



Australian Government  
Department of Education and Training

# Deed for Student Mobility Programmes

between the

**COMMONWEALTH OF AUSTRALIA**

as represented by the

**Australian Government Department of Education and Training**

and

**[Funding Recipient name]**

regarding

**Student Mobility Programmes  
offered from rounds 2016 – 2020**

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## Parties

COMMONWEALTH OF AUSTRALIA ('Commonwealth', 'Us', 'We' or 'Our'), represented by and acting through the Australian Government Department of Education and Training

[ABN 12 862 898 150] ('Department')

AND

[Funding Recipient name] [ABN], ('You', 'Your' or 'Yourself')

## Background

- A. The Australian Government is committed to promoting opportunities for more Australians to have an overseas study experience and to encourage international students to experience what Australia has to offer.
- B. The Department provides support for student mobility to eligible Australian education providers through a suite of international mobility programmes administered by the Department. These include:
  - (a) Endeavour Mobility Grants programmes. Endeavour Mobility Grants involves grants provided to eligible Australian higher education and vocational education and training providers which in turn provide grants to Australian students to undertake mobility projects globally. The Funding Rounds for Endeavour Mobility Grants are anticipated to open once per calendar year, with funding being available to support mobility projects commencing in the following calendar year. The mobility programmes that provide Endeavour Mobility Grants comprise the following:
    - (i) International Student Exchange Programme;
    - (ii) Endeavour Cheung Kong Student Exchange Programme;
    - (iii) Study Overseas Short-term Mobility Programme;
    - (iv) Asia Postgraduate Programme;
    - (v) Vocational Education and Training Outbound Mobility Programme; and
    - (vi) Asia Vocational Education and Training Programme.
  - (b) New Colombo Plan Mobility Programme, involving grants provided to eligible Australian universities which in turn provide grants to Australian undergraduate students to undertake mobility projects in specified host locations. The Funding Rounds for the New Colombo Plan Mobility Programme are anticipated to open once per calendar year, with funding being available to support mobility projects commencing in the following calendar year, and
  - (c) Any other student mobility programme notified by Us to You in accordance with clause 1.4 below.
- C. You are committed to helping achieve the goals of the Department's student mobility programmes and You may, from time to time, apply for funding from Us to undertake a Project according to this Deed.
- D. You agree to accept any Funding, that may be provided to You by Us to undertake a Project, on the terms and conditions set out in an Agreement (which is entered into according to this Deed).

## Agreed Terms

### 1. Interpretation

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1.1 In this Deed and each Agreement, unless the contrary intention appears:

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

**'Agreement'** means an agreement for a Project formed pursuant to clause 3 of this Deed;

**'Alternate International Liaison Officer'** or **'AILO'** is the person authorised by You to provide assistance to the International Liaison Officer;

**'Auditor-General'** means the office established under the *Auditor-General Act 1997* and includes any other entity that may, from time to time, perform the functions of that office;

**'Australian Accounting Standards'** refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the *Australian Securities and Investments Commission Act 2001*;

**'Australian Auditing Standards'** refers to the standards prepared by the Auditing and Assurance Standards Board and generally accepted audit practices to the extent they are not inconsistent with those standards;

**'Australian Privacy Principle'** has the meaning given in section 14 of the Privacy Act;

**'Business Day'** means any day of the week other than Saturday, Sunday or a public holiday in the Australian Capital Territory;

**'Change in Control'** of a partnership, trust, joint venture, corporation or other entity, means:

- (a) the ability to cast or control the casting of more than 50% of the maximum number of votes that might be cast at any general meeting (or equivalent) of the entity; or
- (b) the holding of more than 50% of the issued ordinary share capital, the equity, or other ownership interest, in the entity;

**'Commonwealth Material'** means any Material provided by Us to You or which is derived from that Material, including the Material (if any) specified in an Agreement as 'Commonwealth Material' (but does not include Reporting Material or Project Material);

**'Commonwealth Purposes'** does not include commercialisation or the provision of the Material to a third party for its commercial use.

**'Confidential Information'** means information that is by its nature confidential or a party knows or ought to know is confidential, but does not include information which is or becomes public knowledge other than by breach of the contract or any other confidentiality obligation;

**'Conflict'** refers to a conflict of interest, or risk of a conflict of interest, or an apparent conflict of interest arising through You engaging in any activity or obtaining any interest that is likely to interfere with or restrict You in undertaking a Project fairly and independently;

**'Contact Officer'** means the person occupying the position specified in Item K of Schedule 1;

**'Date of this Deed'** means the date specified on the signatory page of this Deed;

**'Deed'** means this Deed for Student Mobility Programmes;

**'Department'** includes any department or agency of the Commonwealth of Australia which is from time to time responsible for the administration of this Deed, which, at the Date of this Deed, is the Australian Government Department of Education and Training;

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

**'Existing Material'** means Material developed independently of an Agreement that is incorporated in or supplied as part of the Reporting Material;

**'Funding' or 'Funds'** means the amount(s) (cash or in kind) payable by Us to You under an Agreement for a Project including interest earned on that amount;

**'Funding Round'** refers to one of a series of annual instances in which We invite Applicants to submit applications for funding of student mobility projects under a student mobility programme. In each Funding Round, We evaluate and select applications for funding, and offer funding towards successful applications;

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

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

**'Guidelines'** refers to the programme guidelines described in an Agreement or as otherwise notified by Us to You from time to time, as amended from time to time by Us;

**'International Liaison Officer' or 'ILO'** is the person authorised by You and identified on the ISEO system to oversee all administrative processes relating to this Deed and any Agreement, including meeting reporting requirements;

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

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

**'ISEO Conditions of Use'** are the conditions which govern use of the Department's ISEO System, available at <https://iseo.education.gov.au/Information/Terms.aspx> or as otherwise notified by Us to You from time to time;

**'ISEO System' or 'ISEO'** is the International Student Exchange Online System. ISEO is the Department's electronic communication system through which You can register, apply for Funding, receive offers of Funding and report on Project outcomes online, available at <https://iseo.education.gov.au> or as otherwise notified by Us to You from time to time;

**'Material'** includes documents, equipment, software (including source code and object code), goods, information and data stored by any means including all copies and extracts of the same;

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

**'Privacy Act'** means the *Privacy Act 1988* (Cth);

**'Privacy Commissioner'** means the Office of the Privacy Commissioner established under the Privacy Act and includes any other entity that may, from time to time, perform the functions of that Office;

**'Project'** means the activity or activities described in an Agreement, and includes the provision of Reporting Material;

**'Project End Date'**, in relation to a Project, means:

- (a) the date specified as the 'Project End Date' in an Agreement; or
- (b) if no date is specified, the day after You have done all that You are required to do under an Agreement to Our satisfaction;

**'Project Material'** means any Material, other than Reporting Material, created or developed by You as a result of a Project;

**'Project Schedule'** means a document substantially in the form of Schedule 2, which when completed and signed by the parties in accordance with clause 3 of this Deed, will form part of the Agreement in relation to a Project (refer clause 3.8 of this Deed);

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

**'Reporting Material'** means all Material provided to Us for reporting purposes on matters including the use of Funding, whether or not outcomes have been achieved, as required under an Agreement;

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

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

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

- 1.2 In this Deed and any related Agreement, unless the contrary intention appears:
- (a) words in the singular include the plural and vice versa;
  - (b) words importing a gender include the other gender;
  - (c) a reference to a person includes a partnership and a body whether corporate or otherwise;
  - (d) clause headings or words in bold format are inserted for convenience only, and have no effect in limiting or extending the language of provisions;
  - (e) all references to dollars are to Australian dollars;
  - (f) unless stated otherwise, a reference to legislation is to legislation of the Commonwealth, as amended from time to time;
  - (g) an uncertainty or ambiguity in the meaning of a provision will not be interpreted against a party just because that party prepared the provision; and
  - (h) where a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning.
- 1.3 To the extent of any inconsistency between two or more documents which form part of this Deed, those documents will be interpreted in the following descending order of priority (unless the contrary intention is expressly stated):
- (a) clauses 1 – 23 of this Deed;
  - (b) the Schedules to the Deed; and
  - (c) documents incorporated by reference in this Deed.
- 1.4 The student mobility programmes offered by the Australian Government may change from time to time. Accordingly We may, by notice to You:
- (a) advise You of an additional student mobility programme that is supported by Us, for which You may apply for funding from Us to undertake Projects as set out in this Deed; and
  - (b) advise You that an existing student mobility programme is no longer supported by Us, and that You may no longer apply for funding from Us in relation to that programme.

## **2. Term**

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- 2.1 This Deed commences on either:
- (a) 1 August 2015; or
  - (b) where the Date of this Deed is later than the date specified in clause 2.1(a), this Deed will commence on the Date of this Deed.

2.2 **Subject to this Deed, this Deed will continue in force until 1 August 2020.**

2.3 The Department may unilaterally extend the term of this Deed for an additional period of one year, on the terms and conditions in effect at that point in time, by giving You written notice at least 30 calendar days before 1 August 2020.

### **3. Formation of Agreements**

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3.1 During an open Funding Round You may submit an application to Us through the ISEO System for funding of a student mobility project or project(s). At all times You agree to access and use the ISEO system in accordance with the ISEO Conditions of Use.

3.2 Each application for funding of a student mobility project must be in the form required by Us from time to time, and contain all information required by Us, as specified on the ISEO System.

3.3 You authorise the personnel identified by You as the ILO and AILO through the ISEO System to access and use the ISEO System on Your behalf, pursuant to the ISEO Conditions of Use.

3.4 If We decide in Our absolute discretion that Your application for funding for a student mobility project is successful and We wish to grant You funding for the Project, We will:

- (a) determine at Our discretion the amount of funding We will offer You; and
- (b) make available to You, Our offer of funding for the project through a Project Schedule on the ISEO System that details the Project, the Funding and any additional conditions upon which the Funding is offered.

3.5 You may apply for funding for multiple student mobility projects relating to a student mobility programme or different student mobility programmes within the same Funding Round. If You are successful in more than one application, You will receive an offer of Funding for each Project in the form of a separate Project Schedule.

3.6 You must print and sign a copy of the Project Schedule, and return it to Us through the ISEO System within 15 Business Days to be executed by Us.

3.7 Upon Our execution of a Project Schedule submitted by You, an Agreement will be formed between Us and You in respect of the Project described in the Project Schedule.

3.8 We will provide You as soon as practicable with the Project Schedule which has been executed by Us.

3.9 Each Project Schedule executed in accordance with this clause 3 will give rise to a separate Agreement. The terms and conditions of an Agreement will comprise:

- (a) the terms and conditions specified in a signed Project Schedule;
- (b) sub-clauses 1.1 and 1.2 and clauses 5 - 22 of this Deed;
- (c) the terms and conditions specified in Schedule 1 to this Deed; and
- (d) any variation to this Deed or the Project Schedule, mutually executed by the parties.

3.10 To the extent of any inconsistency between two or more documents which form part of an Agreement, those documents will be interpreted in the following descending order of priority:

- (e) the Project Schedule (as varied from time to time);
- (f) this Deed (as varied from time to time);
- (g) the attachments to the Project Schedule; and
- (h) any other document referred to in the Project Schedule.

3.11 You acknowledge that:

- (a) We are not bound by virtue of this Deed to enter into any particular Agreement or any Agreement at all, or otherwise provide any Funds to You; and
- (b) We make no guarantee or representation about the specific funding We may offer under a Funding Round, nor about the level of funding (if any) We may in Our absolute discretion make available for any particular programme(s), in total or during a particular Funding Round.

#### **4. Funding under Agreements**

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- 4.1 The total amount of Funding paid to You may comprise certain amounts for each Project as specified in the relevant Agreement. You must spend each specified amount only for the Project to which it relates and in accordance with the relevant Agreement.
- 4.2 Without limiting Our rights, We may withhold or suspend any payment in whole or in part if:
  - (i) We reasonably believe You have not performed Your obligations under this Deed or an Agreement; or,
  - (j) You have outstanding or unacquitted money under any arrangement (whether contractual or statutory) with Us.
- 4.3 If We exercise Our rights under clause 4.2, You must continue to perform any obligations under this Deed or an Agreement, unless We agree otherwise in writing.



## **5. Subcontracting**

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- 5.1 You must not, without Our prior written approval, subcontract the performance of any obligations under an Agreement. In giving approval, We may impose terms and conditions as We think fit.
- 5.2 If We give our approval according to clause 5.1 in relation to an Agreement, You remain fully responsible for the performance of Your obligations under the Agreement at all times, including in relation to any tasks undertaken by subcontractors.
- 5.3 You must ensure that any subcontract entered into for the purposes of an Agreement is consistent with Your obligations under the Agreement.

## **6. Assignment and Novation**

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

## **7. Commonwealth, Project and Reporting Material**

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### *Commonwealth Material*

- 7.1 Ownership of any Commonwealth Material, including Intellectual Property Rights in that Material, remains vested at all times in Us but We grant You a licence to use, copy and reproduce that Material only for the purposes of this Deed or an Agreement.
- 7.2 You must keep safely and maintain Commonwealth Material You have been given for the purposes of this Deed or an Agreement.
- 7.3 You must retain all Commonwealth Material remaining in Your possession for 7 years after the end of this Deed, unless otherwise specified in the Agreement.

### *Project and Reporting Material*

- 7.4 You own the Intellectual Property Rights in Material created undertaking a Project.
- 7.5 You give the Commonwealth a non-exclusive, irrevocable, royalty-free licence to use, reproduce, publish and adapt Project Material and Reporting Material for Commonwealth Purposes.
- 7.6 This Agreement does not affect the ownership of Intellectual Property Rights in Existing Material.

## **8. Confidential Information**

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- 8.1 Subject to sub-clause 8.5:
  - (a) You must not, without Our prior written approval, disclose any of Our Confidential Information to a third party; and
  - (b) We must not, without Your prior written approval, disclose any of Your Confidential Information to a third party.
- 8.2 In giving written approval to disclosure, a party may impose conditions as it thinks fit, and the other party must agree to comply with the conditions.
- 8.3 We may at any time require You to arrange for any person engaged in, or in relation to, the performance or management of this Deed or an Agreement to give written undertakings, in a form required by Us, relating to the non-disclosure of Our Confidential Information.

- 8.4 If You receive a request under sub-clause 8.3, You must promptly arrange for all undertakings to be given.
- 8.5 The obligations on the parties under this clause 8 will not be breached if Confidential Information is:
- (c) disclosed by Us or You to the responsible Australian Government Minister;
  - (d) disclosed by Us, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
  - (e) authorised or required by law or public accountability requirements, to be disclosed; or
  - (f) in the public domain otherwise than due to a breach of this clause 8.

## **9. Indemnity**

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- 9.1 You agree to indemnify Us against any:
- (a) loss or liability incurred by Us;
  - (b) loss of or damage to Our property; or
  - (k) loss or expense incurred by Us in dealing with any claim against Us, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by Us;
- arising from:
- (i) any act or omission by You, or any of Your employees, agents, or subcontractors in connection with this Deed or an Agreement, where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, or expense;
  - (ii) any breach by You or any of Your employees, agents, subcontractors of obligations or warranties under this Deed or an Agreement;
  - (iii) any use or disclosure by You, Your officers, employees, agents, subcontractors of Personal Information held or controlled in connection with this Deed or an Agreement; or
  - (iv) the use by Us of the Reporting Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights (including moral rights) in Reporting Material.
- 9.2 Your liability to indemnify Us under this clause 9 will be reduced proportionately to the extent that any fault on Our part contributed to the relevant loss, damage, expense or liability.
- 9.3 Our right to be indemnified under this clause 9 is in addition to, and not exclusive of, any other right, power, or remedy provided by law, but We are not entitled to be compensated in excess of the amount of the relevant loss, damage, expense or liability.
- 9.4 In this clause 9, “fault” means any negligent or unlawful act or omission or wilful misconduct.

## **10. Conflict of Interest**

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- 10.1 You warrant that, to the best of Your knowledge after making reasonable inquiries, at the date of signing this Deed and at the formation of each Agreement, no Conflict exists or is likely to arise in the performance of Your obligations under this Deed or an Agreement.
- 10.2 If during the term of this Deed or an Agreement a Conflict arises, or is likely to arise, You must:
- (g) immediately notify Us in writing of that Conflict and of the steps You propose to take to resolve or otherwise deal with the Conflict;
  - (h) make full disclosure to Us of all relevant information relating to the Conflict; and
  - (i) take steps as We may, if We choose to, reasonably require to resolve or otherwise deal with that Conflict.

- 10.3 If You fail to notify Us under this clause 10, or are unable or unwilling to resolve or deal with the Conflict as required, We may terminate this Deed or relevant Agreement under clause 14.

## **11. Negation of Employment, Partnership and Agency**

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- 11.1 You will not, by virtue of this Deed or an Agreement, be or for any purpose be deemed to be Our employees, partners or agents.
- 11.2 You must not represent Yourself, and must ensure that Your employees, partners, agents or sub-contractors do not represent themselves, as being Our employees, partners or agents.

## **12. Dispute Resolution**

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- 12.1 Subject to clause 12.4 the parties agree not to commence any legal proceedings in respect of any dispute arising under this Deed or an Agreement that cannot be resolved by informal discussion, until the procedure provided by this clause 12 has been used.
- 12.2 The parties agree that any dispute arising during the course of this Deed or an Agreement is to be dealt with as follows:
- (j) the party claiming that there is a dispute will send the other party a written notice setting out the nature of the dispute; and
  - (k) the parties will try to resolve the dispute through direct negotiation by persons to whom they have given authority to resolve the dispute.
- 12.3 The parties have 10 Business Days after the receipt of the notice to reach a resolution or to agree that the dispute is to be submitted to mediation or some alternative dispute resolution procedure; and if:
- (l) there is no resolution of the dispute;
  - (m) there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
  - (n) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 Business Days after the submission, or extended time as the parties may agree in writing before the expiration of the 15 Business Days,
- then either party may commence legal proceedings.
- 12.4 This clause 12 does not apply if:
- (o) either party commences legal proceedings for urgent interlocutory relief;
  - (p) action is taken by Us under clauses 13 or 14; or
  - (q) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the law by You.

## **13. Termination On Notice**

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- 13.1 We may, at any time, by written notice to You, terminate or reduce the scope of this Deed or an Agreement (without prejudice to any accrued rights or remedies of either party).
- 13.2 Upon receipt of a notice of termination or reduction in scope You must:
- (r) stop the performance of Your obligations as specified in the notice and comply with any other directions or requests included in the notice; and
  - (s) take all available steps to minimise loss resulting from that termination.
- 13.3 In the event of termination under this clause of an Agreement, the Commonwealth will be liable only to:

- (a) pay any part of the Funding due and owing to You under the Agreement at the date of the notice; and
- (b) reimburse any reasonable expenses You have unavoidably incurred that relate directly to the termination of the Agreement and are not covered by clause 13.3(a).

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

- (a) Your compliance with the relevant Agreement; and
- (b) the total amount of the Funding under the Agreement.

13.5 You will not be entitled to compensation for loss of prospective profits or benefits that would have been conferred on You.

#### **14. Termination For Default**

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14.1 We may terminate an Agreement by notice to You where We reasonably believe You:

- (t) have breached the Agreement and the breach cannot be rectified;
- (u) have breached the Agreement, and You do not rectify the breach within 10 Business Days after receiving a notice in writing from Us to do so;
- (v) have provided false or misleading statements in Your application for Funding relating to the Agreement;
- (w) are unable to pay all Your debts when they become due;
- (x) are an incorporated body, and:
  - (i) You fail to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001*;
  - (ii) proceedings are initiated to obtain an order for Your winding up or any shareholder, member or director convenes a meeting to consider a resolution for Your winding up;
  - (iii) You come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* or equivalent provisions in other legislation, or an order has been made to place You under external administration; or
  - (iv) notice is served on You or proceedings are taken to cancel Your incorporation or registration or to dissolve You as a legal entity; or
- (y) have ceased to carry on a business relevant to the performance of the Agreement; or
- (z) have had a Change in Control that adversely affects Your ability to perform the Agreement.

14.2 We may terminate this Deed by notice to You if We become entitled to terminate an Agreement entered into under this Deed.

## **15. Entire Agreement, Variation and Severance**

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- 15.1 This Deed and each Agreement records the entire agreement between the parties in relation to the subject matter of those documents.
- 15.2 Except for action We are expressly authorised to take elsewhere in this Deed or an Agreement, no variation of this Deed or an Agreement is binding unless it is agreed in writing and signed by the parties.
- 15.3 If a court or tribunal says any provision of this Deed or an Agreement has no effect or interprets a provision to reduce an obligation or right, this does not invalidate, or restrict the operation of, any other provision.

## **16. Applicable Law and Jurisdiction**

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- 16.1 This Deed and an Agreement are governed by the laws for the time being in force in the Australian Capital Territory and the parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

## **17. Compliance With Laws and Our Policies**

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- 17.1 You must, in carrying out Your obligations under this Deed or an Agreement, comply with:
- (aa) all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or local authority; and
  - (bb) any Commonwealth policies notified by Us to You in writing.

## **18. Protection of Personal Information**

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- 18.1 When dealing with Personal Information for the purposes of this Deed or an Agreement, you agree:
- (cc) not to do anything which, if done by the Commonwealth, would be a breach of the requirements of Division 2 of Part III of the Privacy Act; and
  - (dd) to comply with any of our directions, guidelines, determinations or recommendations, to the extent that they are consistent with your obligations referred to in clause 18.1(a).
- 18.2 If you become aware of any breach or possible breach of this clause 18, you must notify us immediately.
- 18.3 You acknowledge that We may disclose or publish details about an Agreement or a Project. The details may include (but are not limited to) Your name, the Funding amount for the Agreement and/or the Project and the location where the Project is being delivered or performed.
- 18.4 You must obtain any Subcontractor's express consent for the disclosure to Us of the Subcontractor's identity (and their Personal Information, if the Subcontractor is an individual). The consent obtained must extend to allowing Us to disclose for reporting purposes the Subcontractor's identity and the existence and nature of the Subcontract.

## **19. Freedom of Information Requests**

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- 19.1 In this clause 19:
- (a) 'FOI Act' means the *Freedom of Information Act 1982* (Cth); and
  - (b) 'document' and 'Commonwealth contract' have the same meaning as in the FOI Act.
- 19.2 This clause 19 applies to the extent that an Agreement is a Commonwealth contract.
- 19.3 Where We have received a request for access to a document created by You or a Subcontractor, or in Your possession or that of Your Subcontractor, which relates to the performance of an Agreement (and not to the entry into an Agreement), We may at any time by

written notice require You to provide the document to Us and You must, at no additional cost to Us, promptly comply with the notice.

19.4 You must include provisions in all of your Subcontracts that will enable you to comply with your obligations under this clause 19.

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## **20. Insurance**

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20.1 You agree to maintain adequate insurance for the duration of an Agreement and provide Us with proof when requested.

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## **21. Notices**

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21.1 A party giving notice under this Deed or an Agreement must do so in writing or by Electronic Communication and;

(ee) if given by You:

(v) marked for the attention of the Contact Officer; and

(vi) hand delivered or sent by pre-paid post or Electronic Communication to the address specified for the Contact Officer in Item M of Schedule 1; or

(ff) if given by Us:

(vii) marked for the attention of the person identified by You through ISEO as the International Liaison Officer; and

(viii) hand delivered or sent by pre-paid post or Electronic Communication to the contact address specified in the ISEO System.

21.2 A notice given under sub-clause 20.1 is taken to be received:

(gg) if hand delivered, on delivery;

(hh) if sent by pre-paid post, 5 Business Days after the date of posting; or

(ii) if sent by Electronic Communication, at the time that would be the time of receipt under the Electronic Transactions Act 1999 if a notice was being given under a law of the Commonwealth.

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## **22. Waiver**

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

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

22.3 Waiver of any provision of, or right under, this Deed or an Agreement:

must be in writing signed by the party entitled to the benefit of that provision or right; and

is effective only to the extent set out in the written waiver.

22.4 In this clause 21 'rights' means rights or remedies provided by this Deed, an Agreement or at law.

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## **23. Survival of Deed clauses**

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23.1 The clauses listed in this clause and all clauses required to give effect to those clauses survive the expiration or earlier termination of this Deed, namely clauses 7, 8, 9, 18 and 19.

**THIS DEED FOR STUDENT MOBILITY PROGRAMMES** is made on the ..... day  
of  
..... 2015

**EXECUTED BY THE PARTIES AS A DEED**

SIGNED, SEALED AND DELIVERED  
for and on behalf of the  
COMMONWEALTH OF AUSTRALIA  
represented by and acting through  
the Australian Government  
Department of Education and  
Training  
(ABN: 12 862 898 150)

by:

.....  
..... (signature)

.....  
Branch Manager  
International Mobility Branch  
International Group

in the presence of:

.....  
..... (printed name of witness) ..... (signature of witness)

SIGNED, SEALED AND DELIVERED  
for and on behalf of the Funding  
Recipient name  
(ABN:)

by:

.....  
..... (printed name of authorised delegate) ..... (signature of authorised delegate)

in the presence of:

.....  
..... (printed name of witness) .....(signature of witness)

# Schedule 1 to Deed for Student Mobility Programmes – Conditions of Funding

## A. Undertaking the Project

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A.1 You must carry out a Project:

- (jj) in the manner specified in the Agreement for the Project;
- (kk) within the timeframe specified in the Agreement for the Project; and
- (ll) in accordance with the Agreement for the Project, diligently, effectively and to a high professional standard.

SAMPLE



## **B. Payment of Funding**

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- B.1 We agree to pay the Funding for a Project to You in accordance with the relevant Agreement.
- B.2 We may by notice to You withhold payment of any amount of the Funding for a Project where We reasonably believe You have not complied with the Agreement for the Project or You are unable to undertake the Project in accordance with the Agreement.
- B.3 A notice under clause B.2 will contain the reasons for any payment being withheld and the steps You can take to address those reasons.
- B.4 We will pay the withheld amount once You have satisfactorily addressed the reasons contained in a notice under clause B.2.
- B.5 To be correctly rendered, an invoice provided to Us must include the following information:
- (a) where applicable, the words “tax invoice” stated prominently;
  - (b) Your name and ABN;
  - (c) the Department of Education and Training as the recipient;
  - (d) the date of issue of the invoice;
  - (e) the title of the Agreement and the agreement number (if any) or date of execution of the Agreement;
  - (f) the name of the Project and the Funding Round of the student mobility programme to which the invoice relates;
  - (g) the total amount payable (including, where applicable, GST);
  - (h) where applicable, the GST amount shown separately; and
  - (i) the nominated bank account details for payment of the invoice by electronic funds transfer.
- B.6 An invoice is not correctly rendered where:
- (a) it includes an amount that is not properly payable under the Agreement or is incorrectly calculated; or
  - (b) it relates to a payment in relation to which We have exercised our rights under clause B.2 (Schedule 1) or clause 4.2 of this Deed.

## **C. Taxes, duties and government charges**

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- C.1 Subject to this clause C, You must pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of the Agreement.
- C.2 In this clause C, words and expressions which are not defined in the Agreement but which have a defined meaning in the GST Act have the same meaning as in the GST Act.
- C.3 Unless otherwise expressly stated, all sums payable and consideration to be provided under the Agreement are exclusive of GST.
- C.4 If GST is payable by a supplier on any supply made under the Agreement, the recipient of the supply will pay to the supplier an amount equal to the GST payable on the supply, in addition to and at the same time that the consideration for the supply is to be provided under the Agreement.

- C.5 (a) Except where sub-clause C.5(b) applies:
- i. the supplier must deliver a tax invoice or an adjustment note to the recipient of the supply before the supplier is entitled to payment of an amount under clause C.4; and
  - ii. the recipient of the supply can withhold payment of the amount payable under clause C.4 until the supplier provides a tax invoice or an adjustment note as appropriate.
- (b) If GST is imposed on any supply made by You to Us under the Agreement in return for all or any part of the Funding, We may issue a 'recipient created tax invoice' to You for the supply in question (and an adjustment note for any adjustment event in respect of that supply) and You must not issue a tax invoice (or adjustment note) for or in respect of the supply. Each party warrants that it is GST registered and agrees that it will promptly notify the other party if it ceases to be GST registered.
- C.6 If an adjustment event arises in respect of a taxable supply made by a supplier under the Agreement the amount payable by the recipient of the supply under clause C.4 will be recalculated to reflect the adjustment event and a payment will be made by the recipient of the supply to the supplier or by the supplier to the recipient of the supply as the case requires.
- C.7 No party may claim from the other an amount for which the first party can obtain an input tax credit.

#### **D. Management of Funding**

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- D.1 You must:
- (mm) ensure that the Funds are held in an account in Your name, and which You solely control, with a bank or credit union carrying on banking business in Australia;
  - (nn) notify Us, prior to the receipt of any Funds, of details sufficient to identify the account;
  - (oo) on request from Us, provide Us and the authorised deposit-taking institution with an authority for Us to obtain all details relating to any use of the account in respect of the Agreement; and
  - (pp) identify the receipt and expenditure of the Funds separately within Your accounting Records so that at all times the Funds are identifiable and ascertainable.
- D.2 You may include Funds under more than one Agreement made under the Deed in one bank account.
- D.3 You must keep financial Records relating to each Project to enable:
- (qq) all income and expenditure related to the Project to be identified in Your accounts;
  - (rr) the preparation of financial statements in accordance with Australian Accounting Standards; and
  - (ss) the audit of those Records in accordance with Australian Auditing Standards.

- D.4 You must not use the Funds for any other purpose than for those prescribed in the Agreement, including:
- (tt) as security to obtain, or comply with, any form of loan, credit, payment or other interest; or
  - (uu) for the preparation of, or in the course of, any litigation.

## **E. Repayment of Funding**

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- E.1 If:
- (vv) at any time, an overpayment by Us to You occurs, including where an invoice is found to have been incorrectly rendered after payment; or
  - (ww) at the Project End Date (or if the Agreement or a Project is terminated earlier, the date of termination) some or all of the Funding relating to a Project has not been:
    - (ix) spent in accordance with the Agreement; or
    - (x) acquitted to Our satisfaction;
- then this amount must be repaid to Us within 20 Business Days after You receive a written notice from Us, or dealt with as directed in writing by Us.
- E.2 An overpayment may be recovered from You, including by offsetting that overpayment against any amount subsequently due to You under the Agreement.
- E.3 If an overpayment is not repaid to Us, Interest is payable on the amount after the expiry of the 20 Business Days' notice referred to in clause E.1, until the amount is paid in full.
- E.4 Any amount owed to Us under clause E.1 and any Interest owed under clause E.3, is recoverable by Us as a debt due to Us by You without further proof of the debt by Us.
- E.5 An adjustment note must be provided to Us if required by the GST Act, including where You repay some or all of the Funding to Us.

## **F. Acknowledgment and Publicity**

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- F.1 You must, in all publications, promotional and advertising materials, public announcements and activities by You or on Your behalf in relation to a particular Project, or any products, processes or inventions developed as a result of the Project:
- (xx) ensure that no comment is included or made that is party political in nature;
  - (yy) acknowledge the financial and other support You have received from Us, and from our funding partners (where appropriate and as notified to You by Us), including the specific dollar amount, all in the manner set out in the relevant Guidelines and including the following statements:
    - (xi) "This Project is supported by funding from the Australian Government"; and

- (ii) "The views expressed here do not necessarily represent the views of the Australian Government."

F.2 We reserve the right to publicise and report on Our offers of Funding to You; including the amount of the Funds given to You, the title and a brief description of the Project(s).

## **G. Liaison and Monitoring**

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G.1 You must:

(zz) liaise with and provide information to; and

(aaa) comply with all reasonable requests, directions, or monitoring requirements as reasonably required of You by,

the Contact Officer or a person or persons nominated by the Contact Officer and representing the Department in this matter.

## **H. Reporting**

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H.1 You must provide Us with the reports specified in the 'Reporting Requirements' section of the Agreement.

H.2 The reports referred to in clause H.1 must be provided to Us online via the ISEO system, unless otherwise advised by Us.

## **I. Records**

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I.1 You must keep full and accurate Records of the conduct of the Project including the receipt and use of Funding.

I.2 Records created as a result of an Agreement must be retained by You for 7 years after the end of the Agreement.

## **J. Access and Audits**

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J.1 You must at all reasonable times give Our representative on production of photo identification, or any person authorised in writing by the Secretary:

(bbb) reasonable access to:

- (xii) Your employees;
- (xiii) premises occupied by You;
- (xiv) Material; and

(ccc) reasonable assistance to:

- (xv) inspect the performance of the Project;
- (xvi) inspect the accuracy of Your invoices and reports in relation to the performance of the Funding under the Agreement;
- (xvii) locate and inspect any relevant Material;
- (xviii) make copies of Material and remove those copies,

relevant to the Project.

J.2 The rights in clause J.1 apply equally to the Auditor-General or a delegate of the Auditor-General, or the Privacy Commissioner or a delegate of the Privacy

Commissioner, for the purpose of performing the Auditor-General's or Privacy Commissioner's statutory functions or powers.

- J.3 The rights referred to in clause J.1 are subject to:  
(ddd)the provision of reasonable prior notice to You; and  
(eee)Your reasonable security procedures.
- J.4 If a matter is being investigated by a person authorised in writing by the Secretary involves an actual or apprehended breach of the law, sub-clause J.3(ddd) will not apply.
- J.5 The requirement for access specified in clause J.1 does not in any way reduce Your responsibility to perform Your obligations under this Deed.

**K. Contact Details**

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<b>Contact Officer</b>	The Director International Mobility International Mobility Branch International Group
<b>Office Address</b>	Level 10 50 Marcus Clarke Street CANBERRA ACT 2601
<b>Postal Address</b>	International Group Australian Government Department of Education and Training GPO Box 9880 CANBERRA ACT 2601
<b>Email</b>	student.mobility@education.gov.au

The above details may change, as notified to You by Us from time to time.

**L. Survival**

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- L.1 The following clauses survive the expiry or termination of an Agreement:
- (a) sub-clause 1.1 and clauses 7, 8, 9, 18 and 19 of this Deed; and
  - (b) Items C, E, I, J and L of this Schedule 1.

# Schedule 2 to Deed for Student Mobility Programmes

[DEPARTMENT\_LOGO]

## New Colombo Plan Mobility Programme

### Project Schedule: 2017 Funding Round

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<p>This Project Schedule is issued in accordance with clause 3 of the Deed for Student Mobility Programmes offered from 2016 – 2020 dated [insert Date of the Deed] between the Commonwealth of Australia as represented by the Department of Education and Training (ABN: 12 862 898 150) (“Us”, “We” or “Our”) and [Funding Recipient name] (“You”, “Your” or “Yourself”)(“Deed”) and comprises this Project Schedule and any attached annexures. Subject to Our execution of the Project Schedule signed and submitted by You, an Agreement (as defined in clause 1 of the Deed) is entered into between Us and You in respect of the Project (“Agreement”).</p>		
1.	<b>Branch</b>	International Mobility Branch
2.	<b>Funding Recipient ('You', 'Your' or 'Yourself')</b>	[Funding Recipient name] ABN [insert ABN] [If the Funding Recipient is the lead member of a funding group, insert the following wording after the name and ABN of the Funding Recipient 'being the lead member of the Funding Group known as (insert name of funding group) whose members are listed in <b>Item 12</b> below.]
3.	<b>Funding Round</b>	The Funding is being provided as part of the 2017 funding round for the New Colombo Plan Mobility Programme ( <b>Programme</b> ). The strategic objectives and purposes of the 2017 funding round for the Programme are described in detail in the New Colombo Plan Guidelines - Mobility Program 2017 Round ( <b>Guidelines</b> ). The Funding will support the achievement of the strategic objectives of the 2017 funding round for the Programme through assisting You to undertake the Project described in <b>Item 5</b> below.
4.	<b>Terms of Payment</b>	Subject to sufficient funding being available for the Programme and the terms of the Agreement, the Funding will be paid in one instalment, by electronic transfer into Your nominated bank account, within 28 days of the due execution of this Project Schedule and You having provided Us with a correctly rendered invoice for that payment.

5.	<b>Project</b>	<p>You must undertake the following activities:</p> <p>(a) using the part of the Funding available for the purpose of providing Student Grants (as described in <b>Item 7</b> below), provide:</p> <p style="padding-left: 40px;">[insert description of the particular Student Grants to be provided as part of the Project. For e.g.:</p> <p style="padding-left: 80px;">i. <i>semester grants (as described in section 2.2.2 of the Guidelines); and</i></p> <p style="padding-left: 80px;">ii. <i>internship grants (as described in section 2.2.3 of the Guidelines).]</i></p> <p>to [insert relevant number] Eligible Students, so as to enable the students to undertake [insert relevant description of studying being undertaken] in [insert field(s)] in [insert location], which study is to commence between 1 January 2017 to 30 June 2018; and</p> <p>(b) perform such administrative tasks as are necessary to duly manage the provision of the Student Grants to Eligible Students (including, without limitation, those tasks described in section 2.6 of the Guidelines).</p> <p>In this Agreement:</p> <p><b>'Eligible Student'</b> means a student who meets the requirements of sections 3.2 and 3.3 of the Guidelines; and</p> <p><b>'Student Grant'</b> has the meaning given to that term in the Guidelines.</p>
6.	<b>Duration of Project</b>	<p>The Project starts on the date of Our execution of this Project Schedule and ends on the day after You have done all that You are required to do under the Agreement to Our satisfaction (<b>Project End Date</b>).</p>
7.	<b>Total Funding Value (excl. GST)</b>	<p>The total amount of the Funding is [<i>insert amount</i>] (GST excl). This amount comprises:</p> <p style="padding-left: 40px;">a. [<i>insert</i>] is to be spent by You on Short-term Grants or Semester Grants;</p> <p style="padding-left: 40px;">b. [<i>insert</i>] is to be spent by You on Internship Grants; and</p> <p style="padding-left: 40px;">c. [<i>insert</i>] is to be spent by You for purposes related to the administration of the Project (including the purposes described in section 2.6 of the Guidelines).</p>
8.	<b>Variations to Project Schedule</b>	<p>(a) We may agree to vary the scope of the Project or the Project End Date upon receiving a request from You in the ISEO System.</p> <p>(b) Variation of the scope of the Project or the Project End Date may require You to provide additional reports to Us as set out in a Deed of Variation to the Agreement, executed by You and Us.</p> <p>(c) In the event that the scope of the Project is varied, We</p>

		<p>may vary the Funding payable to You in accordance with <b>Item 7</b> above.</p>
<p><b>9. Obligations in undertaking the Project</b></p>		<p>In undertaking the Project, You must:</p> <p>(a) act in accordance with the requirements of the Guidelines (and You acknowledge and agree that minor variations may be made by the Commonwealth to the Guidelines and You will be bound by such amendments to the Guidelines);</p> <p>(b) at all times, maintain in the ISEO System, the information required by section 5 of the Guidelines, including the requirement to confirm all details at least six weeks before the Project commences;</p> <p>(c) obtain express consents from students participating in the Project to the Department and the Department of Foreign Affairs and Trade using and disclosing students' Personal Information for the purposes described in section 9 of the Guidelines. As part of this, You must ensure that the students confirm that they understand that the students confirm that they understand that if the Department and/or the Department of Foreign Affairs and Trade disclose their personal information to an overseas recipient:</p> <ul style="list-style-type: none"> <li>(i) the overseas recipient may not be bound by the Privacy Act 1988 and/or subject to any privacy obligations;</li> <li>(ii) the Department and the Department of Foreign Affairs and Trade will not be accountable under the Privacy Act should the overseas recipient breach Australian Privacy Principles; and</li> <li>(iii) Australian Privacy Principle 8.1 will not apply to the disclosure of the information;</li> </ul> <p>and that the students expressly consent to the disclosure of their personal information to the overseas recipient on this basis;</p> <p>(d) ensure that students participating in a Project are made aware that they may obtain more information about the way in which the Department and the Department of Foreign Affairs and Trade will manage their Personal Information, including full privacy policies, at <a href="http://www.education.gov.au/privacy-policy">http://www.education.gov.au/privacy-policy</a> or <a href="http://www.dfat.gov.au/privacy.html">http://www.dfat.gov.au/privacy.html</a> or by requesting a copy from the department concerned;</p> <p>(e) ensure that staff and students participating in the Project register on the Smartraveller website</p>



		<p>(<a href="http://www.smartraveller.gov.au">www.smartraveller.gov.au</a>) and subscribe to relevant travel advisories on that website prior to commencement of their overseas travel;</p> <p>(f) ensure that students participating in the Project do not do so in a country or region where the Smartraveller travel advice advises “Do not travel”;</p> <p>(g) liaise with the relevant Australian diplomatic mission in the event of any serious risk to the safety or wellbeing of staff and students when they are participating in the Project; and</p> <p>(h) perform such other tasks or activities as are required of You by the Guidelines (including, without limitation, the tasks described in section 7.2 of the Guidelines).</p>
<p>10.</p>	<p><b>Reporting Requirements</b></p>	<p><b>Report</b></p> <p>On or before [30 June 2018], You must provide a final completion report in relation to the Project (<b>Report</b>) in accordance with section 6.4 of the Guidelines. The Report must include:</p> <ol style="list-style-type: none"> <li>a. confirmation of the number of Eligible Students who participated in the Project, the final amount of the Funding used for Student Grants and the breakdown as between the students;</li> <li>b. the final amount of the Funding used for administration purposes;</li> <li>c. a summary of key achievements, major outcomes and highlights of the Project (up to 150 words), and</li> <li>d. a list of publicity materials used to promote the Project and the Programme.</li> </ol> <p>You may also include in the Report any feedback You have received, formally or informally, in relation to the Project and the Programme, including from participants.</p> <p><b>Statutory Declaration</b></p> <p>Once We have notified You that We consider the Report to be satisfactory, You must submit a statutory declaration declaring that the Funding has been spent in accordance with the Agreement, and, if requested, any unspent funds must be refunded to Us. The statutory declaration must be declared by Your chief financial officer, or one of your officers with authority to do so.</p> <p><b>Submission</b></p> <p>The Report and statutory declaration must be submitted to Us using the ISEO System, unless We instruct You</p>

		otherwise.
11.	<b>Commonwealth Material</b>	We agree to provide the following Material to You: [insert details] [OR] Not Applicable.
12.	<b>Funding Group</b>	<p>[insert this Item 12 if the Project is with a funding group/consortium]</p> <p>(a) If You are part of a Funding Group, You warrant that each member of the Funding Group has given their authority to You as the Funding Group's lead member to negotiate, bind and act on that member's behalf in relation to this Agreement and any variations thereto.</p> <p>23.1 (b) The members of the Funding Group are as follows:</p> <p>23.2 [insert the name of the legal entity, address and ABN of each member of the Funding Group.]</p> <p>In this Agreement:</p> <p><b>'Funding Group'</b> means a group of two or more entities, however constituted, other than a partnership, which have entered into an arrangement for the purposes of jointly delivering the Project, and which have appointed a lead member of the group with authority to act on behalf of all members of the group for the purposes of the Agreement.</p>
13.	<b>Funding Recognition</b>	You may use the New Colombo Plan logo in publications, promotional and advertising materials, public announcements and activities, if You have the consent of the NCP Secretariat.