



Department of Jobs, Skills, Industry and Regions

CAPITAL WORKS FUNDING AGREEMENT

PROJECT TITLE

THE STATE OF VICTORIA
as represented by its

DEPARTMENT OF JOBS, SKILLS, INDUSTRY AND REGIONS

AND

TAFE NAME

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CAPITAL WORKS FUNDING AGREEMENT

DETAILS

Date

Parties

Minister for Skills and TAFE for and on behalf of the State of Victoria represented by the Department of Jobs, Skills, Industry and Regions (**Minister**)

TAFE NAME ABN XXXX, of ADDRESS (the TAFE)

BACKGROUND

- A The Minister has determined to invest certain funding towards the cost of the Facility.
- B The parties have agreed that the TAFE is responsible for:
- (i) ensuring the Works are completed and are fit for the Project Purpose; and
 - (ii) the cost of the Works, irrespective of the amount and extent of any Funding.

AGREED TERMS

1 DEFINITIONS AND INTERPRETATIONS

Definitions

1.1 In this Agreement the following definitions apply:

Applicable Department Policy means any applicable Department policies and guidelines, as amended or replaced from time to time.

Approval means any consent, authorisation registration, filing, agreement, notification, certificate, permission, licence, approval, permit, authority or exemption issued by, from or with any Relevant Authority required in relation to the delivery of the Project.

Auditor-General has the meaning set out in section 3 of the *Audit Act 1994* (Vic).

Australian Accounting Standards means the accounting standards made by the Australian Accounting Standards Board in accordance with section 227 of the *Australian Securities and Investments Commission Act 2001* (Cth).

Australian Auditing Standards means the auditing standards made by the Auditing and Assurance Standards Board in accordance with section 227B of the *Australian Securities and Investment Commission Act 2001* (Cth).

Australian Standard means the Australian/New Zealand Risk Management Standard: AS/NZS ISO 31000:2009.

Background Intellectual Property means the Intellectual Property of a party which was either created:

- (a) before the Start Date; or
- (b) independently of this Agreement,

and all improvements to such Intellectual Property by the party.

Building Contractor means a builder appointed under clause 4.3.

Building Works Contract means the building works contract to be entered into by the TAFE and a contractor for the construction of the Facility, being a contract in the form of suitable Australian Standard which complies with the requirements of clause 1.1(a).

Business Case means the summary business case for the Project attached at Schedule 2.

Business Day means a day other than a Saturday, Sunday or public holiday appointed under the *Public Holidays Act 1993* (Vic).

Change in Control means any change during the Term in any person(s) who directly or indirectly exercises effective control over the TAFE (including the ability to determine the outcome of decisions about the financial and operating and other policies of the TAFE) by holding the majority of voting shares, units or other interests in the TAFE or by any other means, but does not include a change in respect of a council if that change is due to an election.

Confidential Information means information or data (including Personal Information and Health Information), whether or not in a material form, that is confidential to a party or should reasonably be considered confidential. Confidential Information does not include information that is already in the public domain, unless the reason it is in the public domain is as a result of a breach of this Agreement.

Conflict of Interest means a situation, or a risk of a situation, where an officer, board member, employee, member, volunteer, subcontractor, representative or agent of the TAFE has duties or interests arising as a result of holding a position, possessing property, engaging in a business or occupation or from contractual obligations and those duties or interests are in conflict with or might appear to be in conflict with their duties and interest under this Agreement.

Contractor has the meaning given in clause 4.3.

Current CFA means the existing common funding agreement between the Minister and the TAFE.

Department means the Department of Jobs, Skills, Industry and Regions of the State of Victoria.

DJSIR Project Manager means the Departmental representative who has responsibility for the oversight of the Project from the Department's perspective.

End Date means the date set out in Item 4 of Schedule 1.

Execution Date means the date this agreement is executed by the Minister.

Facility or Facilities means the facility described in Schedule 3.

Final Certificate has the meaning given to that term under the Building Works Contract.

Funding means the amount identified at Item 5 of Schedule 1.

GST means the tax payable on taxable supplies in accordance with *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Health Information has the meaning set out in the *Health Records Act 2001* (Vic).

Intellectual Property includes:

- (a) all copyright (including rights in relation to all documents, reports, charts, drawings, data bases, software, source codes, models, systems, slides, tapes and specifications);
- (b) all copyright and all rights in relation to inventions (including registered and registrable patents), registered and unregistered trademarks, registered and unregistered designs, circuit layouts, and know-how; and
- (c) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Item means an item set out in Schedule 1.

Laws includes:

- (a) Acts of the Commonwealth and the State(s) and Territory(ies) in which the Project will be delivered, and any other relevant State or Territory;
- (b) ordinances, regulations, by-laws, orders and proclamations or other instruments made under those Acts referred to in paragraph (a); and
- (c) lawful directions by any person exercising statutory powers regarding the Project.

Licence means a non-exclusive, world-wide, everlasting, irrevocable, royalty free licence to the Department to exercise all rights in relation to the Intellectual Property it applies to as if the licensee were the owner, including the right to sub-licence.

Milestone means the milestones identified in Schedule 5.

Milestone Dates means the dates identified in Schedule 5 by which each Milestone is to be achieved.

Milestone Payments means the payments identified in Schedule 5 to be made upon achievement of each Milestone.

Minister means the Minister for Skills and TAFE of the State of Victoria.

Moral Right has the meaning set out in section 189 of the *Copyright Act 1968* (Cth).

Ombudsman means the person appointed under section 3 of the *Ombudsman Act 1973* (Vic).

Personal Information has the meaning set out in the *Privacy and Data Protection Act 2014* (Vic).

Practical Completion means where the Project is substantially complete within the meaning of the Building Works Contract including that:

- (a) the Facility is fit for occupation and use by the TAFE;
- (b) all major defects have been rectified; and
- (c) all documents, manuals and as built drawings have been provided to the TAFE by the builder under the Building Works Contract.

Project means the project described in Schedule 8.

Project Control Group or **PCG** means the project control group established by the TAFE in connection with the delivery of this Project pursuant to clause 6.1.

Project Plan means a plan which sets out the TAFE's approach to implementation, management and delivery of the Project, including scope, budget and risk, and which meets the requirements of Schedule 7.

Project Intellectual Property means all Intellectual Property (excluding Background Intellectual Property) developed, created, discovered, brought into existence or otherwise acquired (other than from the Department) by the TAFE under the Agreement.

Project Manager means a person appointed under clause 4.1 who must have appropriate project management qualification and experience.

Project Purpose is the purpose set out in the Business Case at Schedule 2.

Public Sector Data has the meaning set out in the *Privacy and Data Protection Act 2014* (Vic).

Publicity Guidelines means the Victorian Government Acknowledgement and Publicity Guidelines.

Record means any document within the meaning of the *Evidence Act 2008* (Vic), including:

- (a) anything on which there is writing;
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or
- (d) a map, plan, drawing or photograph;

created, managed, maintained, brought into existence or otherwise acquired or used by the TAFE (or subcontractor) in relation to the Funding, the Project, or the performance of the TAFE's obligations under this Agreement.

Relevant Authority means any government department or other statutory or public body, or individual providing statutory certification having jurisdiction in relation to the Project, the Works or the Site including any local council or authority and utility service providers.

Site means the site described at Schedule 4.

Start Date means the date set out in Item 3 of Schedule 1.

Superintendent means the superintendent appointed under the Building Works Contract.

Term means the period of this Agreement as detailed in clause 2.1.

Works means the planning, design, refurbishment, project management and/or construction works required to complete the scope of the Project, as set out in Schedule 8.

Interpretation

- 1.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:
- (a) headings are inserted for convenience only and do not affect the interpretation of this Agreement;
 - (b) a reference to 'dollars' or '\$' means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars;
 - (c) all amounts to be paid or provided under this agreement are expressed inclusive of GST, if any;
 - (d) where a period of time is specified and dates from a given day or the day of an act or event, it must be calculated exclusive of that day;
 - (e) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
 - (f) any right or obligation of the Minister under this Agreement may be exercised or performed by the Department on behalf of the Minister;
 - (g) a word which indicates the singular also indicates the plural, a word which indicates the plural also indicates the singular, and a reference to another gender also indicates the other genders;
 - (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
 - (i) a reference to the word 'include' or 'including' is to be interpreted without limitation;
 - (j) a reference to the word 'owing' means actually or contingently owing, and 'owe' and 'owed' have an equivalent meaning;
 - (k) a reference to a party, clause, part, schedule, annexure or attachment is a reference to a party, clause, part, schedule, annexure or attachment of or to this Agreement;
 - (l) a reference to any document or agreement is to that document or agreement as amended, novated, supplemented or replaced;
 - (m) the schedules, annexures and attachments form part of this Agreement; and

- (n) a reference to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision, in either case whether before, on or after the date of this agreement.

2 TERM

- 2.1 The Agreement will start on the Start Date and end on the End Date unless the Agreement is terminated earlier under clause 21.

3 GENERAL OBLIGATIONS

Roles and Responsibilities of the TAFE

- 3.1 The roles and responsibilities of the TAFE are set out in Schedule 9.

Roles and Responsibilities of the Minister

- 3.2 The role of the Minister is to:
 - (a) make Milestone Payments upon achievement of the relevant Milestones;
 - (b) review and comment on any draft Project Plan in accordance with clause 4;
 - (c) ensure that the representatives of the Minister attend Project Control Group meetings; and
 - (d) do all things reasonably necessary to assist the TAFE in meetings its obligations under this agreement including but not limited to providing the TAFE with access to the Department's reporting system.

4 PROJECT MANAGEMENT

Appointment of Project Manager and other consultants

- 4.1 If the total Project value exceeds \$5 million, the TAFE must, subject to the Department's prior written approval (which may not be unreasonably withheld), engage an internal or external Project Manager to manage the Project.
- 4.2 The TAFE must ensure that the Works include provision for the engagement of an external, Principal Consultant and Quantity Surveyor to deliver relevant components of the Project.

Appointment of a Contractor

- 4.3 The parties acknowledge that the TAFE proposes to deliver the construction component of the Works, where included in the scope of this Project, by:
 - (a) engaging a Building Contractor under a Building Works Contract; and
 - (b) if necessary, the direct engagement of other contractors, consultants and suppliers(together '**Contractors**').
- 4.4 The TAFE must not engage a Contractor to perform any of its obligations under this Agreement or deliver any component of the Project without the prior approval of the PCG.
- 4.5 Any procurement by the TAFE of a Contractor must be performed in accordance with its procurement policies. Any request for endorsement or approval under

clause 4.3 must be accompanied by a tender evaluation report which includes all information required by the PCG.

- 4.6 Any request for approval under clause 4.4 must be accompanied by a tender evaluation report which includes all information required by the PCG.
- 4.7 In considering whether to provide any approval to engage a Contractor to perform any of The TAFE's obligations under this Agreement or deliver any component of the Project, the PCG must have regard to the following matters:
- (a) the capacity of the Contractor to undertake the work or services including the availability of that contractor's proposed resources;
 - (b) the competence and experience of the Contractor to undertake the work or services including whether the contractor has demonstrated capacity to deliver projects of the scale of the Project;
 - (c) the proposed terms of the Building Contract, which must:
 - i. contain a risk allocation in which risk is allocated to the party best able to bear that risk;
 - ii. comply with all Applicable Departmental Policies (and other Victorian Government policies) in relation to the construction of capital works;
 - iii. where practicable, pass through all applicable obligations and liabilities imposed on the TAFE in this Agreement;
 - iv. align performance, timing and delivery with the Milestones to the extent necessary; and
 - v. include a term that expressly allows the Minister to access the subcontractor's premises or place of business to conduct a performance review or audit of the Contractor on the same terms and conditions as clause 12.
- 4.8 The TAFE agrees that it is:
- (a) responsible for the delivery of the Project including any part of the Project that is subcontracted to any externally appointed professional, Consultant, or Contractor; and
 - (b) accountable for any acts, omissions and mistakes of any externally appointed professional, Consultant, or Contractor in performing all or part of the Project as though they were the TAFE's own acts, omissions and mistakes.

Project Planning and Approval

- 4.9 The parties agree that the TAFE must prepare a Project Plan:
- 4.10 The TAFE, within 60 Business Days of execution of this Agreement, must submit a draft Project Plan to the Minister for the Minister's consideration. The Minister may provide the TAFE with its comments on each draft Project Plan. The TAFE must amend each draft Project Plan to address the Minister's comments and considerations and resubmit each draft Project Plan for consideration until such time as the Minister advises the TAFE that it has no further comments on the relevant Project Plan.
- 4.11 Following the Minister's advice under clause 4.10, the TAFE must obtain internal board endorsement for each draft Project Plan and advise the Minister accordingly.
- A draft Project Plan is approved where:
- (a) the Minister has advised it has no further comments on; and

- (b) the TAFE's board has approved.

The TAFE then:

- (c) if specified as a financial Milestone, may submit a payment claim in respect of the achievement of the Milestone for finalisation of the Project Plan; and
- (d) must strictly comply with, and not deviate from, the Project Plan unless such deviation is accepted by the Minister in advance of any such deviation.

4.12 Any comment or consideration provided by the Minister under clauses 4.10 or 4.11 does not relieve the TAFE from its obligations and liabilities pursuant to this Agreement.

4.13 The TAFE must update and revise the Project Plan whenever necessary to do so as a result of any change in the Work or the Project or when directed to do so by the Minister. All updates and revisions to the Project Plan must be prepared and approved in accordance with clauses 4.10 to 4.11.

5 FUNDING

Contributions

5.1 Subject to the terms of this Agreement:

- (a) The Minister will make the Funding contribution specified in Item 5 of Schedule 1; and
- (b) The TAFE will make the contribution specified in in Item 6 of Schedule 1.

5.2 In addition to the funding to be provided by the parties, the parties acknowledge that funding may also be provided by other third parties including the Commonwealth, a local council or industry or other private sector body as specified in Item 7 of Schedule 1.

Use of Funding

5.3 The TAFE must ensure that:

- (a) the Funding is applied to the delivery of the Project including the planning, design, project managing and completing the Works;
- (b) the completed Works and any equipment, furniture or other assets purchased with the Funding are used for the Project Purpose;
- (c) the Works is to be designed, developed and constructed to meet the Project Purpose; and
- (d) equipment and assets, if required, are procured to meet the Project Purpose.

5.4 The TAFE will do all things necessary to make sure that all payments made by the TAFE from the Funding (including payments to subcontractors) are correctly made and properly authorised and that the TAFE maintains proper and diligent control over the incurring of all liabilities.

5.5 If the TAFE complies with this Agreement and delivers the Works to the Minister's reasonable satisfaction, the TAFE can retain all unspent and uncommitted Funding at the expiry of this Agreement, unless otherwise notified by the Minister in accordance with the terms of any Applicable Department Policy.

5.6 If, in the reasonable opinion of the Minister, the TAFE:

- (a) does not comply with this Agreement;

- (b) does not deliver all or part of the Project to the TAFE's reasonable satisfaction; or
- (c) has used, spent or committed all or part of the Funding other than in accordance with this Agreement,

the Minister may in its absolute discretion give written notice to the TAFE requiring the TAFE to repay that part of the Funding and any GST paid to the TAFE which, in the Minister's reasonable opinion, has not been applied in accordance with this Agreement and the TAFE will repay that amount to the Minister within 20 Business Days, or such other time period as agreed, of receiving the written notice from the Minister. Nothing in this clause derogates from the Minister's right to terminate the agreement under clauses 21.5 or 21.9.

6 GOVERNANCE

Project Control Group

- 6.1 The parties have, by this Agreement, established the Project Control Group.
- 6.2 The role of the PCG is to:
 - (a) oversee the delivery of the Project by the TAFE;
 - (b) oversee and monitor all contractual arrangements including the Building Works Contract; and
 - (c) ensure the Project achieves the Project Purpose.
- 6.3 The PCG composition and terms of reference are set out in Schedule 6 as amended by the Department from time to time.

7 MILESTONES

Milestone Dates

- 7.1 The TAFE must deliver the Project in accordance with the Milestone Dates.

Milestone Payments

- 7.2 The Minister will pay the Milestone Payments within 20 Business Days of the Institute submitting evidence of the achievement of the relevant Milestone, as identified in the Milestone Schedule and to the reasonable satisfaction of the Minister.
- 7.3 The parties agree that payment of any Milestone Payment is not an admission by the Minister that the TAFE has met all of its obligations under this Agreement associated with that Milestone to the reasonable satisfaction of the Minister.

8 LOCAL JOBS FIRST POLICY

- 8.1 If the Local Jobs First Policy applies to this Agreement or a contract entered applying the Funding from this Agreement as indicated in Schedule 1, the terms and conditions set out in Annexure 1 form part of this Agreement.

9 FAIR JOBS CODE

- 9.1 If the Fair Jobs Code applies to this Agreement or a contract entered applying the Funding from this Agreement as indicated in Schedule 1, the terms and conditions set out in Annexure 2 form part of this Agreement.

10 REPORTING

Monthly Reporting

- 10.1 The TAFE must ensure that the Project Manager submits monthly progress reports in the format and digital reporting system required by the Department.
- 10.2 These reports must include (at a minimum):
- (a) an update in respect of the progress of the Project against the Milestones;
 - (b) forecast timeframe to achieve all remaining milestones
 - (c) a list of activities undertaken since the previous report;
 - (d) a look forward list of activities to be undertaken before the next report;
 - (e) details of expenditure to date including funding source;
 - (f) a section on risk management which complies with clause 10.3;
 - (g) details of any information the TAFE requires from the Minister; and
 - (h) any other information which the Minister may reasonably request be included at least 10 Business Days before the progress report is due.

Risk Management

- 10.3 The TAFE must:
- (a) manage risk in relation to the Project and the obligations under this Agreement in accordance with the Australian Standard as amended from time to time, or as otherwise specified in any Applicable Department Policies.
 - (b) arrange for its chief executive officer or a board member of the TAFE to attest that:
 - i. the TAFE's risk management processes (**Processes**) are consistent with the Australian Standard or any Applicable Department Policies;
 - ii. during the Term, the TAFE has managed risk in accordance with the Australian Standard or any Applicable Department Policies;
 - iii. within 12 months prior to attestation, the TAFE has undertaken a review of the Processes to ensure compliance with the Standard or any Applicable Department Policies;
 - iv. the Processes satisfactorily and effectively manage the TAFE's risks; and
 - v. the TAFE's board, committee of management or audit or risk committee has verified that the Processes satisfactorily and effectively manage the TAFE's risks.

Reporting during the Design and Tender Stage

- 10.4 The TAFE must submit all design documents to the Department (or its nominated DJSIR Project Manager) for review.
- 10.5 The Minister must ensure that the Department (or its nominated DJSIR Project Manager) completes the review of design and tender documents within 10 Business Days.
- 10.6 The TAFE acknowledges that if the Department (or its nominated DJSIR Project Manager) provides the TAFE with comments on the design and tender documents, the TAFE must amend the design documents to address the Minister's comments and, if required by the Minister, resubmit the documents for consideration until such

time as the Minister advises the TAFE that it has no further comments on the documents.

10.7 The TAFE must not proceed beyond:

- (a) completion of schematic design phase; or
- (b) the issue of the request for tender to the market,

until the Department (or its nominated DJSIR Project Manager) has completed the relevant review and advised the TAFE that there are no further comments on the design and tender documents in accordance with clause 10.6.

11 RECORD KEEPING

Financial Records

11.1 The TAFE will keep full and accurate Records so that:

- (a) all financial transactions, including receipts and payments, from the Funding are clearly and separately identifiable;
- (b) if required by Law or the Minister, financial statements under the Australian Accounting Standards can be prepared;
- (c) if required by Law or the Minister, the TAFE's accounts and Records can be audited in accordance with Australian Auditing Standards; and
- (d) all of the TAFE's taxation liabilities and payments can be clearly identified.

Recordkeeping

11.2 Subject to clause 11.3, the TAFE will deal with all its Records in accordance with its usual recordkeeping practices, unless agreed otherwise in writing with the Minister.

11.3 The TAFE will:

- (a) maintain and manage the Records:
 - i. as specified by the Minister and in accordance with any Applicable Department Policy; and
 - ii. in such a way that will allow the Records to be quickly and easily accessed, retrieved, reviewed, used and kept by the Minister and Victorian Government.
- (b) retain the Records for a period of 7 years after the termination or expiry of the Agreement or the completion of the Project (whichever is the earlier).

11.4 In addition to any other obligation under clause 11 or clause 22, the TAFE will immediately provide access to Records at the Minister's written request and in any of the following circumstances:

- (a) in accordance with the requirements of all relevant Laws;
- (b) if requested by the Auditor-General or Ombudsman in writing;
- (c) to the Minister or any third party nominated by the Minister in accordance with any written request by the Minister; or
- (d) for the purposes of audit and performance monitoring under clause 12.

Freedom of Information

11.5 The TAFE will provide access to the Records during such time as they remain in the TAFE's possession or control to the Minister and any other person authorised by the

Minister exercising rights under the *Freedom of Information Act 1982 (Vic)*, or any other Laws that apply to the Records.

12 AUDIT AND PERFORMANCE REVIEW

- 12.1 The Minister may conduct, or the Minister may engage a third party to conduct, a performance review or an audit of the TAFE at any reasonable time, at the Minister's own expense:
- (a) for the purpose of monitoring and assessing the TAFE's performance of its obligations under this Agreement or delivery of the Project;
 - (b) if the Minister has reasonable concerns that the TAFE may not be delivering, or may be unable to deliver, all or part of the Project in accordance with this Agreement;
 - (c) if the TAFE's Records give the Minister reasonable concern about the TAFE's compliance, or ability to comply, with this Agreement;
 - (d) if the Minister has reasonable concerns that the TAFE is not financially stable;
 - (e) if the Minister has reasonable concerns that the TAFE has misused all or part of the Funding; or
 - (f) to confirm whether the Funding has been used for the correct purposes.
- 12.2 The TAFE will:
- (a) cooperate with and provide assistance to the Minister or any third party engaged by the Minister to conduct an audit or performance review;
 - (b) make available to the Minister or any third party engaged by the Minister all information and Records needed for the audit or performance review in accordance with any written request from the Minister or third party engaged by the Minister; and
 - (c) allow the Minister or any third party engaged by the Minister access to the TAFE's premises or place of business to carry out the audit or performance review.

13 MEDIA, SIGNAGE AND PUBLICITY

Media Release

- 13.1 Subject to clause 13.2, the TAFE and the Minister are entitled to independently issue media releases in relation to the Project.
- 13.2 Prior to issuing a media release in relation to the Project, the TAFE must obtain the approval of the Minister. Where approval is requested under this clause it must be provided promptly and not unreasonably withheld.
- 13.3 During the delivery of the Project, the TAFE must immediately notify the Minister if it is contacted by a media representative in connection with the Project.

Events Attendance

- 13.4 The TAFE acknowledges that the Minister or its nominee may attend any opening of other event held in connection with the Project. Any invitation must be issued to the Minister's office 6 weeks in advance and must suggest three possible dates which must not conflict with the Parliamentary Sitting Calendar.

Publicity Guidelines

13.5 The TAFE must comply with the Publicity Guidelines.

Signage

13.6 The TAFE must maintain signage on the Site in accordance with the Department's guidelines for signage.

13.7 The signage on the Site must include the following details:

- (a) the value of the Project;
- (b) the source of funding
- (c) a description of the Project; and
- (d) expected date for completion.

14 CONFLICT OF INTEREST

14.1 The TAFE:

- (a) warrants that, to the best of its knowledge after making diligent inquiry, it has no actual or potential Conflict of Interest and no actual or potential Conflict of Interest is likely to arise during the Term; and
- (b) will take all reasonable steps to ensure that no actual or potential Conflict of Interest arises during the Term.

14.2 If during the Term the TAFE becomes aware of any matter that gives rise to an actual or potential Conflict of Interest, the TAFE will:

- (a) immediately give written notice to the Minister of the actual or potential Conflict of Interest and of the steps the TAFE proposes to take to resolve or manage the actual or potential Conflict of Interest; and
- (b) make full disclosure to the Minister of all relevant information relating to the actual or potential Conflict of Interest; and take such steps as the Minister may, if the Minister chooses to, reasonably require to resolve or manage the actual or potential Conflict of Interest.

14.3 If the TAFE fails to notify the Minister, or is unable or unwilling to resolve or deal with the Conflict of Interest as required by the Minister, the Minister may terminate this Agreement under clause 21.

15 INTELLECTUAL PROPERTY

15.1 The Background Intellectual Property of each party remains the property of that party.

15.2 The TAFE will own all Project Intellectual Property unless clause 13.3 applies.

15.3 The Minister will give written notice to the TAFE prior to the delivery of all the Project if the Minister considers that:

- (a) all or part of the Project Intellectual Property arising from the delivery of the Project should be owned by the Minister; or
- (b) the Minister requires a Licence to use all or part of the Project Intellectual Property for any purpose, including publication on the internet.

15.4 If the Minister gives written notice to the TAFE under clause 15.3, the Project Intellectual Property specified in the notice is owned by the Minister.

- 15.5 The TAFE grants, and the Minister accepts:
- (a) a Licence over:
 - i. the Project Intellectual Property not owned by the Minister;
 - ii. the Background Intellectual Property, if any; and
 - iii. any Intellectual Property of a third party, if any,
only to the extent needed to allow the Minister to enjoy the full benefit of the Project and this Agreement; and
 - (b) if the Minister gives written notice to the TAFE in accordance with 15.3(a) Licence to use the Project Intellectual Property specified in the notice for the Minister's purposes, including publication on the internet.
- 15.6 At the request of the Minister, the TAFE will provide the Minister with copies of all Licensed materials and Intellectual Property and in a way that allows the Minister to exercise the Minister's rights under the Licence.
- 15.7 The TAFE warrants that it has the right to grant the Licences referred to in clause 15.5.
- 15.8 The TAFE will obtain all consents needed for any Licence, including in relation to any Moral Right.
- 15.9 The TAFE will properly manage the Project Intellectual Property to allow the Minister to enjoy the full benefit of the Project and this Agreement, which may include taking any necessary action to:
- (a) register, maintain the registration of, protect, manage, exploit and (as appropriate) commercialise the Project Intellectual Property for the benefit of the Victorian public;
 - (b) maintain, improve, enhance and develop the Project Intellectual Property to the fullest extent reasonably necessary to maintain its usefulness and appropriateness to the TAFE and the Minister for the delivery of the Project;
 - (c) use, reproduce, publish, adapt, disseminate, communicate to the public, broadcast, and perform the Project Intellectual Property for the benefit of the Victorian public; and
 - (d) comply with all applicable Minister or other Victorian government policies in respect of the Project Intellectual Property.
- 15.10 The TAFE must not accept co-funding or involve any person in the delivery of the Project, on terms that would jeopardise or limit any Licence to be granted to the Minister without obtaining the Minister's prior agreement and consent in writing.

16 PRIVACY, DATA PROTECTION AND PROTECTED DISCLOSURES

Privacy

- 16.1 The TAFE is bound by the Information Privacy Principles contained in the *Privacy and Data Protection Act 2014 (Vic)* (**PDP Act**) and any applicable code of practice made under the PDP Act when performing its obligations under this Agreement in the same way and to the same extent that the Department would be bound if the Department were to perform the TAFE's obligations under this Agreement.
- 16.2 In performing this Agreement, the TAFE must:
- (a) collect, hold, use, manage, disclose and transfer Personal Information and Health Information obtained while delivering the Project, only for the purposes

of providing the Project in accordance with this Agreement and in accordance with the PDP Act and the Health Records Act (**HR Act**) (as applicable);

- (b) not do anything that would breach a Health Privacy Principle contained in the HR Act or an Information Privacy Principle contained in the PDP Act;
- (c) comply with the HR Act and any applicable code of practice made under the HR Act;
- (d) comply with the PDP Act and any applicable code of practice made under Division 3 of Part 3 of the PDP Act;
- (e) comply with any applicable direction, guideline, determination or recommendation made by the Victorian Commissioner for Privacy and Data Protection or the Victorian Health Services Commissioner; and
- (f) unless the TAFE is excluded from the operation of the PDP Act by s 84(2) of that Act:
 - i. not act or engage in any practice that contravenes a protective data security standard issued by the Victorian Commissioner for Privacy and Data Protection under s 86 of the PDP Act in respect of Public Sector Data collected, held, used, managed, disclosed or transferred by the TAFE for the Department; and
 - ii. comply with any provision of a protective data security plan developed by the Department under the PDP Act that applied to the TAFE.

16.3 The TAFE must also:

- (a) make sure that any person (including any subcontractor) who may deal with Personal Information, Health Information or Public Sector Data on behalf of the TAFE in relation to the Project or this Agreement is made aware of the obligations in this clause 16;
- (b) immediately notify the Minister if the TAFE becomes aware of a breach, or possible breach, of any of the obligations in clause 16.2, by the TAFE, or any person acting for or on behalf of the TAFE (including any subcontractor) in relation to all or part of the Project or this Agreement; and
- (c) make sure that any subcontract it enters into imposes the obligations in this clause 16 on the subcontractor.

Protected Disclosure Act

16.4 If the *Protected Disclosure Act 2012* (Vic) applies to the TAFE, the TAFE agrees to comply with and be bound by the provisions of that Act.

17 CONFIDENTIAL INFORMATION

17.1 The TAFE and the Minister may disclose information (including on the internet) about the content of this Agreement unless the information is Confidential Information.

17.2 Each party agrees to treat all Confidential Information as confidential and not to disclose it to any third party without the prior written consent of the other party, except in the following circumstances:

- (a) where the disclosure is required by Law or by this Agreement;
- (b) where the disclosure is reasonably required by any persons performing their obligations under this Agreement;

- (c) any disclosure to that party's own professional advisers, or its insurer; or
 - (d) if requested by the Auditor-General or the Ombudsman.
- 17.3 Subject to clause 17.2, each party will ensure that any third party to which it discloses Confidential Information is made aware of the confidential nature of the Confidential Information.

18 INDEMNITY

- 18.1 The TAFE indemnifies the Minister and the Department against all Liability the Minister and the Department may incur in respect of any Claim including Claims relating to:
- (a) loss of or damage to property;
 - (b) death or personal injury;
 - (c) a breach of any third party's Intellectual Property rights;
 - (d) a breach of privacy Law; and
 - (e) a breach of its obligations under clause 11,
- arising in any way from:
- (f) the TAFE's breach of this Agreement or any Law; or
 - (g) an unlawful or negligent act or omission of the TAFE or its officers, board members, employees, agents, volunteers or subcontractors in connection with the Project or this Agreement.
- 18.2 The TAFE's Liability will be reduced to the extent that Liability is caused or contributed to by an unlawful or negligent act or omission of the Minister, the Department or their officers or employees.
- 18.3 For the purposes of this clause 18 and clause 21:
- (a) 'Liability' includes all costs, damages, expenses and losses of any kind;
 - (b) 'Claim' includes all demand, rights, actions, suits or proceedings of any kind; and
 - (c) 'the Minister and the Department' includes their officers and employees.

19 INSURANCE AND RISK MANAGEMENT

Insurance

- 19.1 The TAFE will:
- (a) on and from the Start Date have appropriate insurance coverage for its operational and business risks with the Victorian Managed Insurance Authority;
 - (b) provide the Minister with proof of The TAFE's insurance cover on request;
 - (c) ensure that any Contractor engaged in relation to the delivery of the Project, obtains and maintains all necessary insurances;
 - (d) ensure that any consultant engaged in relation to the delivery of the Project, obtains and maintains all necessary insurances, and, in relation to professional indemnity insurance, for no less than ten (10) years after the completion of the Project;

- (e) otherwise maintain appropriate insurance coverage for the Term; and
- (f) undertake periodic reviews to make sure the TAFE's operational and business risks are adequately insured, particularly in regard to public and products liability and professional indemnity risks.

20 SUSPENSION

Suspension of Project

- 20.1 The TAFE acknowledges that it may only suspend the Project in accordance with this Agreement.
- 20.2 At any time during the Term, the Minister may by written notice, require the TAFE to immediately suspend delivery of the Project, or part of the Project if:
- (a) the TAFE has failed, or in the Minister's reasonable opinion, is likely to fail, to deliver the Project in accordance with this Agreement;
 - (b) the TAFE has misused or is reasonably suspected to have misused Funding, or has shown an inability to properly manage its Assets;
 - (c) the TAFE has breached this Agreement and written notice has been given to the TAFE by the Minister; or
 - (d) the TAFE or its officer, board member, employee, member, volunteer, subcontractor, representative or agent has breached, or is reasonably suspected to have breached, any Law material to the Project or the operation of the TAFE.
- 20.3 The TAFE will suspend delivery of all or part of the Project at the request of the Minister under clause 20.2.
- 20.4 The Minister may, by giving written notice to the TAFE, reduce the Project to be delivered under this Agreement to reflect any suspension of all or part of the Project under clause 20.2.
- 20.5 The TAFE agrees that the Minister may fund a third party to deliver all or part of the Project that have been suspended under clause 20.2.

Suspension of Funding

- 20.6 The Minister may immediately suspend payment of all or part of the Funding if any of the following occurs:
- (a) the TAFE has failed, or in the Minister's reasonable opinion is likely to fail, to deliver the Project in accordance with this Agreement;
 - (b) the TAFE has misused or is reasonably suspected to have misused Funding, or has shown an inability to properly manage its Assets;
 - (c) the TAFE has breached the Agreement and notice has been given to the TAFE by the Minister;
 - (d) the Minister has concerns on reasonable grounds that the TAFE is not financially stable; or
 - (e) the Minister has requested the TAFE to suspend all or part of the Project under clause 20.2.
- 20.7 The Minister may, by giving written notice to the TAFE, reduce the Funding to be paid by the Minister under this Agreement to reflect any suspension of all or part of the Funding under clause 20.6.

Parties may exercise rights

- 20.8 The Minister may exercise any of its rights under clauses 20 and 21 at any time during a suspension of the Project or the Funding under this clause 20.

21 TERMINATION

Termination of Current CFA

- 21.1 This clause only applies if there is a Current CFA relating to this project in force. Notwithstanding anything in the Current CFA, on and from the Execution Date, the parties agree that:

- (a) the Current CFA is terminated by mutual agreement with effect from the Execution Date;
- (b) neither party is entitled to make any Claim or recover any loss, cost, expense or damage in relation to such termination.

The TAFE right to terminate

- 21.2 The TAFE may terminate this Agreement immediately by giving the Minister written notice, if the Minister fails to pay any Milestone Payment within 40 Business Days of the achievement, to the reasonable satisfaction of the Minister of the relevant Milestone.

- 21.3 If the TAFE terminates this Agreement in accordance with clause 21.2:

- (a) the Minister will not be obliged to make any further Milestone Payments; and
- (b) the TAFE must promptly upon request re-pay to the Minister all Funding paid prior to the date of the notice under clause 21.2 (except any Funding which has been disbursed, expended or which is subject to a binding contractual commitment by the TAFE).

- 21.4 A termination pursuant to clause 21.2 will be effective from the date of receipt by the Minister of a written notice issued in accordance with clause 21.2.

Minister's right to terminate for Default

- 21.5 If a Default Event has occurred, then the Minister may, by written notice to the TAFE, terminate this Agreement.

- 21.6 A Default Event has occurred if the TAFE:

- (a) become insolvent or an administrator is appointed;
- (b) has a Change in Control which the Minister reasonably believes would negatively affect the TAFE's ability to comply with this Agreement;
- (c) behaves in such a way that the Minister believes that its continued association with the Organisation may be detrimental to the reputation of the Minister or the Department; or
- (d) fails or refuses to perform its obligations under this Agreement or otherwise breaches this Agreement, and the Minister has requested the TAFE in writing to remedy the breach or failure within 30 days of receipt of the request, and the TAFE fails to remedy, or make a reasonable attempt to remedy, the breach or failure within such time.

- 21.7 If the Minister terminates this Agreement in accordance with clause 21.5, the TAFE must within 30 days of receipt of the written notice, re-pay to the Minister all Funding paid prior to the date of the notice.

- 21.8 A termination pursuant to clause 21.5 will be effective from the date of receipt by the TAFE of the written notice issued in accordance with clause 21.5.

Minister right to terminate for convenience

- 21.9 Despite any other provision of the Agreement, the Minister may in its absolute and unfettered discretion by written notice, without cause and for any reason at any time terminate this Agreement by written notice to the TAFE.
- 21.10 A termination pursuant to clause 21.9 will be effective from the date specified in the notice pursuant to clause 21.9, which shall be no earlier than 20 Business Days from the date of receipt by the TAFE of such written notice.
- 21.11 If the Minister terminates this Agreement under clause 21.9 it will pay the reasonable costs necessarily incurred and substantiated by the TAFE that arise directly from the termination. the TAFE must use its best efforts to minimise any such costs arising from termination.
- 21.12 The total amount payable by the Minister to the TAFE, if any, on termination of this Agreement under clause 21.9 will not exceed the total amount of Funding that would have been payable under the Agreement had it not been terminated, less any amount already paid under the Agreement.

22 TRANSITION OF PROJECT

- 22.1 On expiry or termination of this Agreement for any reason or if the TAFE ceases to deliver the Project, the TAFE must, promptly upon request by the Minister:
- (a) hand over all material and Records held by the TAFE or any Contractor or consultant engaged by the TAFE necessary for the delivery of the Project, regardless of the manner of storage, to the Minister and/or to any third party nominated by the Minister.
 - (b) provide (and require any Contractor or consultant engaged by the TAFE to provide) all reasonable assistance, advice and information to the Minister to transfer all or part of the Project, functions and operations provided by the TAFE under this Agreement to the Minister or any third party nominated by the Minister in a smooth and orderly way.

23 DISPUTE RESOLUTION

Legal proceedings conditional

- 23.1 A party may not begin legal proceedings in connection with a dispute under this Agreement unless that dispute has first been dealt with under this clause 23.

Senior Executive Meeting

- 23.2 If a dispute arises under this Agreement, either party may within 20 Business Days give written notice to the other setting out in summary the particulars of the dispute and requesting that a settlement meeting take place. Senior representatives of each party (who have authority to settle the dispute) must meet within 7 days of the notice and endeavour to resolve the dispute in good faith.

Mediation

- 23.3 In the event that the meeting does not resolve the dispute within a further 20 Business Days or the dispute is not otherwise resolved within this time, then the dispute is referred to mediation before a mediator agreed on by the parties, but if the parties do not agree on a mediator within 5 Business Days after referral for

mediation, then to a mediator appointed at the request of either party by the president of Resolution Institute (Victorian Chapter).

- 23.4 If the dispute is not resolved within a further 20 Business Days after a mediation is held under clause 23.3, or if a mediation is not held within 40 Business Days of agreement upon a mediator or appointment by Resolution Institute, the parties are free to pursue their rights at law.

Urgent relief

- 23.5 Nothing in this clause 23 precludes a party from instituting proceedings to seek injunctive or declaratory relief in a court of competent jurisdiction.

Continued Performance

- 23.6 The parties will continue to perform their obligations under this Agreement despite the existence of any Dispute.

24 MISCELLANEOUS

Notice

- 24.1 Any notice or communication given or made by a party in connection with this Agreement must be executed by that party or signed by an authorised signatory of that party. A person is an authorised signatory if he or she is a director of the relevant party, or if he or she is authorised in writing by that party. Any notice sent by email is taken to be signed by the named sender.
- 24.2 Any notice or communication given to a party under this Agreement is only given if it is in writing, marked for the attention of the relevant department or key contract (if any) set out in Schedule 1, and sent in one of the following ways:
- (a) delivered or posted to that party at its address set out in Schedule 1; or
 - (b) emailed to that party at its email address set out in set out in Schedule 1; or
 - (c) faxed to that party at its fax number set out in schedule set out in Schedule 1.
- 24.3 If a party gives the other party three business days' notice of a change of its address, email address or fax number, any notice or communication is only given by that other party if it is delivered, posted or faxed to the latest address, email address or fax number.
- 24.4 Any notice or communication is to be treated as given at the following time:
- (a) if it is delivered, when it is left at the relevant address;
 - (b) if it is sent by post, three (or, in the case of a notice or communication posted to another country, nine) business days after it is posted;
 - (c) if it is sent by email, on the earlier of the sender receiving an automated message confirming delivery or, provided no automated message is received stating that the email has not been delivered, three hours after the time the email was sent by the sender, such time to be determined by reference to the device from which the email was sent; or
 - (d) if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error-free transmission to the correct fax number.
- 24.5 However, if any notice or communication is given on a day that is not a business day, or after 5.00pm, in the place of the party to whom it is sent it will be treated as having been given at the beginning of the next business day in that place.

Approvals and consents

- 24.6 Unless this Agreement expressly provides otherwise, a party may give or withhold an approval or consent in that party's absolute discretion and subject to any conditions determined by the party. A party is not obliged to give its reasons for giving or withholding a consent or approval or for giving a consent or approval subject to conditions. Where this Agreement refers to a matter being to the 'satisfaction' of a party, this means to the satisfaction of that party in its absolute discretion.

Assignments and transfers

- 24.7 A party must not assign or transfer any of its rights or obligations under this Agreement, or attempt to do so, without the prior written consent of the other party.

Costs

- 24.8 Except as otherwise set out in this Agreement, each party must pay its own costs and expenses for preparing, negotiating, executing and completing this Agreement and any document related to this Agreement.

Entire agreement

- 24.9 This Agreement contains everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this Agreement was executed.

Execution of separate documents

- 24.10 This Agreement is properly executed if each party executes either this document or an identical document. In the latter case, this Agreement takes effect when the separately executed documents are exchanged between the parties.

Exercise of rights

- 24.11 A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or any other right, power or remedy and failure by a party to exercise, or delay by a party in exercising a right, power or remedy does not prevent its exercise. Except where expressly stated to the contrary in this Agreement, the rights of a party under this Agreement are cumulative and are in addition to any other rights available to that party whether those rights are provided for under this Agreement or by law.

Further acts

- 24.12 Each party must at its own expense promptly execute all documents and do or use reasonable endeavours to cause a third party to do all things that another party from time to time may reasonably request in order to give effect to, perfect or complete this Agreement and all transactions incidental to it.

Governing law and jurisdiction

- 24.13 This Agreement is governed by the law of Victoria. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

No adverse construction

- 24.14 No term or condition of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement or that provision.

Severability

- 24.15 Each provision of this Agreement is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this Agreement in the relevant jurisdiction, but the rest of this Agreement will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

Variation

- 24.16 No variation of this Agreement will be of any force or effect unless:
- (a) it is in writing and signed by each party to this Agreement; or
 - (b) the Minister notifies the TAFE in writing of a proposed variation of this Agreement and the date the proposed variation will take effect (**Effective Date**) and the TAFE continues to deliver all or part of the project or delivers the new Project as described in the proposed variation after the Effective Date.

Waivers

- 24.17 A waiver of any right, power or remedy under this Agreement must be in writing signed by the party granting it. A waiver only affects the particular obligation or breach for which it is given. It is not an implied waiver of any other obligation or breach or an implied waiver of that obligation or breach on any other occasion. The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement does not amount to a waiver.

EXECUTION

Executed as an Agreement.

Executed for and on behalf of the **Minister for Skills and TAFE** by a duly authorised officer:

.....
Signature of witness

.....
Signature of authorised officer

.....
Name of witness (print)

.....
Name of authorised officer (print)

.....
Position of authorised officer (print)

Executed by **The TAFE** by its duly authorised delegate:

.....
Signature of witness

.....
Signature of delegate

.....
Name of witness (print)

Name of Delegate

Position of Delegate

SCHEDULE 1: DETAILS

Item No.	Description	Detail
1	Minister's Contact Details Key Contact Address Phone Email	
2	The TAFE's Contact Details Key Contact Address Phone Email	
3	Start Date	Date of Execution
4	End Date	
5	Funding	
6	The TAFE Contribution	Nil
7	Funding by other parties	Nil
8	Local Jobs First Policy (Clause 8)	<input type="checkbox"/> The Local Jobs First Policy is applicable to this Agreement. <i>[Drafting note: Tick above if the Local Jobs First Policy applies, e.g., if the Project has a budget of =>\$1,000,000 (regional) or =>\$3,000,000 (metro / state-wide).]</i> <p>If ticked, the Local Jobs First Policy is applicable to this Agreement as obligations of the TAFE and the provisions of Annexure 1 are incorporated into this Agreement.</p> <input type="checkbox"/> The Local Jobs First Policy will be applicable to contract(s) entered by the TAFE applying Funding from this Agreement. <p>If ticked, the Local Jobs First Policy is applicable to the TAFE as an obligation to pass through to contract(s) entered by the TAFE applying the Funding from this Agreement, in accordance with clause 4.7(c)(ii) and (iii).</p>

Item No.	Description	Detail
		<p><input type="checkbox"/> The Local Jobs First Policy is not applicable to this Agreement.</p> <p><i>[Drafting note: If the above is ticked and the Local Jobs First Policy does not apply, delete the content of Schedule 1 and replace it with the words 'NOT USED'.]</i></p>
9	<p>Fair Jobs Code (Clause 9)</p>	<p><input type="checkbox"/> The Fair Jobs Code is applicable to this Agreement.</p> <p><i>[Drafting note: Tick above if the Fair Jobs Code applies, e.g., the Grant is \$500,000 or more (exclusive of GST) where the key milestones specify that the Recipient will deliver new jobs.]</i></p> <p>If ticked, the Fair Jobs Code is applicable to this Agreement as obligations of the TAFE and the provisions of Annexure 2 are incorporated into this Agreement.</p> <p><input type="checkbox"/> The Fair Jobs Code will be applicable to contract(s) entered by the TAFE applying Funding from this Agreement.</p> <p>If ticked, the Fair Jobs Code is applicable to the TAFE as an obligation to pass through to contract(s) entered by the TAFE applying the Funding from this Agreement, in accordance with clause 4.7(c)(ii) and (iii).</p> <p><input type="checkbox"/> The Fair Jobs Code is not applicable to this Agreement.</p> <p><i>[Drafting note: If the above is ticked and the Fair Jobs Code does not apply, delete the content of Schedule 2 and replace it with the words 'NOT USED'.]</i></p>

SCHEDULE 2: BUSINESS CASE

SCHEDULE 3: FACILITY

SCHEDULE 4: SITE

SCHEDULE 5: SCHEDULE OF MILESTONES

Milestone Reference	Milestone Description	Milestone Date (Proposed)	Milestone Payment (\$)(incl GST)
1.			
2.			
3.			
4.			
5.			

SCHEDULE 6: PCG COMPOSITION AND TERMS OF REFERENCE

The Purpose

1. The purpose of the Project Control Group (PCG) is to provide leadership and to ensure appropriate governance and accountability processes are in place to deliver capital projects.

Membership

2. At a minimum, a PCG should have the following membership:
 - a. The TAFE The Project Manager appointed by the TAFE;
 - b. One member appointed by the TAFE, who shall be an executive employed by the TAFE, and who shall serve as the Chair of the PCG;
 - c. One member appointed by the architect;
 - d. One representative nominated by the Minister.
3. In addition to item 2, additional personnel may be invited to attend and / or report to the PCG meetings including:
 - a. principal consultant
 - b. asset or facility manager
 - c. specialist experts or consultants, such as quantity surveyor, or probity advisors
 - d. Building manager / contractor
 - e. user groups representative(s)
4. The Chair of the PCG will be the member appointed by the TAFE, who shall be an executive employed by the TAFE.

Frequency of meetings

5. From the project implementation stage, the PCG must meet regularly as it determines but no less than once every month until the completion and approval of detailed design or, for a construction project, the issue of the Final Certificate by the Superintendent under the Building Works Contract.

PCG Responsibilities

6. The PCG is responsible for:
 - a. Overseeing, planning, designing and implementation of the Project;
 - b. Developing and endorsing the scope and content of the project brief for all consultants;
 - c. Endorsing the appointment and engagement of major consultant appointments such as the principal consultant, architect, engineer, quantity surveyor, superintendent's representative and reviewing the performance of consultants for the duration of the appointment;
 - d. Reviewing and endorsing project reports submitted by consultants;
 - e. Endorsing all payments to consultants and Contractors.
 - f. Monitoring construction milestones, variations and budget;
 - g. Identifying issues, analysing and reporting risks for the project through the Department's reporting system;

- h. Agreeing on actions required to address emerging issues and risks across project delivery;
- i. Endorsing changes in scope and/or additional expenditure for the Project;
- j. Implementing mechanisms or systems to allow the PCG to efficiently discharge its contractual duties and obligations to avoid undue delay to the Project, undue increase to the Building Works Contract sum, or a breach of the Building Works Contract;
- k. Ensuring transparent decision making and communication that is inclusive of all parties.

Dispute resolution

- 7. The PCG will, so far as practicable, reach decisions on a unanimous basis in the best interests of the Project. A unanimous decision or resolution of the PCG is final and binding.
- 8. If the PCG does not, or is not able to, arrive at a unanimous decision on any matter, the PCG must refer the unresolved issue to the TAFE advising on:
 - a. the unresolved issues;
 - b. the steps the PCG has taken to resolve the issue;
 - c. the effect the unresolved issue is having, or may have both if it is not resolved or is resolved, on the project;
 - d. any critical timeframes within which to resolve the issue; and
 - e. the PCG's recommendation or options to resolve the issue including any additional costs to the project.
- 9. The Minister will consider the information provided by the PCG and, acting reasonably, issue its determination to resolve the issue within 20 Business Days of referral of the unresolved issue.
- 10. Any determination by the Minister if not accepted by the TAFE must be resolved as a dispute under the Construction Works Funding Agreement.

Projects less than \$1 million

- 1. For projects less than \$1 million, a PCG is not mandatory, however it is good practice.

SCHEDULE 7: PROJECT PLAN DETAILS

To be provided by the TAFE within 60 Business Days of Execution of this Agreement.

The Project Plan should include (at a minimum) the following:

- Milestones as identified in Schedule 5
- Gantt chart which details steps within each key stage relevant to the achievement of Milestones
- Roles and responsibilities matrix
- Processes for risk identification and management

SCHEDULE 8: PROJECT SUMMARY

SCHEDULE 9: THE TAFE'S ROLES AND RESPONSIBILITIES

TAFE NAME must:

- (1) manage the design, development and construction of the Facility in accordance with the requirements of this Agreement and the Business Case through suitable contracts for design and construction by the Contractor;
- (2) deliver (or arrange for the delivery of) relevant components of the Project in accordance with the Department's procurement policies, including where TAFE **TAFE NAME** enters contracts with a Contractor, by including suitable contractual obligations requiring the Contractor to comply with the Local Jobs First Policy and the Fair Jobs Code;
- (3) ensure that all necessary Approvals are obtained and maintained (either by it or any Contractors);
- (4) submit and finalise a Project Plan which outlines the scope of the project and identifies how the TAFE will perform its role in accordance with clause 4;
- (5) ensure that the necessary representatives of the TAFE attend Project Control Group meetings and prepare meeting minutes;
- (6) provide regular reports as detailed in clause 8 using the format, frequency and reporting system as required by the Department;
- (7) ensure that the relevant funded and non-funded Milestones are achieved by the Milestone Dates;
- (8) comply with all reasonable directions of the Minister in respect of the delivery of the Project;
- (9) where relevant, provide the courses set out in the Business Case at the Facility in accordance with the requirements of this Agreement and the Business Case; and
- (10) where practical and safe, encourage use of the completed Facility by the community, provided that such use is only permitted when the Facility (or relevant part thereof) is not required by the TAFE.

ANNEXURE 1 – LOCAL JOBS FIRST POLICY

[Drafting note: Only include this Schedule 1 if the Local Jobs First Policy applies to this Agreement.

If the Local Jobs First Policy applies only as an obligation of the TAFE in relation to contracts entered applying Funding from this Agreement or does not apply, then delete the content of this Annexure and replace it with the words 'NOT USED'.]

1. Definitions

In this Schedule:

Contract Manager means the person (however described) appointed by the Department as its representative for all communication and liaison with the Recipient for the purposes of this Agreement, and as notified by the Department to the Recipient from time to time.

Guidelines means the Local Jobs First Supplier Guidelines, available at www.localjobsfirst.vic.gov.au.

ICN means the Industry Capability Network Victoria of Level 11, 10 Queens Road Melbourne Vic, 3004 ACN 007 058 120.

Interaction Reference Number (IRN) means the number issued by the ICN to the Recipient.

IRN Form means the form submitted by the Recipient to the ICN via the VMC in accordance with clause 3.

Local Jobs First Commissioner means the person appointed under s 12 of the *Local Jobs First Act 2003*.

Local Jobs First Policy means the policy of the Victorian Government made under s 4 of the *Local Jobs First Act 2003*.

Local Jobs First Policy Commitment means the commitments of the Recipient as set out in this Schedule 1, and includes the Recipient's commitments as set out in the Reference Letter.

Reference Letter means the letter provided by the ICN to the Recipient after the Recipient has consulted with ICN regarding opportunities for local industry for the Project.

Responsible Department has the same meaning given to the term "Department" in s 3(1) of the *Local Jobs First Act 2003*.

Responsible Minister means the Minister with responsibility for administering the *Local Jobs First Act 2003*.

Victorian Local Jobs First Management Centre (VMC) means the online system developed to manage the application of the Local Jobs First Policy by suppliers (including Recipients) and Government agencies.

2. The Recipient must comply with the Local Jobs First Policy, the Local Jobs First Policy Commitments and this Schedule 1.

3. Interaction Reference Number

(a) The Recipient must comply with this clause 3 as a condition precedent to it becoming entitled to payment of the Grant under this Agreement.

- (b) To maximise opportunities for local business within the Project, within sixty (60) days of the Contract Manager's request, the Recipient must prepare and submit an IRN Form through the VMC setting out:
 - (i) details of the Project; and
 - (ii) the services or activity likely to be required to deliver the Project.
- (c) When contacted by the ICN, the Recipient must consult with ICN in respect of opportunities for local businesses to deliver the services and activity required under this Agreement.
- (d) The Recipient acknowledges and agrees that ICN will, if required:
 - (i) review and contribute to planning for the Project; and
 - (ii) participate in meetings regarding the Project.
- (e) Within twenty (20) Business Days of entering into this Agreement, the Recipient must:
 - (i) provide the IRN to the Contract Manager; and
 - (ii) inform the Contract Manager of any opportunities for local business agreed with ICN. For this purpose, the Recipient may provide the Contract Manager with a copy of the Reference Letter.

4. Record Keeping and monitoring

- (a) The Recipient must prepare and maintain records demonstrating its compliance with any Local Jobs First Policy Commitments.
- (b) The Recipient must monitor its compliance with any Local Jobs First Policy Commitments.
- (c) The Recipient acknowledges and agrees that the Responsible Department and the Department may consult with the ICN in respect of the Recipient's compliance with any Local Jobs First Policy Commitments.
- (d) The obligations of the Recipient set out in this clause 4 are in addition to and do not derogate from any other obligations of the Recipient under this Agreement.

5. Use of Information

- (a) The Recipient acknowledges and agrees that any information provided to the Department or the Responsible Department by the ICN in accordance with clause 4 may be:
 - (i) included in the Department's report of operations under Part 7 of the *Financial Management Act 1994* in respect of the Department's compliance with the Local Jobs First Policy in the financial year to which the report of operations relates;
 - (ii) provided to the Responsible Minister for inclusion in the Responsible Minister's report to the Parliament for each financial year on the implementation of the Local Jobs First Policy during that year; and
 - (iii) may be disclosed in the circumstances authorised or permitted under the terms of this Agreement or as otherwise required by Law.

6. Local Jobs First Commissioner

- (a) The Recipient acknowledges that:

- (i) it is required to comply with any information notice issued to it by the Local Jobs First Commissioner in accordance with s 24 of the *Local Jobs First Act 2003*;
 - (ii) it is required to comply with any compliance notice issued to it by the Local Jobs First Commissioner in accordance with s 26 of the *Local Jobs First Act 2003*;
 - (iii) its failure to comply with the compliance notice referred to in this clause 6(a) may result in the issue of an adverse publicity notice by the Responsible Minister under s 29 of the *Local Jobs First Act 2003*; and
 - (iv) the Local Jobs First Commissioner may:
 - (A) monitor and report on compliance with the Local Jobs First Policy; and
 - (B) request the Department to conduct an audit in relation to the Recipient's compliance with the Local Jobs First Policy.
- (b) The Recipient acknowledges that the Commissioner may recommend that the Department take enforcement proceedings against the Recipient if the Recipient has failed to comply with the Local Jobs First Policy by:
- (i) applying to a court to obtain an injunction; or
 - (ii) taking action available under this Agreement.

ANNEXURE 2 – FAIR JOBS CODE

[Drafting note: Only include this Schedule 2 if the Fair Jobs Code applies to this Agreement.

If the Fair Jobs Code applies only as an obligation of the TAFE in relation to contracts entered applying Funding from this Agreement or does not apply, then delete the content of this Annexure and replace it with the words 'NOT USED'.]

1. Definitions

In this Schedule:

Adverse Ruling means a ruling (by any court, tribunal, board, commission or other entity with jurisdiction or legal authority to determine the matter) that the Recipient has breached an applicable employment, industrial relations or workplace health and safety law;

Agency means the organisation with which the Recipient has entered into this Agreement;

Agreement means this grant agreement;

Contract Manager means the person (however described) appointed by the Agency as its representative for communications and liaison with the Recipient for the purposes of this Agreement;

DJSIR means the Department of Jobs, Skills, Industry and Regions (and its successor Government department) as the Department responsible for the FJC;

Enforceable Undertaking means a promise or agreement made by the Recipient with a regulator, Court or other body (including the Fair Work Ombudsman, WorkSafe Victoria and Wage Inspectorate Victoria) in respect of a breach or alleged/suspected breach of an applicable employment, industrial relations or workplace health and safety law;

FJC Guidelines means Fair Jobs Code Guidelines, available at www.buyingfor.vic.gov.au/fair-jobs-code-and-guides;

FJC Plan means the Recipient's Fair Jobs Code Industrial Relations and Occupational Health and Safety Plan, addressing industrial relations, occupational health and safety requirements and commitments and standards as required by the FJC;

FJC Plan Template means the template the Recipient must use when submitting a FJC Plan. The FJC Plan Template is available at www.buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies;

FJC means the Fair Jobs Code issued by the State of Victoria available at www.buyingfor.vic.gov.au/fair-jobs-code;

FJC Unit means the Fair Jobs Code Unit, an administrative group within DJSIR with responsibilities in relation to the FJC;

Notice means a notice given, delivered or served in accordance with this Agreement; and

Pre-Assessment Certificate means a certificate issued to the Recipient by the FJC Unit prior to entering into this Agreement, or which is renewed during the term of this Agreement.

2. Fair Jobs Code

- 2.1 The Recipient warrants that at the time of entering this Agreement it holds a valid Pre-Assessment Certificate.
 - 2.2 The Recipient agrees to submit to the Agency an FJC Plan using the FJC Plan Template by *[Drafting note: insert DATE to be determined by program area, considering whether the Recipient has an existing presence in Australia, or is significantly upscaling its presence in Australia as a result of the grant]* but not later than 12 months from the time of entering into this Agreement.
 - 2.3 Failure to submit the FJC Plan as specified in this Agreement will constitute a breach of the Agreement which will enable the Agency to exercise its rights under clause 7 of this Schedule.
 - 2.4 In performing its obligations under this Agreement, the Recipient acknowledges and agrees that it shall:
 - (1) continue to hold a valid Pre-Assessment Certificate;
 - (2) submit the FJC Plan;
 - (3) comply with its FJC Plan;
 - (4) perform all obligations required to be performed under the FJC Plan by the due date; and
 - (5) comply with the FJC.
 - 2.5 If at any time during the term of this Agreement the Recipient's Pre-Assessment Certificate is revoked by the FJC Unit that revocation will constitute a breach in this Schedule which will enable the Agency to exercise its rights under clause 7 of this Schedule.
 - 2.6 The Recipient acknowledges and agrees that the obligations for holding and maintaining a Pre-Assessment Certificate apply during the term of this Agreement and any extensions to the term and until all of its reporting obligations set out in clause 4 of this Schedule are fulfilled.
- 3. Verification of Recipient's compliance with the Fair Jobs Code**
- 3.1 The Recipient must, on request by the Agency, provide a copy of the Pre-Assessment Certificate or any related correspondence with the FJC Unit.
 - 3.2 If, during the term of this Agreement, the Recipient's Pre-Assessment Certificate expires the Recipient must provide Notice to the Agency of the expiry within 10 Business Days.
 - 3.3 If the Recipient fails to promptly take steps to renew an expired Pre-Assessment Certificate after notifying the Agency of expiration, the expiration will constitute a breach of this Schedule which will enable the Agency to exercise its rights under clause 7 of this Schedule.
- 4. Reporting**
- 4.1 The Recipient must prepare and maintain records to demonstrate its compliance with, and implementation of, the FJC Plan.
 - 4.2 The Recipient must provide reports which demonstrate the Recipient's progress towards implementing the FJC Plan at a time or times to be determined by the Agency.
 - 4.3 Within twelve (12) months of this Agreement ending, the Recipient must provide to the Agency:

- (6) a final report identifying FJC Plan commitments and actual achievements; and
 - (7) a statutory declaration to confirm that the information contained in the final FJC Plan report is true and accurate. The statutory declaration must be made by a director of the Recipient or the Recipient's Chief Executive Officer or Chief Financial Officer.
- 4.4 At the request of the Agency, the Recipient must provide further information or explanation of any differences between expected and achieved FJC Plan outcomes.
- 4.5 The reporting obligations in this Schedule are in addition to and do not derogate from any other reporting obligations as set out in this Agreement.

5. Ongoing duty of disclosure and cooperation and audits

- 5.1 If during the term of this Agreement, the Recipient is the subject of an Adverse Ruling or Enforceable Undertaking it must provide Notice to the Agency and the FJC Unit within 10 Business Days of the Adverse Ruling or Enforceable Undertaking being made.
- 5.2 During the term of this Agreement the Recipient must:
- (8) cooperate with all reasonable requests from the Agency seeking evidence of the Recipient's compliance with the FJC and the FJC Plan;
 - (9) permit the Contract Manager, an accountant or auditor on behalf of the Agency, DJSIR or any other person authorised by the Agency or DJSIR, from time to time during ordinary business hours and upon Notice, to inspect and verify all records maintained by the Recipient relating to compliance with the FJC and FJC Plan under this Agreement; and
 - (10) ensure that its employees, agents and subcontractors give all reasonable assistance to any person authorised by the Agency or DJSIR to undertake such audit or inspection.
- 5.3 The Agency will bear all costs for any audit in accordance with clause 5.2(9) of this Schedule.
- 5.4 The Recipient acknowledges and agrees that the Agency, DJSIR, or their duly authorised representatives (including the FJC Unit), are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Recipient's compliance with the FJC.
- 5.5 The obligations set out in this clause 5 are in addition to any other obligation under this Agreement.
- 5.6 A failure to comply with this clause 5 will constitute a breach of this Schedule which will enable the Agency to exercise its rights with respect to clause 7 of this Schedule.

6. Use of information

The Recipient acknowledges and agrees that:

- 6.1 The FJC Unit will assess the Recipient's compliance with the FJC.
- 6.2 Information regarding the Recipient's compliance with the FJC including any disclosures regarding Adverse Rulings or Enforceable Undertakings:

- (a) will be reported by the Agency to the FJC Unit in compliance with the Agency's obligations under the FJC; and
- (b) may be disclosed in the circumstances authorised or permitted under the terms of this Agreement or as otherwise required by Law.

6.3 Nothing in this provision removes the obligation for the Recipient to report Adverse Rulings or Enforceable Undertakings to the FJC Unit as per clause 5.

7. Consequences of breach

Any breach of the provisions of this Schedule will enable the Agency, in its absolute discretion, to do any or all of the following:

- (a) suspend the Agreement until such time as the breach has been remedied to the satisfaction of the Agency and within a timeframe acceptable to the Agency;
- (b) by written notice immediately terminate the Agreement; or
- (c) exercise any rights that it has under this Agreement.