



Australian Government

Department of Education, Employment and Workplace Relations

Our Ref :
Your Ref :

Mr. Damian Foley
PO Box 10500
South Brisbane BC QLD 4101

Dear Mr Foley

CONTRACT FOR PARTNERSHIP BROKERS IN SERVICE REGION QLD03

Thank you for returning the two copies of the contract for the Partnership Brokers services you have agreed to provide. I have enclosed a copy of the executed contract for your records.

As we have now received a correctly rendered tax invoice and your Vendor Data Form we will make the first Payment due to you under the Services Contract.

As you will now be establishing your Partnership Brokers Program, there are a number of matters we would like raise with you.

Insurance

As per the Partnership Brokers Services Contract (Clause 7 and item F of Schedule 1) you must maintain:

- (a) workers' compensation insurance for an amount required by the relevant State or Territory legislation; and
- (b) public liability insurance for \$10,000,000 (ten million dollars) or more per claim.

You will be required to upload a copy of your insurance to YATMIS in early 2010. In the interim, you must maintain appropriate insurance for your Partnership Brokers program. We may ask to view this documentation during monitoring visits.

DEEWR Code of Conduct in Contracting

Please note the DEEWR Code of Conduct in Contracting has been updated and a hard copy has been attached for your records. The DEEWR webpage referred to in the Contract (item K.2.c of Schedule 1) will be updated with the new version.

Branding

We understand that many providers will be creating promotional materials and we will be issuing further advice and guidance in January 2010.

YATMIS

The Youth Attainment and Transitions Management Information System (YATMIS) will support the Youth Connections and Partnership Brokers programs. YATMIS will assist providers to manage their program delivery and report against program outcomes. Partnership Broker providers will be able to access YATMIS from late January 2010. A *YATMIS User Access Request Form* will be made available in January 2010 for you and your staff to complete in order to gain access to the system.

Inductions Sessions

State-based Partnership Brokers Provider inductions will be held in February/March and we will provide you with further information in January.

Environmental Scan and Strategic Plan

Under Item B.6 of Schedule 1 of your Contract, you are required to submit an Environmental Scan and Strategic Plan to the Department by 31 March 2010. The Environmental Scan must identify the needs of your Service Region related to young people's education and transition outcomes. The Environmental Scan will be used to inform the development of your Strategic Plan. The Department will release Environmental Scan and Strategic Plan templates in January and work with you during and following induction sessions to ensure plans and scans are completed by 31 March.

Partnership Brokers Program Guidelines

We suggest that you review the Partnership Brokers Program Guidelines, as you establish your program. The Guidelines contain important information regarding:

- the program objectives;
- provider and Department responsibilities; and
- monitoring, evaluation and reporting.

You will also need to ensure you are familiar with any State/Territory specific requirements as outlined in the RFT and at Attachment C of the Partnership Brokers Guidelines. The updated Guidelines are available at <http://www.deewr.gov.au/Youth/YouthAttainmentandTransitions>

Launches

DEEWR will not require providers to officially 'launch' their Partnership Brokers program. If you would like to conduct a launch, we suggest you discuss this with us in the first instance to seek further advice and assistance, particularly in relation to inviting federal and state parliamentary representatives.

We look forward to working with you to progress this exciting new project. Until further notice the Partnerships Brokers program in QLD will be managed through DEEWR national office as we implement contracts and plan for initial induction sessions. For any QLD program related enquiries please send an email to yatqld@deewr.gov.au and a member of our team will respond to your enquiry. Alternatively contact me directly on 02 6240 8269.

Yours sincerely



David Hardy
Director

Youth Attainment and Transitions Branch

24 December 2009



Australian Government

**Department of Education, Employment
and Workplace Relations**

Services Contract

PRN 23984

between the

COMMONWEALTH OF AUSTRALIA

as represented by the

**Department of Education, Employment and Workplace
Relations**

and

The Smith Family

regarding **Services for**

School Business Community Partnership Brokers Program

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QLD03 Brisbane North and West

Table of Contents:

1	Term of Contract.....	3
2	Services.....	3
3	Fees, Allowances and Assistance.....	4
4	Overpayments.....	4
5	Subcontracting.....	4
6	Specified Personnel.....	5
7	Insurance.....	5
8	Liaison.....	6
9	Commonwealth Material.....	6
10	Contract Material.....	6
11	Disclosure of Information.....	7
12	Protection of Personal Information.....	7
13	Access to Premises and Records.....	8
14	Indemnity.....	8
15	Conflict of Interest.....	9
16	Negation of Employment, Partnership and Agency.....	9
17	Entire Contract, Variation and Severance.....	9
18	Waiver.....	10
19	Assignment and Novation.....	10
20	Dispute Resolution.....	10
21	Termination with Costs and Reduction.....	11
22	Termination for Default.....	11
23	Compliance with Laws and Our Policies.....	12
24	Applicable Law and Jurisdiction.....	12
25	Notices.....	12
26	Survival of Clauses.....	12
27	Interpretation.....	13
	Schedule 1 Your Obligations.....	16
	A. Term of contract (clause 1).....	16
	B. Services (clause 2).....	16
	C. Invoice Requirements (clause 3).....	20
	D. Subcontractors (clause 5).....	21
	E. Specified Personnel (clause 6).....	21
	F. Insurance (clause 7).....	21
	G. Commonwealth Material (clause 9).....	21
	H. Contract Material (clause 10).....	21
	I. Our Confidential Information (clause 11).....	21
	J. Protection of Personal Information (clause 12).....	21
	K. Compliance with Laws and Policies (clause 23).....	22
	L. Notices (clause 25).....	23
	Schedule 2 Our Obligations.....	24
	AA. Fees (clause 3).....	24
	BB. Allowances (clause 3).....	24
	CC. Assistance (clause 3).....	24
	DD. Project Delegate (clauses 8 and 25).....	24
	EE. Your Confidential Information (see clause 11).....	25

Parties

COMMONWEALTH OF AUSTRALIA ('Commonwealth, 'Us', 'We' or 'Our'), represented by and acting through the Department of Education, Employment and Workplace Relations ('Department')

AND

THE SMITH FAMILY, ACN 000 030 179, ABN 28 000 030 179, a company incorporated under the *Corporations ACT 2001* and having its registered office at Level 9, 117 Clarence Street, SYDNEY NSW 2000. ('You' or 'Your').

Note: this contract uses a number of words which are defined in the glossary in clause 27.1. Defined terms start with a capital letter, e.g. Conflict.

Purpose

- A. We require the provision of Services to Us for the purposes of delivering the School Business Community Partnership Brokers program.

You must provide School Business Community Partnership Broker services in Your contracted Youth Attainment and Transitions Service Region. You must broker partnerships between education and training providers, business and industry, parents and families, and community groups to foster a strategic and sustainable whole-of-community approach that supports young people's learning and development.

The main objective of the Partnership Brokers program is to improve education and transition outcomes for all young people by facilitating stakeholder engagement, building community capacity and infrastructure and driving the Government's education reform and social inclusion agendas.

- B. You have fully informed Yourself on all aspects of the work required, including the draft School Business Community Partnership Brokers Program Guidelines and the draft Monitoring, Evaluation and Reporting Framework, and have submitted a tender entitled Request for Tender for the provision of School Business Community Partnership Brokers (Partnership Brokers).
- C. We agree to accept Your offer to provide the Services on the terms and conditions contained in this contract.

1 Term of Contract

- 1.1 This contract commences on the Date of this Contract and, unless terminated earlier, it expires on the Completion Date.

2 Services

- 2.1 You must carry out the Services:

- (a) at the times and in the manner specified in item B of Schedule 1; and
(b) in accordance with this contract, diligently, effectively and to a high professional standard.

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

3 Fees, Allowances and Assistance

- 3.1 We will:
- (a) pay You the fees set out in item AA of Schedule 2;
 - (b) pay You the allowances set out in item BB of Schedule 2; and
 - (c) provide assistance as specified in item CC of Schedule 2.
- 3.2 You must submit invoices for payment in the manner set out in item C of Schedule 1
- 3.3 Without limiting Our rights, We may withhold or suspend any payment in whole or in part, if:
- (a) You have not performed Your obligations under this contract to the satisfaction of the Commonwealth; or
 - (b) You have outstanding or unacquitted money under any arrangement (whether contractual or statutory) with Us.
- 3.4 If We exercise Our rights under clause 3.3, You must continue to perform any obligations under this contract, unless We agree otherwise in writing.
- 3.5 If one party is required to reimburse or pay to another party an amount calculated by reference to a cost, expense or an amount paid or incurred by that party [the 'reimbursement amount'];
- (a) the reimbursement amount will be reduced by an amount equal to the value of any input tax credits to which the party being reimbursed is entitled in respect of that cost, expense or amount; and
 - (b) after making the adjustment under paragraph (a), where the payment of the reimbursement attracts GST, the reimbursement amount will be increased by the rate of the GST.

4 Overpayments

- 4.1 If, at any time, an overpayment occurs for any reason (including where an invoice is found to have been incorrectly rendered after payment), then this amount must be repaid to Us within 20 business days of a written notice from Us, or dealt with as directed in writing by Us.
- 4.2 An overpayment may be recovered from You, including by offsetting that overpayment against any amount subsequently due to You under this contract or any other arrangement between the parties.
- 4.3 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 4.1, until the amount is paid in full.
- 4.4 Any amount owed to Us under clause 4.1 and any Interest owed under clause 4.3, is recoverable by Us as a debt due to Us by You without further proof of the debt by Us.
- 4.5 An adjustment note must be provided to Us if required by the GST Act, including where You repay some or all of the fees or allowances to Us.

5 Subcontracting

- 5.1 You must not, without Our prior written approval, subcontract the performance of any obligations under this contract. In giving approval, We may impose terms and conditions as We think fit.

- 5.2 The subcontractors We have approved at the Date of this Contract, and any terms and conditions relating to their use, are identified in item D of Schedule 1.
- 5.3 You are fully responsible for the performance of Your obligations under this contract, even if You subcontract some or all of them.
- 5.4 Despite any approval given by Us under clause 5.1, You are responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that the work meets the requirements of this contract.
- 5.5 The Department requires You to agree to the public disclosure of the names of any subcontractors engaged to perform the services in relation to this contract. You must inform relevant sub-contractors that the sub-contractor's participation in fulfilling a Commonwealth contract for procurement may be publicly disclosed.
- 5.6 We may revoke Our approval of a subcontractor on any reasonable ground by giving written notice to You. On receipt of the notice You must, at Your own cost, promptly cease using that subcontractor and arrange their replacement with personnel or another subcontractor acceptable to Us.
- 5.7 If We withdraw Our approval of a subcontractor, You remain liable under this contract for the past acts or omissions of Your subcontractors as if they were current subcontractors.
- 5.8 You must not enter into a subcontract under this contract with a subcontractor named by the Director of the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the *Equal Opportunity for Women in the Workplace Act 1999*.

6 Specified Personnel

- 6.1 You must ensure that the Specified Personnel, if any, listed in item E of Schedule 1 undertake work on the Services in accordance with the terms of this contract.
- 6.2 Where Specified Personnel are unable to undertake work on the Services, You must notify Us immediately. You must, if requested by Us, provide replacement personnel acceptable to Us without additional payment and at the earliest reasonable opportunity.
- 6.3 We may give notice on reasonable grounds related to performance of the Services requiring You to remove personnel (including Specified Personnel) from work on the Services. You must, at Your own cost, promptly arrange for the removal of the personnel from work on the Services and their replacement with personnel acceptable to Us.
- 6.4 If You are unable to provide acceptable replacement personnel, We may terminate this contract under clause 22.

7 Insurance

- 7.1 You must, for as long as any obligations remain in connection with the Services, have insurance as specified in item F of Schedule 1.
- 7.2 When requested, You must provide Us, within 10 business days of the request, with evidence satisfactory to Us that You have complied with Your obligation to insure.

8 Liaison

- 8.1 You must liaise with and provide information to the Project Delegate, or a person nominated by the Project Delegate, as reasonably required by the Project Delegate.

9 Commonwealth Material

- 9.1 Ownership of all Commonwealth Material, including Intellectual Property Rights in that Material, remains vested at all times in Us but We grant You a licence to use, copy and reproduce that Material only for the purposes of this contract and in accordance with any conditions or restrictions specified in item G of Schedule 1.
- 9.2 You must keep safely and maintain Commonwealth Material You have been given for the purposes of this contract.
- 9.3 You may retain or destroy all Commonwealth Material remaining in Your possession at the end of this contract, unless otherwise specified in item G or item J of Schedule 1.

10 Contract Material

Ownership

- 10.1 Subject to this clause 10, We Own the Contract Material and the Intellectual Property Rights in the Contract Material immediately on their creation.
- 10.2 The Excluded Material and the Excluded IPR may be owned by You or a third party.

Licences

- 10.3 This clause 10 does not affect the ownership of any Intellectual Property Rights in any Excluded Material. You, however, grant to Us or must arrange for the grant to Us of a permanent, irrevocable, free, world-wide, non-exclusive licence (including a right of sublicense) to exercise the Excluded IPR for any purpose.
- 10.4 In relation to Excluded IPR for which You are unable to obtain a licence on the terms referred to in clause 10.3, you must arrange for the grant to Us of a licence to exercise the Excluded IPR on the terms set out in item H of Schedule 1.

Use of Contract Material

- 10.5 If You are the Author of any Contract Material or Excluded Material (either the sole or a joint Author), You consent to the performance of the Specified Acts by Us or any person licensed by Us to use, reproduce, adapt and exploit that Contract Material or Excluded Material.
- 10.6 You agree:
- (a) to obtain from each Author (other than You) of any Contract Material or Excluded Material a written consent to the performance of the Specified Acts (whether occurring before or after the consent is given) by Us or any person licensed by Us to use, reproduce, adapt and exploit that Contract Material or Excluded Material; and
 - (b) upon request, to provide the executed original of each consent to Us.
- 10.7 At the end of this contract, unless otherwise specified in item H of Schedule 1, You must deliver all Contract Material to Us.
- 10.8 You must use the Contract Material:

- (a) only for the purposes of this contract and any other purpose specified in item H of Schedule 1;
- (b) in accordance with the conditions or restrictions set out in item H of Schedule 1, or notified from time to time in writing by the Commonwealth.

General

- 10.9 You must comply with any request that We make of You at any time to bring into existence, sign, execute or otherwise deal with any document that may be necessary or desirable to give effect to this clause 10.
- 10.10 You warrant that You are entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Contract Material in accordance with this clause 10.

11 Disclosure of Information

- 11.1 Subject to clause 11.5,
- (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.
- 11.2 In giving written approval to disclosure, a party may impose conditions as it thinks fit, and the other party agrees to comply with the conditions.
- 11.3 We may at any time require You to arrange for any person engaged in, or in relation to, the performance or management of this contract to give written undertakings, in a form required by Us, relating to the non-disclosure of Our Confidential Information.
- 11.4 If You receive a request under clause 11.3, You must promptly arrange for all undertakings to be given.
- 11.5 The obligations on the parties under this clause 11 will not be breached if information:
- (a) is disclosed by Us to the responsible Minister;
 - (b) is disclosed by Us, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - (c) is authorised or required by law to be disclosed; or
 - (d) is in the public domain otherwise than due to a breach of this clause 11.
- 11.6 Nothing in this clause 11 limits Your obligations under clause 12 or clause 13.

12 Protection of Personal Information

- 12.1 You agree:
- (a) to comply with the Information Privacy Principles when doing any act or engaging in any practice in relation to Personal Information for the purposes of this contract, as if You were an agency as defined in the Privacy Act; and
 - (b) to deal with Personal Information received, created or held by You for the purposes of this contract only to fulfil Your obligations under this contract and in accordance with any conditions or restrictions specified in item J of Schedule 1.
- 12.2 An act done or a practice engaged in by You or a subcontractor to meet (directly or indirectly) an obligation under this contract:

- (a) is authorised by this clause 12 for the purposes of sub-sections 6A(2) and 6B(2) of the Privacy Act even if the act or practice is inconsistent with a national privacy principle or an approved privacy code that applies to You or the subcontractor; but
- (b) is subject to the other obligations in this contract including this clause 12.

12.3 In this clause 12, "received" includes "collected".

13 Access to Premises and Records

13.1 You must at all reasonable times give the Auditor-General, the Privacy Commissioner, the Project Delegate, a member of the Investigation Branch in the Department on production of photo identification, or any person authorised in writing by the Secretary:

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

relevant to the Services.

13.2 The rights referred to in clause 13.1 are subject to:

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

13.3 If a matter is being investigated which, in the opinion of an member of the Investigations Branch in the Department, or any person authorised in writing by the Secretary, may involve an actual or apprehended breach of the law, clause 13.2(a) will not apply.

13.4 The requirement for access specified in clause 13.1 does not in any way reduce Your responsibility to perform Your obligations under this contract.

14 Indemnity

14.1 You agree to indemnify Us against any:

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

arising from:

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

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

- 14.2 Your liability to indemnify Us under this clause 14 will be reduced proportionately to the extent that any fault on Our part contributed to the relevant loss, damage, expense, or liability.
- 14.3 Our right to be indemnified under this clause 14 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.
- 14.4 In this clause 14, "fault" means any negligent or unlawful act or omission or wilful misconduct.

15 Conflict of Interest

- 15.1 You warrant that, to the best of Your knowledge after making reasonable inquiries, at the Date of this Contract no Conflict exists or is likely to arise in the performance of Your obligations under this contract.
- 15.2 If during the term of this contract, a Conflict arises, or is likely to arise, You must:
- (a) immediately notify Us in writing of that Conflict and of the steps You propose to take to resolve or otherwise deal with the Conflict;
 - (b) make full disclosure to Us of all relevant information relating to the Conflict; and
 - (c) take steps as We may, if We choose to, reasonably require to resolve or otherwise deal with that Conflict.
- 15.3 If You fail to notify Us under this clause 15, or are unable or unwilling to resolve or deal with the Conflict as required, We may terminate this contract under clause 22.

16 Negation of Employment, Partnership and Agency

- 16.1 You will not, by virtue of this contract, be or for any purpose be deemed to be Our employees, partners or agents.
- 16.2 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.

17 Entire Contract, Variation and Severance

- 17.1 This contract records the entire contract between the parties in relation to its subject matter.
- 17.2 Except for action We are expressly authorised to take elsewhere in this contract, no variation of this contract is binding unless it is agreed in writing and signed by the parties.
- 17.3 If a court or tribunal finds any provision of this contract 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.

18 Waiver

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

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

18.3 Waiver of any provision of, or right under, this contract:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in the written waiver.

18.4 In this clause 18, 'rights' means rights or remedies provided by this contract or at law.

19 Assignment and Novation

19.1 You must not assign Your rights under this contract without prior written approval from Us.

19.2 You agree not to negotiate with any other person to enter into an arrangement that will require novation of this contract without first consulting Us.

20 Dispute Resolution

20.1 Subject to clause 20.3, the parties agree not to commence any legal proceedings in respect of any dispute arising under this contract, which cannot be resolved by informal discussion, until the procedure provided by this clause 20 has been used.

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

- (a) the party claiming that there is a dispute will send the other party a written notice setting out the nature of the dispute;
- (b) the parties will try to resolve the dispute through direct negotiation by persons to whom they have given authority to resolve the dispute;
- (c) the parties have 10 business days from 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:

- (i) there is no resolution of the dispute;
- (ii) there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
- (iii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 business days of 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.

20.3 This clause 20 does not apply if:

- (a) either party commences legal proceedings for urgent interlocutory relief;
- (b) action is taken by Us under clauses 4, 13, 21 or 22; or
- (c) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the law by You.

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

21 Termination with Costs and Reduction

- 21.1 We may, at any time by written notice to You, terminate this contract in whole or reduce the scope of this contract without prejudice to the rights, liabilities, or obligations of either party accruing prior to the date of termination. If this contract is terminated or reduced in scope We will only be liable for:
- (a) payments under the payment provisions of this contract that were due before the effective date of termination; and
 - (b) subject to clauses 21.3 and 21.4, any reasonable costs incurred by You and directly attributable to the termination or partial termination of this contract.
- 21.2 Upon receipt of a notice of termination or reduction in scope You must:
- (a) stop work as specified in the notice;
 - (b) take all available steps to minimise loss resulting from that termination and to protect Commonwealth Material and Contract Material; and
 - (c) continue work on any part of the Services not affected by the notice.
- 21.3 If there is a reduction in scope of the obligations under this contract, Our liability to pay any part of the fees or allowances set out in items AA and BB of Schedule 2 will, in the absence of agreement to the contrary, abate proportionately to the reduction in the obligations under this contract.
- 21.4 We will not be liable to pay compensation for loss of prospective profits for a termination or reduction in scope under this clause 21 or loss of any benefits that would have been conferred on You had the termination or reduction not occurred.

22 Termination for Default

- 22.1 We may immediately terminate this contract by giving written notice to You of the termination if:
- (a) We are satisfied that, prior to entering into this contract, You have engaged in misleading or deceptive conduct or omitted to provide information to Us,
 - (i) that is material to the performance of this contract; or
 - (ii) that may have affected the original decision to enter into this contract or the terms and conditions of this contract or action taken by Us under this contract;
 - (b) You fail to fulfil, or are in breach of any of Your obligations under this contract (including but not limited to Your obligations under clauses 6 and 15), and You do not rectify the omission or breach within 10 business days of receiving a notice in writing from Us to do so;
 - (c) You are unable to pay all Your debts when they become due;
 - (d) if You are an incorporated body:
 - (i) You fail to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001*;
 - (ii) proceedings are initiated to obtain an order for Your winding up or any shareholder, member or director convenes a meeting to consider a resolution for Your winding up;
 - (iii) You come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* or equivalent provisions in other legislation, or an order has been made to place You under external administration; or

- (iv) notice is served on You or proceedings are taken to cancel Your incorporation or registration or to dissolve You as a legal entity;
- (e) if You are an individual, You become bankrupt or enter into a scheme of arrangement with creditors; or
- (f) You cease to carry on a business relevant to the performance of the Services.

22.2 You may immediately terminate this contract by giving written notice to Us of the termination if We fail to fulfil, or are in breach of any of Our obligations under this contract and We do not rectify the omission or breach within 10 business days of receiving a notice in writing from You to do so.

23 Compliance with Laws and Our Policies

23.1 You must, in carrying out Your obligations under this contract, comply with:

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

including those listed in item K of Schedule 1.

24 Applicable Law and Jurisdiction

24.1 The laws of the Australian Capital Territory apply to the interpretation of this contract.

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

25 Notices

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

- (a) if given by You, marked for the attention of the Project Delegate specified in item DD of Schedule 2; or
- (b) if given by Us, marked for the attention of the person specified in item L of Schedule 1; and

hand delivered or sent by pre-paid post or Electronic Communication to the address of the other party specified in item L of Schedule 1 or item DD of Schedule 2.

25.2 A notice given under clause 25.1 is taken to be received:

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

26 Survival of Clauses

26.1 These clauses survive the expiration or earlier termination of this contract: 4, 9, 10, 11, 12, 14, 20 and 24.

26.2 Clause 13 applies during this contract and for 7 years from the end of this contract.

27 Interpretation

27.1 In this contract, 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*;

'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;

'Author' means a person who is an author of any Contract Material or Excluded Material for the purposes of Part IX of the *Copyright Act 1968* (Moral Rights);

'Commonwealth Material' means any Material provided by Us to You for the purposes of this contract or which is copied from that Material, except for Contract Material;

'Completion Date' means the date specified in item A of Schedule 1, or if no date is specified, the day after You have done all that You are required to do under this contract to Our satisfaction;

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

'Contract Material' means:

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

but does not include Excluded Material;

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

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

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

'Excluded Material' means any Material specified under the heading 'Excluded Material' in item H of Schedule 1;

'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*;

'Information Privacy Principle' has the meaning given in the Privacy Act;

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

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

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

'Our Confidential Information' means information that:

- (a) is described in item I of Schedule 1;
- (b) We identify, by notice in writing to You after the Date of this Contract, as confidential information for the purposes of this contract; or
- (c) You know or ought to know is confidential;

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

'Privacy Act' means the *Privacy Act 1988*;

'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 Delegate' means the person for the time being performing the duties of the office of the Department specified in item DD of Schedule 2 or any other person specified by the Secretary and notified in writing to You

'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 contract;

'Services' means the services described in item B of Schedule 1, and includes the provision of Contract Material specified in that item;

'Specified Personnel' means the personnel (whether Your employees or subcontractors), or people with specific skills, specified in item E of Schedule 1 as personnel required to undertake the Services or any part of the work constituting the Services;

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

- (a) using, reproducing, adapting, or exploiting all or any part of the Contract Material, with or without attribution of authorship;
- (b) supplementing the Contract Material with any other Material; or
- (c) using the contract Material in a different context to that originally envisaged;

but does not include false attribution of authorship;

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

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

'Your Confidential Information' means information that is described in item EE of Schedule 2.

27.2 In this contract, unless the contrary intention appears:

- (a) words in the singular include the plural and vice versa;
- (b) words importing a gender include the other gender;

- (c) a reference to a person includes a partnership and a body whether corporate or otherwise;
- (d) clause headings or words in bold format are inserted for convenience only, and have no effect in limiting or extending the language of provisions;
- (e) all references to dollars are to Australian dollars;
- (f) unless stated otherwise, a reference to legislation is to legislation of the Commonwealth, as amended from time to time;
- (g) an uncertainty or ambiguity in the meaning of a provision of this contract 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.

27.3 The schedules (and annexures and documents incorporated by reference, if any) form part of this contract.

27.4 In the event of any conflict or inconsistency between any part of:

- (a) the terms and conditions contained in the clauses of this contract;
- (b) the schedules;
- (c) the annexures, if any;
- (d) documents incorporated by reference, if any;

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

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

Schedule 1 Your Obligations

A. Term of contract (clause 1)

- A.1 The Completion Date for this contract is 31 December 2011.
- A.2 We may, at Our absolute discretion and by notice to You in writing on or before 30 November 2011, extend this Contract for a maximum of two further twelve month periods. If We exercise this discretion, the same terms and conditions will apply during those renewal period(s) unless otherwise agreed to in writing by Us.

B. Services (clause 2)

B.1 Background

- B.1.1 The Australian Government is committed to providing opportunities and support for all young Australians to acquire the knowledge and skills they need to participate effectively in society and employment in a globalised economy.
- B.1.2 To support this objective, the Council of Australian Governments (COAG) has set goals to lift the Year 12 or equivalent attainment rate to 90 percent by 2015 and improve education outcomes for all young people, including Indigenous Australians, humanitarian refugees and other disadvantaged young people.
- B.1.3 The Australian, State and Territory Governments have entered into a National Partnership on Youth Attainment and Transitions. As part of the Australian Government's contribution to this National Partnership, existing youth, transitions and career programs will be consolidated into two new programs from 1 January 2010. These programs will work together to improve Year 12 or equivalent attainment rates and support successful engagement and transitions for all young people. The programs are:
- A national network of School Business Community Partnership Brokers (Partnership Brokers) to build partnerships that support improved education and transition outcomes for all young people.
 - A national network of Youth Connections providers to ensure young people at risk of not attaining Year 12 or its equivalent or making a successful transition get the support they need to remain engaged, or to reengage in education.

B.2 Program Objective

- B.2.1 The objective of the Partnership Brokers program is to improve education and transition outcomes for all young people by facilitating stakeholder engagement, building community capacity and infrastructure and driving the Government's education reform and social inclusion agendas.
- B.2.2 The program aims to achieve this through a national network of Partnership Brokers that broker partnerships between education and training providers, business and industry, parents and families, and community groups to foster a strategic and sustainable whole-of-community approach that supports young people's learning and development.
- B.2.3 Partnership Brokers will work within their region to build strategic and sustainable partnerships between key stakeholders which support young people to reach their potential and make a successful transition through school to further education or training and work and deliver mutual benefits that make the relationship viable in the long term.

B.2.4 You have been contracted to service the following Youth Attainment and Transitions Service Region: QLD03 Brisbane North and West.

B.3 School Business Community Partnership Brokers Guidelines (“Guidelines”)

B.3.1 In delivering the Service, You must comply with the School Business Community Partnership Brokers Guidelines 2010-2013. The Guidelines may be amended by Us from time to time and You must comply with the amended Guidelines in Your conduct of these Services.

B.4 School Business Community Partnership Broker Deliverables

B.4.1 In delivering the Service, You are required to achieve the following program objective:

- To facilitate stakeholder engagement in the Service Region, build community capacity and infrastructure and drive the government’s education reform and social inclusion agendas to improve education and transition outcomes for all young people.

B.4.2 In delivering the Service, You are required to achieve the following program outcomes:

- (a) High quality partnerships are established that link key stakeholders together with shared commitment, goals and outcomes to improve young people’s education and transition outcomes.
- (b) Partnerships are developed that strategically address the needs of the Service Region and involve a number of stakeholder groups to improve young people’s education and transition outcomes.
- (c) Education and training providers partnering with stakeholders in their community to ensure all young people participate in challenging, relevant and engaging learning that broadens personal aspirations and improves education and transition outcomes.
- (d) Business and industry actively engaged in sustainable partnerships that support the development of young people, contribute to the skills and knowledge of the future workforce and improve young people’s education and transition outcomes.
- (e) Parents and families participating in partnerships that provide an informed and supportive environment for all young people to enable lifelong learning and career and pathway planning, and improve their education and transition outcomes.
- (f) Community groups participating in partnerships that harness resources and build social capital to support young people to identify and achieve their goals and improve their education and transition outcomes.

B.4.3 You will achieve these objectives and outcomes through brokering partnerships between four key stakeholder groups: education and training providers; business and industry; parents and families; and community groups.

B.4.4 We will assess You on the quality of the partnerships You broker and the contribution these partnerships make to the program objectives and outcomes through Key Performance Measures as outlined in the School Business Community Partnership Brokers Monitoring, Evaluation and Reporting Framework (MERF).

B.4.5 In conducting the Service, you must:

- (a) Develop and maintain an understanding of Your Service Region’s specific characteristics, including:
 - Identifying the issues, needs and expectations of young people that impact on their education and transition outcomes within their region

- Identifying the issues, needs and expectation of key stakeholders within the Service Region
 - Identifying the existing and emerging skill needs of local and national businesses
- (b) Use Your knowledge of the region to develop a strategic approach to building partnerships that improve the education and transition outcomes of young people in the Service Region
 - (c) Establish and maintain relationships with key community and regional leaders, as well as identify new partnership opportunities
 - (d) Play a strategic leadership role in Your Service Region and drive improvements in young people's education and transition outcomes
 - (e) Create new partnerships and enhance existing partnerships in the Service Region
 - (f) Monitor and review the outcomes of the strategies You develop and the partnerships You broker or support, and improve these strategies and partnerships as appropriate.
- B.4.6 You must provide Partnership Broker Services to the full Service Region to the satisfaction of the Commonwealth.
- B.4.7 You must engage schools across all sectors, including government and non-government.
- B.4.8 You must work to complement related State/Territory Government programs in Your Service Region, particularly as specified in State/Territory specific information contained in the Program Guidelines.
- B.4.9 You must work closely with the Youth Connections provider in Your Service Region to strengthen services for at risk young people.
- B.4.10 You must maintain active business premises within the Service Region and employ personnel who operate from these premises within the Service Region.
- B.4.11 You must participate in induction and professional development sessions as requested by Us.
- B.4.12 You must participate in an annual Program Monitoring Meeting (PMM) between July and September in each year of the Contract Period.
- B.4.13 You must make Your staff and offices available for site visits to be conducted by Us from time to time.
- B.4.14 You must participate in ongoing, formative evaluations during the contract period as directed by Us.
- B.4.15 You must attend quarterly State and Territory Network meetings at a time and location to be advised by Us, and where selected to represent Your State or Territory You must attend National Network meetings.
- B.4.16 As an organisation or consortium, You are able to enter into other contracts to deliver services, however You must maintain the integrity of the Partnership Brokers program.
- B.4.17 We reserve the right to set more frequent milestones for payment if You breach any of Your obligations under this contract.

B.5 State/Territory Specific Requirements

- B.5.1 You must meet the specific requirements as outlined for the State/Territory Your Service Region is in. These requirements are identified in the Program Guidelines.

B.6 Reporting Requirements

B.6.1 You must meet the requirements of the School Business Community Partnership Broker Monitoring, Evaluation and Reporting Framework (MERF) which form part of the Guidelines and include:

- Individual provider reporting against the Key Performance Measures (KPMs) and Environmental Scan, Strategic Plan and the Partnership Broker Outcomes Framework using the templates provided by Us; and
- Baseline data collection and ongoing evaluation activities to assess the appropriateness, quality and effectiveness of the Services to be provided. We will manage the ongoing evaluation of the program, using tools such as sample surveys of key stakeholders and case studies. You are required to provide information on baseline data and ongoing evaluation activities in a timely and efficient manner as requested by Us.

B.6.2 You must provide Us with the Reports, at a standard satisfactory to and accepted by Us, set out below via the Youth Attainment and Transition Management Information System (YATMIS) or as otherwise advised, at the times specified. We will provide You with templates of all the Reports which You must use. The templates will be accessible at least 30 days prior to any Report being due to Us from the YATMIS website or as otherwise arranged by Us. The templates will specify in more detail what is required from You so that You can meet Your reporting obligations under this contract.

Reporting Requirement	Description	Timing
a) Environmental Scan	Must include identification of the needs of the Service Region related to young people's education and transition outcomes and an analysis of what can be implemented to meet these needs.	Must be submitted by 31 March 2010 and reviewed and updated by 28 February 2011.
b) Strategic Plan	Must: include a Mission statement Cover the Contract Period Identify short and long term goals for the Service Region and Your proposed strategies for achieving these goals Include a risk assessment and risk management strategy	Must be submitted by 31 March 2010 and be reviewed and updated by 28 February 2011.
c) Case Studies	You must provide a minimum of two Case Studies annually that illustrate the outcomes of the program in Your Service Region.	To be completed by 31 December 2010 and 15 December 2011.
d) Key Performance Measure Reporting	You must record details of Your work, including the partnerships You broker, and the outcomes of Your work on YATMIS.	Data must be up-to-date and endorsed prior to each quarterly reporting date: • 30 March, 30 June, 30 September, and 31

		December 2010; • 30 March, 30 June, 30 September, and 15 December 2011.
e) Young People's Education and Transition Outcomes	You must provide evidence, where that evidence is available, of each partnership's impact on young people's education and transition outcomes.	Data must be up-to-date and endorsed prior to each quarterly reporting date: • 30 March, 30 June, 30 September, and 31 December 2010; • 30 March, 30 June, 30 September, and 15 December 2011.
f) Annual Partnership Brokers Survey	You must complete an Annual Partnership Brokers Provider Survey. Responses must be entered through YATMIS.	Entered and endorsed by 31 January 2011 and 15 December 2011

B.6.3 We reserve the right to require You to increase communication with Us, or monitor Your performance more closely by increasing the reporting requirements, if You fail to fulfil any of Your obligations under this contract.

B.6.4 At the expiration or earlier termination of this contract, You must ensure that:

- the YATMIS is up to date and contains all record and other information You are required to upload into the YATMIS in accordance with this contract and guidelines , and
- you comply with any request by us to provide to us, or any person or organisation as we direct in writing, any Contract Material or other information relevant to the Services which is in your possession or control.

C. Invoice Requirements (clause 3)

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

- (a) title of Services;
- (b) Your name and ABN;
- (c) name of Project Delegate;
- (d) contract number or date of execution;
- (e) fees and expenses to be invoiced (including a description of the deliverables or milestones that the invoice relates to); and
- (f) bank account details for payment of the invoice by electronic funds transfer.

C.2 Where the invoice relates to a taxable supply made under this contract the invoice must comply with the requirements for a tax invoice, as defined in the GST Act.

C.3 The date for payment is 30 days after delivery of a correctly rendered invoice to the Commonwealth.

D. Subcontractors (clause 5)

D.1 Not applicable

E. Specified Personnel (clause 6)

E.1 Not applicable

F. Insurance (clause 7)

F.1 You must maintain:

- (a) workers' compensation insurance for an amount required by the relevant State or Territory legislation;
- (b) public liability insurance for \$10,000,000 (ten million dollars) or more per claim;

G. Commonwealth Material (clause 9)

G.1 Not applicable.

H. Contract Material (clause 10)

H.1 Not applicable.

I. Our Confidential Information (clause 11)

I.1 Not applicable.

J. Protection of Personal Information (clause 12)

J.1 In relation to Personal Information received, created or held by You for the purposes of this contract, you agree:

- (a) not to use or disclose Personal Information to engage in a practice that would breach section 16F of the Privacy Act, unless the use or disclosure is necessary to meet (directly or indirectly) an obligation under this contract;
- (b) not to transfer Personal Information outside Australia, or to allow parties outside Australia to have access to it, without the prior written approval of the Project Delegate;
- (c) to co-operate with reasonable demands or inquiries made by the Privacy Commissioner or the Project Delegate in relation to the management of Personal Information;
- (d) to ensure that any person who You allow to access Personal Information is made aware of, and undertakes in writing, to observe the Information Privacy Principles;
- (e) to comply with policy guidelines laid down by the Us or issued by the Privacy Commissioner from time to time relating to the handling of Personal Information;
- (f) if requested by Us, at the end of this contract, to return all Records containing Personal Information to the Project Delegate, or delete or destroy those Records in the presence of a person authorised by the Project Delegate; and
- (g) Your name being published in reports by the Privacy Commissioner.

You must immediately notify the Project Delegate if You become aware:

- (a) of a breach of Your obligations under clause 12;
- (b) that a disclosure of Personal Information may be required by law; or
- (c) of an approach to You by the Privacy Commissioner or by a person claiming that their privacy has been interfered with.

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

K. Compliance with Laws and Policies (clause 23)

Compliance with Laws

K.1 You acknowledge that:

- (a) You may have obligations under the *Equal Opportunity for Women in the Workplace Act 1999* and You must comply with those obligations;
- (b) when dealing with Your employees, You must comply with the *Fair Work Act 2009*, and obligations under relevant occupational health and safety laws
- (c) Chapter 7 of the *Criminal Code* provides for offences which attract substantial penalties, including theft of Commonwealth property and other property offences, obtaining property or financial advantage by deception, offences involving fraudulent conduct, bribery, forgery and falsification of documents;
- (d) giving false or misleading information is a serious offence under the *Criminal Code*;
- (e) the publication or communication of any fact or document by a person which has come to their knowledge or into their possession or custody by virtue of the performance of this contract (other than a person to whom You are authorised to publish or disclose that fact or document) may be an offence under section 70 of the *Crimes Act 1914*, punishment for which may be a maximum of two years imprisonment;
- (f) in respect of data, including personal information, held in connection with this contract, any unauthorised and intentional access, destruction, alteration, addition or impediment to access or usefulness of the data stored in any computer in the course of performing this contract is an offence under Part 10.7 of the *Criminal Code* which may attract a substantial penalty, including imprisonment;
- (g) You are aware of the provisions of section 79 of the *Crimes Act 1914* relating to official secrets;
- (h) You are aware of Your obligations under Part 4 of the *Charter of United Nations Act 1945* and the *Charter of United Nations (Terrorism and Dealing with Assets) Regulations 2002*;

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

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

Compliance with policies

K.2 You must:

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

A copy of the DEEWR Code of Conduct in Contracting is available at:

L. Notices (clause 25)

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

Name: Mr. Damian Foley

Postal Address: PO Box 10500

South Brisbane BC QLD 4101

Fax: (07) 3337 6424

Phone: (07) 3115 6214

Email: damian.foley@thesmithfamily.com.au

Schedule 2 Our Obligations

AA. Fees (clause 3)

AA.1 The total Fee payable for the Services is \$2,383,288.60 inclusive of GST payable by the following instalments:

Amount	Payable
\$595,822.15 (50% of annual fee)	On execution of this Services Contract.
\$595,822.15	31 July 2010, provided a Strategic Plan has been submitted to a standard satisfactory to and accepted by Us and progress towards meeting the program outcomes has been made to a level satisfactory to and accepted by Us.
\$595,822.15	31 January 2011, provided progress towards meeting the program outcomes has been made to a level satisfactory to and accepted by Us.
\$595,822.15	31 July 2011, provided progress towards meeting the program outcomes has been made to a level satisfactory to and accepted by Us.

AA.2 The Fees include GST of \$216,662.60.

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

AA.4 The Department adheres to the Australian Government *Procurement 30 Day Payment Policy for Small Business* (the "Policy")

AA.5 For the purposes of the Policy, 'Small Business' means an enterprise that employs less than the full time equivalent of 20 persons on the day the written contract is entered into ('full time equivalent' is as defined by the Australian Bureau of Statistics). If the enterprise forms part of a group, this test is applied to the group as a whole.

BB. Allowances (clause 3)

BB.1 Not applicable.

CC. Assistance (clause 3)

CC.1 Not applicable.

DD. Project Delegate (clauses 8 and 25)

DD.1 The Project Delegate is:

Name: Branch Manager, Youth Attainment and Transitions Branch

Office Address: 14 Mort St, Canberra ACT 2601

Postal Address: GPO Box 9880, , Canberra ACT 2601

Fax: (02) 6123 7097

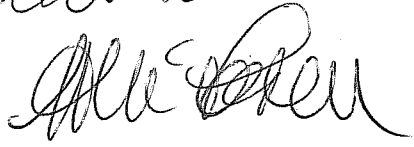
Phone: (02) 6240 9400

Email: Helen.McLaren@deewr.gov.au

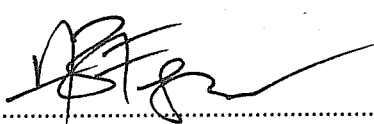
EE. Your Confidential Information (see clause 11)

EE.1 Not applicable.

THIS CONTRACT is made on the 24th day of December 2009
SIGNED for and on behalf of
THE COMMONWEALTH OF AUSTRALIA
by Helen McLaren
the Branch Manager
of Youth Attainment and Transitions Branch
of the Department of Education, Employment and Workplace Relations

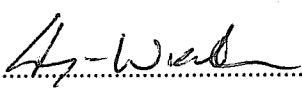


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In the Presence of:


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WITNESS

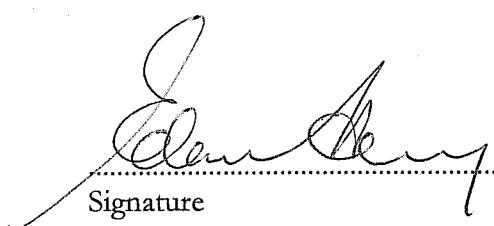
ANDREW FERGUSON Public Servant
Full name and occupation or profession of witness (Please print)

EXECUTED BY
The Smith Family


.....
Signature

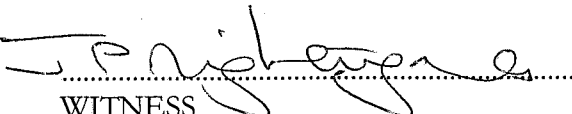
BEN WATKINSON
Full Name (Please print)

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



.....
Signature

ELAINE HENRY
Full Name (Please print)

DIRECTOR
Position
In the Presence of:


.....
WITNESS

JULIA P NIGHTINGALE


.....
WITNESS

JULIA P NIGHTINGALE