

Short Form Supplementary Terms

1. Other Contributions

The Recipient must bear the full cost of conducting the Project, pending receipt of the Grant on completion of the Project.

2. Project budget

Not Applicable

3. Record keeping

3.1 The Recipient agrees to:

- (a) identify the receipt and expenditure of the Grant and any other financial contributions separately within the Recipient's accounts and records so that at all times the Grant is identifiable; and
- (b) keep financial accounts and records relating to the Project so as to enable all receipts and payments related to the Project to be identified and reported;
- (c) without limiting clauses 3.1(a) and 3.1(b) above, keep records of the following information in relation to Eligible Activities that are training:
 - (i) the identity of employers involved;
 - (ii) the identity of training providers;
 - (iii) for training providers that are accredited by the National Training System, evidence demonstrating that the accredited provider had provided training in scope of Eligible Activities at the time of training;
 - (iv) the number of learners;
 - (v) the type of qualification/training undertaken, and the identity of the training provider for each type
 - (vi) the cost of each qualification;
 - (vii) the total cost to the Recipient of the Project; and

(viii) the breakdown of the contributions of the Recipient and the Commonwealth to the cost of the Project; and

(ix) the privacy notice collected from each Eligible Learner that has undertaken training; and

(d) without limiting clauses 3.1(a) and 3.1(b) above, keep records of the following information in relation to Eligible Activities that are support services:

- (i) activity undertaken;
- (ii) personnel involved;
- (iii) hours spent on the activity;
- (iv) materials used; and
- (v) the provider of the support services; and

(e) keep copies of all training records provided to the Recipient by the training provider that relate to the Project.

The records required under clause 3.1(c) must be kept in relation to training provided by persons accredited by the National Training System and, other than those records described in paragraph 3.1(c)(iii), in relation to training provided by unaccredited persons.

3.2 The Recipient agrees to maintain the records for five years after the Completion Date and provide copies of the records to the Commonwealth representative upon request.

3.3 Clause 3 of these Short Form Supplementary Terms survives the termination, cancellation or expiry of the Agreement.

4. Audit

Not Applicable

5. Project Material

Not Applicable

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6. Access

6.1 The Recipient agrees to give the Commonwealth, or any persons authorised in writing by the Commonwealth, access to premises where the Project is being performed and to permit those persons to inspect and take copies of any Material relevant to the Project.

6.2 The Auditor-General and any Information Officer under the *Australian Information Commissioner Act 2010* (Cth) (including their delegates) are persons authorised for the purposes of clause 6.1 of these Short Form Supplementary Terms.

6.3 Clause 6 of these Short Form Supplementary Terms does not detract from the statutory powers of the Auditor-General or an Information Officer (including their delegates).

7. Equipment and assets

Not Applicable

8. Relevant qualifications or skills

8.1 The Recipient agrees to ensure that personnel performing work in relation to the Project are appropriately qualified to perform the tasks indicated.

9. Project specific legislation, policies and industry standards

9.1 The Recipient agrees to comply with the requirements of the following legislation, policies and industry standards when undertaking the Project:

- (a) *Privacy Act 1988* (Cth);
- (b) *Workplace Gender Equality Act 2012* (Cth);
- (c) *Work Health and Safety Act 2011* (Cth);
and
- (d) any other legislation, policies and industry standards identified in Part B of the Grant Details.

10. Commonwealth Material, facilities and assistance

Not Applicable

11. Jurisdiction

11.1 This Agreement is governed by the law of the Australian Capital Territory.

12. Recipient trustee of a Trust

12.1 In this clause, 'Trust' means the trust specified in the Parties to the Agreement section of this Agreement (if any).

12.2 If the Recipient has entered into this Agreement in its capacity as trustee, the Recipient warrants that:

- (a) it is the sole trustee of the Trust; and
- (b) it has full and valid power and authority to enter into this Agreement and perform the obligations under it on behalf of the Trust; and
- (c) it has entered into this Agreement for the proper administration of the Trust; and
- (d) all necessary resolutions, consents, approvals and procedures have been obtained or duly satisfied to enter into this Agreement and perform the obligations under it; and
- (e) it has the right to be indemnified out of the assets of the Trust for all liabilities incurred by it under this Agreement.

Commonwealth General Grant Conditions

1. Undertaking the Project

The Recipient agrees to undertake the Project in accordance with this Agreement.

2. Acknowledgements

The Recipient agrees to acknowledge the Commonwealth's support in Material published in connection with this Agreement and agrees to use any form of acknowledgment the Commonwealth reasonably specifies.

3. Notices

3.1 The Parties agree to notify the other Party of anything reasonably likely to affect the performance of the Project or otherwise required under this Agreement.

3.2 A notice under this Agreement must be in writing, signed by the Party giving notice and addressed to the other Party's representative.

4. Relationship between the Parties

A Party is not by virtue of this Agreement the employee, agent or partner of the other Party and is not authorised to bind or represent the other Party.

5. Subcontracting

5.1 The Recipient remains responsible for compliance with this Agreement, including in relation to any tasks undertaken by subcontractors.

5.2 The Recipient agrees to make available to the Commonwealth the details of any of its subcontractors engaged to perform any tasks in relation to this Agreement upon request.

6. Conflict of interest

The Recipient agrees to notify the Commonwealth promptly of any actual, perceived or potential conflicts of interest which could affect its performance of this Agreement and agrees to take action to resolve the conflict.

7. Variation

This Agreement may be varied in writing only by both Parties.

8. Payment of the Grant

8.1 The Commonwealth agrees to pay the Grant to the Recipient in accordance with the Grant Details.

8.2 The Commonwealth may by notice withhold payment of any amount of the Grant where it reasonably believes the Recipient has not complied with this Agreement or is unable to undertake the Project.

8.3 A notice under clause 8.2 will contain the reasons for any payment being withheld and the steps the Recipient can take to address those reasons.

8.4 The Commonwealth will pay the withheld amount once the Recipient has satisfactorily addressed the reasons contained in a notice under clause 8.2.

9. Spending the Grant

9.1 The Recipient agrees that the Grant must only be used as reimbursement of Eligible Expenditure actually incurred by the Recipient for the purposes of

undertaking Eligible Activities in connection with the Project. The Recipient must ensure that the Grant is not spent to:

- (a) acquire or create any asset;
- (b) subsidise remuneration paid to the officers, employees or contractors of the Recipient or any of its or their related parties; or
- (c) replace any of the officers, employees or contractors of the Recipient undertaking training.

9.2 The Recipient agrees to provide a statement signed by the Recipient verifying the Grant was used in accordance with this Agreement.

10. Repayment

10.1 If:

- (a) any of the Grant has been spent other than in accordance with this Agreement;
- (b) the Commonwealth has overpaid the Recipient, including as a consequence of a reduction in the amount of the Grant payable in accordance with item D of the Grant Details;
- (c) any amount of the Grant is additional to the requirements of the Project; or
- (d) the Recipient receives a refund from a training provider (whether by way of cash, in-kind, credit or other form of refund),

the Recipient agrees to repay that amount or, in the case of paragraph (d), the Commonwealth Proportion of the amount or value of the refund, to the Commonwealth within 14 days of the Recipient becoming aware that an event in paragraph (a), (b), (c) or (d) has occurred or receipt of a demand from the Commonwealth, unless agreed otherwise.

10.2 The amount to be repaid under clause 10.1 may be deducted by the Commonwealth from subsequent payments of the Grant.

11. Record keeping

The Recipient agrees to maintain records of the expenditure of the Grant.

12. Intellectual Property

12.1 The Recipient owns the Intellectual Property Rights in Material created undertaking the Project.

12.2 The Recipient gives the Commonwealth a non-exclusive, irrevocable, royalty-free licence to use, reproduce, publish and adapt Reporting Material for Commonwealth Purposes.

12.3 The licence in clause 12.2 does not apply to Project Material.

12.4 This Agreement does not affect the ownership of Intellectual Property Rights in Existing Material.

13. Privacy

When dealing with Personal Information in carrying out the Project, the Recipient agrees to comply with its obligations under the *Privacy Act 1988* and not to do anything which, if done by the Commonwealth, would

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be a breach of an Australian Privacy Principle.

14. Confidentiality

- (a) The Parties agree not to disclose each other's confidential information without prior written consent unless required or authorised by law or Parliament, or as otherwise permitted by the Customer Information Guide.
- (b) The Commonwealth reserves the right to publicise and report on the awarding of the Funds, and may do this by, amongst other means, including the name and location of the Recipient, the amount of the Funds and the title and a brief description of the Project on the Commonwealth's website, in media releases, general announcements about the Programme and annual reports in accordance with the law and Commonwealth policy, including the *Commonwealth Grants Rules and Guidelines - July 2014*, as amended or replaced by the Commonwealth from time to time.

15. Insurance

The Recipient agrees to maintain adequate insurance for the duration of this Agreement and provide the Commonwealth with proof when requested.

16. Indemnities

16.1 The Recipient indemnifies the Commonwealth, its officers, employees and contractors against any claim, loss or damage arising in connection with the Project.

16.2 The Recipient's obligation to indemnify the Commonwealth will reduce proportionally to the extent any act or omission involving fault on the part of the Commonwealth contributed to the claim, loss or damage.

17. Dispute resolution

17.1 The Parties agree not to initiate legal proceedings in relation to a dispute unless they have tried and failed to resolve the dispute by negotiation.

17.2 The Parties agree to continue to perform their respective obligations under this Agreement where a dispute exists.

17.3 The procedure for dispute resolution does not apply to action relating to termination or urgent litigation.

18. Termination for default

The Commonwealth may terminate this Agreement by notice where it reasonably believes the Recipient:

- (a) has breached this Agreement; or
- (b) has not provided a report within 30 days of receipt of a notice from the Commonwealth stating that the report is overdue; or
- (c) has provided false or misleading statements in their application for the Grant; or
- (d) has become bankrupt or insolvent, entered into a scheme of arrangement with creditors, or come under any form of external administration.

19. Cancellation for convenience

19.1 The Commonwealth may cancel this Agreement by notice, due to:

- (a) a change in government policy; or
- (b) a Change in the Control of the Recipient, which the Commonwealth believes will negatively affect the Recipient's ability to comply with this Agreement.

19.2 The Recipient agrees on receipt of a notice of cancellation under clause 19.1 to:

- (a) stop the performance of the Recipient's obligations as specified in the notice; and
- (b) take all available steps to minimise loss resulting from that cancellation.

19.3 In the event of cancellation under clause 19.1, the Commonwealth will be liable only to:

- (a) pay any part of the Grant due and owing to the Recipient under this Agreement at the date of the notice; and
- (b) reimburse any reasonable expenses the Recipient unavoidably incurs that relate directly to the cancellation and are not covered by 19.3(a).

19.4 The Commonwealth's liability to pay any amount under this clause is subject to:

- (a) the Recipient's compliance with this Agreement; and
- (b) the total amount of the Grant.

19.5 The Recipient will not be entitled to compensation for loss of prospective profits or benefits that would have been conferred on the Recipient.

20. Survival

Clauses 10, 12, 13, 14, 16, 20 and 21 survive termination, cancellation or expiry of this Agreement.

21. Definitions

In this Agreement, unless the contrary appears:

- **Agreement** means the Industry Skills Fund Single Payment Grant Agreement or Industry Skills Fund Split Payment Short Form Grant Agreement, including the Grant Details, executed by the Recipient, the Short Form Supplementary Terms, these Commonwealth General Grant Conditions and any other document referenced or incorporated in the Grant Details.
- **Australian Privacy Principle** has the same meaning as in the *Privacy Act 1988*.
- **Change in the Control** means any change in any person(s) who directly exercise effective control over the Recipient.
- **Commonwealth** means the Commonwealth of Australia as represented by the Commonwealth entity specified in the Agreement and includes, where relevant, its officers, employees, contractors and agents.

Commonwealth General Grant Conditions

- **Commonwealth General Grant Conditions** means this document.
- **Commonwealth Purposes** does not include commercialisation or the provision of the Material to a third party for its commercial use.
- **Completion Date** means the date or event specified in the Grant Details.
- **Customer Information Guide** means the Customer Information Guide for the Industry Skills Fund, as published by the Commonwealth from time to time at www.business.gov.au/IndustrySkillsFund.
- **Existing Material** means Material developed independently of this Agreement that is incorporated in or supplied as part of Reporting Material.
- **Guide to Managing Your Grant** means the Commonwealth's "Industry Skills Fund Guide to Managing Your Grant" as published by the Commonwealth from time to time at www.business.gov.au/IndustrySkillsFund.
- **Grant** means the money, or any part of it, payable by the Commonwealth to the Recipient as specified in the Grant Details.
- **Grant Details** means the document titled Grant Details that forms part of this Agreement.
- **Intellectual Property Rights** means all copyright, patents, registered and unregistered trademarks (including service marks), registered designs, and other rights resulting from intellectual activity (other than moral rights under the *Copyright Act 1968*).
- **Material** includes documents, equipment, software (including source code and object code versions), goods, information and data stored by any means including all copies and extracts of them.
- **Party** means the Recipient or the Commonwealth.
- **Personal Information** has the same meaning as in the *Privacy Act 1988*.
- **Programme Guidelines** means the Industry Skills Fund Programme Guidelines, as published by the Commonwealth from time to time at www.business.gov.au/IndustrySkillsFund.
- **Project** means the project described in the Grant Details.
- **Project Material** means any Material, other than Reporting Material, created or developed by the Recipient as a result of the Project.
- **Recipient** means the legal entity specified in the Agreement and includes, where relevant, its officers, employees, contractors and agents.
- **Related Entity** has the meaning given in the Programme Guidelines.
- **Reporting Material** means all Material which the Recipient is required to provide to the Commonwealth for reporting purposes as specified in the Grant Details.