to the person having Contact with Children or Vulnerable People in connection with the Project.
8. You are also required to comply with relevant State/Territory legislation requiring screening for persons who work with children. Note that the requirement for all individuals to undergo a National Police Check for Working with Children or Vulnerable People is **in addition** to any other checks undertaken in compliance with State/Territory working with children legislation.
9. National Police Checks must be undertaken by each person who will have Contact with Children or Vulnerable People or every 2 years from the date of issue of the first National Police Check obtained in relation to that person.
10. You must immediately notify Us if any individual who has had Contact with Children or Vulnerable People in the course of participating in the Services/Project is charged with or found guilty of an indictable offence.
11. You must immediately notify Us if an individual who has had Contact with Children or Vulnerable People in the course of participating in the Services/Project is the subject of an allegation relating to:
 - (a) violence against children or vulnerable people;
 - (b) any sexual offence;
 - (c) any offence involving pornography;
 - (d) any offence involving the trafficking or dealing of illegal drugs;
 - (e) a serious offence involving dishonesty;
 - (f) fraud, money laundering, insider dealing or any other financial offence or crime, including those under legislation relating to companies, banking, insurance or other financial services.
12. We will make a decision as to whether an individual who is the subject of a notification in accordance with paragraph 10 or 11 of this Schedule can continue to have Contact

with Children or Vulnerable People. The individual in question must not have Contact with Children or Vulnerable People in connection with the Services/Project while a decision from Us is pending.

13. Prior to engaging or allowing individuals to have Contact with Children or Vulnerable People, You must obtain the consent of those individuals to the provision to Us of the information mentioned at paragraph 10 or 11 above in this Schedule, should the situation arise.
14. You must keep a record of all reports and considerations which are part of the screening process above. All such records are highly sensitive and must be treated in strict confidence. You must ensure that files containing such information are accessed only by people who have a need to know, and store such files in a secure place so that a reasonable level of security is always maintained. The minimum storage requirement in this regard is a lockable, commercial grade cabinet.
15. Prior to engaging or allowing individuals to have Contact with Children or Vulnerable People You must comply with all other legal requirements of the Place where the Services/Project is being conducted in relation to engaging or deploying persons in a capacity where they may have Contact with Children or Vulnerable People.