



Minute – Entering into a New Contract

Subject:	Submission for Contract Signature for Funding Agreement 49478 - 'Creative Industries, Development and Timor-Leste: A Case Educational Innovation'. <i>49920 s.47F</i>		
For:	Susan Wilson, Director RTG		
Through:			
Requested By:	Melissa Davies	Request Date:	20 March 2009
AidWorks Initiative Id:	INI 490	File Number:	09/0268
Contract Value:	\$242,224		
Attachments			

Purpose

Attached are two originals of Funding Agreement *49920 s.47F* 49478, 'Creative Industries, Development and Timor-Leste: A Case Educational Innovation', Griffith University (the Organisation), submitted for your signature.

Background

2. The Funding Agreement is required for the following reasons:

- The ADRA's were developed as a result of the identification of the need to have an open, competitive grant process to increase AusAID's ability to access and stimulate high quality research that informs policy development and increase the stock of knowledge around development problems.
- Following an intensive selection process, AusAID agreed with the Research Selection Committee's recommendations that 41 proposals, totalling \$11.8 million over three years, be funded.

3. The Funding Agreement includes an indemnity, liability cap, guarantee or warranty provided by the Commonwealth.

Approvals and clearances

4. The following approvals and clearances have been completed for this contract:

- The funding has been approved by an FMA Reg 9 Delegate **YES** NO N/A
- The procurement method was approved by an FMA Reg 9 Delegate **YES** NO N/A
- The procurement outcome was approved by an FMA Reg **YES** NO N/A

9 Delegate

- The contract has been cleared by either AusAID's Legal Advisor or the Director, PMG

YES NO N/A

Signing Instructions

5. Please ensure that:

- both copies are signed on page (iii); and
- your signature is witnessed.

6. Please return the signed copies to me for posting. The details of the contract will be entered onto AidWorks in a timely manner in accordance with the Aidworks Manual.

s.47F

Melissa Davies
Research Thematic Group

The contracts have been signed / not signed.

s.47F

Susan Wilson
Director, RTG
FMA Act Section 44 Delegate

Fry - Education

FUNDING AGREEMENT DEED

BETWEEN

COMMONWEALTH OF AUSTRALIA

represented by the Australian Agency for International Development

ABN 62 921 558 838

and

Griffith University

ABN 78 106 094 461

FOR

**CREATIVE INDUSTRIES, DEVELOPMENT AND TIMOR-LESTE: A CASE
EDUCATIONAL INNOVATION.**

AGREEMENT NUMBER 49920

DEED made 30th day of March 2009

BETWEEN:

COMMONWEALTH OF AUSTRALIA represented by the Australian Agency for International Development ("AusAID") of the Department of Foreign Affairs and Trade, ABN 62 921 558 838

AND

GRIFFITH UNIVERSITY (ABN 78 106 094 461), a body corporate established pursuant to the Griffith University Act 1998, of Kessels Road, Nathan, in the State of Queensland (the "Organisation").

RECITALS:

- A. AusAID wishes to provide the Organisation with Funds to undertake an Activity.
- B. The Organisation wishes to accept the Funds subject to the terms and conditions in this Deed.

OPERATIVE:

AusAID and the Organisation promise to carry out and complete their respective obligations in accordance with this Deed including the Deed Conditions, schedules and any annexes contained herein.

IN WITNESS whereof this Deed has been executed by the Commonwealth, by an authorised officer, and has been executed by the Organisation by its authorised officer.

SIGNED

for and on behalf of the

COMMONWEALTH OF AUSTRALIA

represented by the Australian Agency for International Development (AusAID) by

s.47F
[Redacted Signature]

.....
Susan Wilson, Director RTG
FMA Act s.44 Delegate

.....
Signature

in the presence of -

MELISSA DAVIES

.....
Name of Witness
(Print)

s.47F
[Redacted Signature]

.....
Signature of Witness

SIGNED

for and on behalf of

Griffith University by

Dr Vicki Pattemore, Director, Office for Research
Name and Position
(Print)

s.47F
[Redacted Signature]

.....
Signature

By executing this Deed the signatory warrants that he/she is duly authorised to execute this Deed on behalf of the Organisation.

in the presence of -

KAREN MOOREHEAD

.....
Name of Witness
(Print)

s.47F
[Redacted Signature]

.....
Signature of Witness

DEED CONDITIONS

1. INTERPRETATION

1.1 Definitions

In this Deed, including the recitals unless the context otherwise requires:

“**Activity**” means the activity [*Creative Industries, Development & Timor-Leste: A Case Educational Innovation*] described in the Activity Proposal for which the Funds are provided.

“**Activity Proposal**” means the specific tasks and budget associated with the Activity included as **Schedule 1** to this Agreement.

“**Agreement**” means this Deed including all Parts and any schedules and annexes.

“**Agreement Material**” means all material created or required to be developed or created as part of, or for the purpose of undertaking the Activity, including documents, equipment, information data, sounds and images stored by any means.

“**Business Day**” means a day on which AusAID is open for business.

“**Commonwealth**” means Commonwealth of Australia or AusAID, as appropriate.

“**Deed**” means this Agreement comprising these Deed Conditions, schedules and any annexes.

“**Fraudulent Activity**”, “**Fraud**” or “**Fraudulent**” means dishonestly obtaining a benefit by deception or other means.

“**Funds**” means the amount of money as specified in clause titled ‘Funds and Payment’ of this Agreement that has been approved by AusAID and paid to the Organisation subject to the conditions outlined in this Agreement for the Activity.

“**Independently Audited**” means financial records audited by a certified financial professional that is in no way linked or associated with the Activity or the Parties to this Agreement.

“**Partner Government**” means the Government of the Partner Country.

“**Partner Country**” means the country or countries in which the Activity is to be undertaken in whole or in part.

“**Party**” means AusAID or the Organisation.

“**Prior Material**” means all material developed by the Organisation or a third party independently from the Activity whether before or after commencement of the Activity.

“**Relevant List**” means the lists of terrorist organisations made under Division 102 of the *Criminal Code Act 1995* (Cth) and the *Charter of the United Nations Act 1945* (Cth) posted at: <http://www.nationalsecurity.gov.au/agd/www/nationalsecurity.nsf/AllDocs/95FB057CA3DEC30CA256FAB001F7FBD?OpenDocument> and http://www.dfat.gov.au/icat/UNSC_financial_sanctions.html#3

“**Similar List**” means any similar list to the World Bank List maintained by any other donor of development funding.

“**World Bank List**” means a list of organisations maintained by the World Bank in its “Listing of Ineligible Firms” or “Listings of Firms, Letters of Reprimand” posted at: <http://web.worldbank.org/external/default/main?theSitePK=84266&contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984>

1.2 Deed prevails

If there is any inconsistency (whether expressly referred to or to be implied from this Deed or otherwise) between the provisions of the Deed Conditions and those of the schedules and any annexes, the schedules and any annexes are to be read subject to the Deed Conditions and the provisions of the Deed Conditions prevail to the extent of the inconsistency.

2. **TERM OF THE AGREEMENT**

- 2.1 The Organisation must commence the Activity on **2 March 2009** (“Activity Start Date”) and conclude the Activity by **1 March 2012**.
- 2.2 The term of the Agreement concludes when all obligations under it have been satisfied.

3. **NOTICES**

- 3.1 For the purpose of serving notices to either Party of this Agreement, a notice must be in writing and shall be treated as having been duly given and received:
- (a) when delivered (if left at that Party’s address);
 - (b) on the third Business Day after posting (if sent by pre-paid mail); or
 - (c) on the Business Day of transmission (if given by facsimile and sent to the facsimile receiver number of that Party and no intimation having been received that the notice had not been received, whether that intimation comes from that Party or from the operation of facsimile machinery or otherwise).
- 3.2 For the purposes of this Agreement, the address of a Party is the address set out below or another address of which that Party may give notice in writing to the other Party:

AusAID

To: David Carpenter
Manager ADRP, Research Thematic Group

Postal Address: Australian Agency for International Development
GPO Box 887
CANBERRA ACT 2601 AUSTRALIA

Street Address: 255 London Cct
CANBERRA ACT 2601 AUSTRALIA

Facsimile: +61 2 6206 4570

Organisation:

To: Director, Office for Research

Postal Address: Office for Research
Griffith University
170 Kessels Road
Nathan QLD 4111

Facsimile: 07 3735 7994

4. GENERAL CONDITIONS

- 4.1 The Organisation must carry out the Activity in accordance with the Activity Proposal and the terms and conditions of this Deed.
- 4.2 The Organisation must advise AusAID immediately of any difficulties or delays in implementation of the Activity.
- 4.3 Work must commence in the first six months of the grant year. A delay of more than six months from the Activity start date, without approval, will result in the grant being cancelled. In the event of cancellation, all funds must be returned to AusAID within 30 days.
- 4.4 The Organisation shall acknowledge in writing to AusAID receipt of the Funds immediately on its receipt.
- 4.5 The Funds and any interest earned or exchange rate gains must be used diligently and for the sole purpose of the Activity outlined in **Schedule 1** of this Agreement. Any interest earned or exchange rate gains made on the Funds must only be expended on the Activity.
- 4.6 The Organisation acknowledges that Funds provided by AusAID to the Organisation for this Activity does not entitle the Organisation to any other or further funding.
- 4.7 The Organisation shall acknowledge AusAID funding assistance provided under this Deed where appropriate and advise AusAID of matters relating to any publicity and media relations, prior to any publication or media release.
- 4.8 The Organisation must not represent itself and must ensure that its volunteers, employees, agents and sub-contractors participating in the Activity do not represent themselves as being employees, partners or agents of the Commonwealth of Australia.
- 4.9 The Organisation must not assign its interest in this Agreement without first obtaining the consent in writing of AusAID.
- 4.10 No delay, neglect or forbearance by either Party in enforcing against the other any term or condition of this Agreement shall be deemed to be a waiver or in any way prejudice any right of that Party.

- 4.11 This Agreement is governed by, and is to be construed in accordance with, the law of the Australian Capital Territory and the Parties submit to the exclusive jurisdiction of the courts of the Australian Capital Territory and any court hearing appeals from those courts.

5. DEED AMENDMENTS

- 5.1 AusAID or the Organisation may propose amendments to this Agreement at any time for the purpose of improving the delivery of the Activity, the efficiency, cost-effectiveness and development impact of the Activity.
- 5.2 Changes to this Agreement (including to **Schedule 1** and any annexes) shall only be effected if agreed in writing and signed by both Parties in the form of a Deed of Amendment.

6. MONITORING AND EVALUATION

- 6.1 The Organisation must, if required by AusAID, permit AusAID to monitor and/or evaluate the Activity and/or use of the Funds. AusAID shall give the Organisation at least two (2) weeks notice of its intentions prior to commencing such a review. In that event, the Organisation must cooperate fully with any request for assistance pursuant to any such study.

7. INDEMNITY

- 7.1 The Organisation must at all times indemnify AusAID, its employees, agents and contractors (except the Organisation) ("**those indemnified**") from and against any loss or liability whatsoever suffered by those indemnified or arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such loss or liability was caused or contributed to in any way by any wilfully wrongful, unlawful or negligent act or omission of the Organisation, or any of the Organisation's personnel in connection with this Agreement.
- 7.2 The Organisation agrees that AusAID may enforce the indemnity in favour of the persons specified in **Clause 7.1** above for the benefit of each of such persons in the name of AusAID or of such persons.
- 7.3 The indemnity in this **Clause 7** is reduced to the extent that the loss or liability is directly caused by AusAID, its employees, agents or contractors (except the Organisation), as substantiated by the Organisation.
- 7.4 This indemnity shall survive termination or expiration of this Agreement.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 The title to all Intellectual Property rights in or in relation to material created during the course of the Activity vests in the Organisation upon its creation. The Organisation will grant to AusAID a world-wide, irrevocable, royalty-free licence to use, reproduce, adapt or otherwise exploit the material. The licence granted under this Clause 8.1 includes the right to sub-licence for the purposes of performing functions, responsibilities, activities or services for, or on behalf of, AusAID.

9. **COMPLIANCE WITH LAWS AND POLICIES**

- 9.1 The Organisation must have regard to and comply with, relevant and applicable laws, regulations and policies, including those in Australia and in the Partner Country.
- 9.2 The Organisation must comply with AusAID's *Child protection policy* (<http://www.aisaid.gov.au/publications/pubs.cfm?Type=PubPolicyDocuments>) and particularly the child protection compliance standards at Attachment 1 to the policy. AusAID may audit the Organisation's compliance with AusAID's *Child protection policy* and child protection compliance standards. The Organisation must participate cooperatively in any reviews conducted by AusAID.
- 9.3 The Organisation must use its best endeavours to ensure:
- (a) that individuals or organisations involved in implementing the Activity are in no way linked, directly or indirectly, to organisations and individuals associated with terrorism; and
 - (b) that Funds provided under this Agreement are not used in any way to provide direct or indirect support or resources to organisations and individuals associated with terrorism.

If, during the course of this Agreement, the Organisation discovers any link whatsoever with any organisation or individual listed in a Relevant List it must inform AusAID immediately.

- 9.4 If, during the course of this Agreement, the Organisation is listed in on a World Bank List or Similar List it must inform AusAID immediately.

- 9.5 The Organisation agrees that:

- (a) The Organisation and its employees, agents, representatives or its subcontractors must not engage in any Fraudulent Activity. The Organisation is responsible for preventing and detecting Fraud.
- (b) The Organisation must report in writing within five (5) working days to AusAID any detected, suspected, or attempted Fraudulent Activity involving the Activity. AusAID may direct the Organisation to investigate the alleged Fraud and the Organisation must undertake an investigation at the Organisation's cost and in accordance with any directions or standards required by AusAID.
- (c) Following the conclusion of any investigation which identifies acts of a Fraudulent nature, the Organisation shall:
 - (i) make every effort to recover any AusAID Funds, the subject of Fraudulent Activity;
 - (ii) refer the matter to the relevant police or other authorities responsible for prosecution of Fraudulent Activity; and
 - (iii) be liable for the repayment of any Fund amounts misappropriated by the Organisation, its agents, representatives or subcontractors.

- (d) The Organisation warrants that the Organisation shall not make or cause to be made, nor shall the Organisation receive or seek to receive, any offer, gift or payment, consideration or benefit of any kind, which would or could be construed as an illegal or corrupt practice, either directly or indirectly to any party, as an inducement or reward in relation to the execution of this Agreement. In addition, the Organisation shall not bribe public officials and shall ensure that its delivery organisations comply with this provision. Any breach of this clause shall be grounds for immediate termination of this Agreement by notice from AusAID.

9.6 If the Activity includes research with or about people or their data, (“Human Research”), it must present evidence of compliance with appropriate ethical guidelines for the conduct of such research.

- (a) The Australian “*National Statement on Ethical Conduct in Human Research*” (Australian Government, 2007) outlines principles of ethical conduct in human research. All AusAID-funded projects must, as a minimum conform to these principles. In addition, the “*Australian code for the responsible conduct on research 2007*” provides important principles of responsible research practice. No person shall become the subject of research supported by AusAID without his or her competent, voluntary, and informed uniform consent.
- (b) If ethics approval is required it must be obtained from the Organisation within the first year of the project and prior to the commencement of data collection. Written confirmation of ethics approval (including if approval denied) must be provided to AusAID as soon as it is received by the Organisation.
- (c) Ethics approval requirements in the research project target location (country./ countries) must be taken into consideration and met.
- (d) If ethics approval is either not sought or is denied, AusAID reserves the right in its absolute discretion to terminate the research grant forthwith and seek reimbursement of all monies paid.

10. TERMINATION

10.1 If the Organisation:

- (a) becomes, or AusAID considers there is a reasonable prospect of the Organisation becoming bankrupt, insolvent, deregistered or no longer able to undertake the Activity to a standard acceptable to AusAID;
- (b) makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors;
- (c) fails to commence, or in the opinion of AusAID, fails to make satisfactory progress in carrying out the Activity and such failure has not been remedied within the time specified in a written request from AusAID to remedy the failure;
- (d) assigns its interest in this Agreement without the consent in writing of AusAID;
- (e) is, during the term of this Agreement, listed on a World Bank List, Relevant List or similar list; or

- (f) breaches any term of this Agreement and such breach has not been remedied within the time stipulated in a written request notice from AusAID to remedy the breach;

then in every such case AusAID shall be entitled to terminate this Agreement forthwith but without prejudice to any of its other rights.

- 10.2 In addition, either Party may terminate this Agreement by giving to the other a notice to terminate in writing stating the reasons for termination.
- 10.3 AusAID may terminate this Agreement immediately by notice in writing to the Organisation if the Organisation breaches any of its obligations under **Clause 9**.
- 10.4 In the event of any termination, the Organisation must provide an Independently Audited statement of expenditure of the Funds within thirty (30) days of the date of the notice to terminate, signed by the head of the Organisation, and return any uncommitted unspent Funds to AusAID.
- 10.5 In the event that a notice to terminate is given by either Party the Organisation must:
- (a) immediately and forthwith do everything possible to prevent and mitigate all losses, costs and expenses arising in consequence of the termination of this Agreement and shall in a prompt and orderly manner cease expenditure of any uncommitted Funds for the Activity; and
 - (b) refund any uncommitted part of any tranche or Funds already paid by AusAID, together with any uncommitted or unspent interest, within thirty (30) days of the date of the notice to terminate.
- 10.6 In the event that a notice to terminate is given by either party AusAID shall not be liable to pay compensation in an amount which, in addition to any amounts paid or due or becoming due to the Organisation under this Agreement, together would exceed the amount of the total financial limitation of this Agreement, as specified in clause headed 'Funds and Payment'.

11. ACCOUNTS AND RECORDS

- 11.1 The bank account used by the Organisation must be in the name of the Organisation and must not be a personal bank account.
- 11.2 The Organisation must maintain a sound administrative and financial system capable of verifying all statements of acquittal. In addition, the Organisation must:
- (a) keep proper and detailed accounts, records and assets registers along with adequate Activity management records providing clear audit trails in relation to expenditure under this Agreement;
 - (b) afford adequate facilities for audit and inspection of the financial records referred to in this Agreement by AusAID and its authorised representatives at all reasonable times and allow copies and extracts to be taken;
 - (c) the accounts and records must be held by the Organisation for the term of this Agreement and for a period of seven (7) years from the date of expiry or termination of this Agreement.

- (d) if requested by AusAID, provide an acquittal, certified by the senior financial officer in the Organisation, of Funds spent to date against the budget in the Activity Proposal and;
- (e) if reasonably requested by AusAID, provide an Independently Audited statement of Activity expenditure by an auditor nominated by AusAID at no cost to AusAID.

12. **REPORTING**

12.1 **Annual Activity Report(s)** are due on the anniversary of the signature date of this Agreement and must be sent to the nominated AusAID contact officer as detailed in Clause 3.2. **Annual Activity Report(s)** are to be provided electronically in Microsoft Word.

12.2 The **Annual Activity Report(s)** should not exceed five (5) pages and must:

- (a) use the template provided by AusAID;
- (b) provide brief administrative and financial details, including an acquittal of the previous years' tranche payment; and
- (c) provide an activities report indicating progress of the project, comparing actual accomplishments with goals established for the report period.

Acceptance in writing of this report by AusAID will trigger the release of the next annual tranche payment.

12.3 The Organisation is required to submit a final Activity report (**Final Report**) and overall acquittal within one month of completion of the Activity. The **Final Report**, should not exceed ten (10) pages and must:

- (a) provide a short summary of the overall project, the key findings and any recommendations coming out of the Activity.
- (b) Acquit the final years' tranche payment.
- (c) The final Activity Report and overall acquittal of funds must be sent to the nominated AusAID contact officer as detailed in Clause 3.2.

12.4 The Organisation is required to submit a **Communication and Engagement Report**:

- (a) The report must outline ways in which findings from the study have been communicated and distributed to the broader community, particularly policy and decision makers.
- (b) This report is due six (6) months after AusAID acceptance of the **Final Report** and must use the template provided by AusAID.
- (c) Principal Investigators must be available to attend a one-day Communications Workshop in Canberra, Australia in mid 2009.

12.5 The Organisation is required to provide to AusAID the outputs as specified in the Activity Proposal. These are detailed in Schedule 1.

13. **FUNDS AND PAYMENT**

- 13.1 Funds up to a maximum of **AUD242,224**, plus GST if any up to a maximum amount of **AUD24,222.40** shall be payable as an acquittable grant by AusAID in annual tranches divided as follows:

Indicative Date	Tranche Number	Amount of Funds
2009	1	AUD106,197
2010	2	AUD87,622
2011	3	AUD48,405

Tranche 1 shall be payable by AusAID within thirty (30) days of the date of execution of this Agreement and receipt of a valid invoice and will cover the costs relating to activities identified in Year One. Subsequent tranches will be payable on notification from AusAID that it will proceed with the next years funding and will be subject to acceptance in writing of the Annual Activity Report. Subsequent tranches will also be subject to expenditure of 75% of the previous tranche against the budget outlined in '*Creative Industries, Development & Timor-Leste: A Case Educational Innovation*'.

- 13.2 The statement(s) of acquittal must be signed by the senior financial officer of the Organisation indicating that the Funds being acquitted have been expended, in accordance with the terms of this Agreement.
- 13.3 Any unspent Funds or interest must be repaid to AusAID with the final report and final acquittal. The Funds acquittal must include details of any interest earned on the Funds. The final acquittal acquitting all Funds shall be subject to the internal and external auditing procedures laid down in the rules and regulations applicable to the Organisation and must also be Independently Audited and certified. The cost of an independent external audit required by this clause may be payable from the Funds.

14. **CLAIMS FOR PAYMENT**

- 14.1 Invoices must be submitted when due in accordance with this Agreement, in a form identifying the project/activity title and Agreement number 49920. Invoices must also contain the Payment Event number(s) notified by AusAID.

- 14.2 All invoices must be **made** to:

Chief Finance Officer
 Australian Agency for International Development
 GPO Box 887
 CANBERRA ACT 2601 AUSTRALIA

- 14.3 Invoices should be sent to the above address. Alternatively AusAID will accept electronic invoices. These can be sent to accountsprocessing@ausaid.gov.au

- 14.4 Where Australian GST applies to this Agreement all invoices must be in the form of a valid tax invoice. Invalid tax invoices will be returned to organisations. Information on what constitutes a valid tax invoice can be found at <http://www.ato.gov.au/businesses/content.asp?doc=/content/50913.htm>

**SCHEDULE 1 – ACTIVITY PROPOSAL
TO FUNDING AGREEMENT DEED NUMBER 49920**

The specific tasks and budget associated with the Activity are included in the document titled *Creative Industries, Development and Timor-Leste: A Case Educational Innovation* (“Activity Proposal”) dated 29 August 2008 which forms part of the Agreement.

AUD242,224 (“the Funds”) has been approved as a *three year* commitment, subject to the conditions outlined in this agreement, for activities aimed at meeting the following objective(s):

- (a) Build a stronger evidence base for AusAID policy and programs;
- (b) Create incentives for innovative ideas and strategies;
- (c) Deepen the pool of academic expertise about and within countries in the Asia-Pacific region that have traditionally received relatively less research attention;
- (d) Contribute to Australia’s share of research efforts for the global public good;
- (e) Develop partner country capacity to solve local problems; and
- (f) Foster linkages that encourage solutions to development challenges.

In particular, this activity will:

- Aim to improve employment opportunities for the young (especially young women) by the development of local creative industries many of which have been female craft practices;
- Investigate and examine in detail an extensive range of traditional and adopted creative practices and document the product/performance forms created by these practices;
- Evaluate cost-effective practices and products with commercial potential;
- Use the above information to inform the development of a curriculum for a college of creative industries based on skill development and training;
- Provide methods to potential educators to enable them to bring their practices into an appropriate industrial context and to teach;
- Identify and trial methods to enable the curriculum to incorporate commercialisation/marketing strategies for national and export markets.