



HCEM
HANOI COLLEGE FOR ELECTRO - MECHANICS



**Australia Vietnam Centre of Excellence (AVCOE)
Establishment Framework Agreement**

Box Hill Institute

and

Hanoi College for Electro-Mechanics

THIS AGREEMENT is made the

PARTIES

1. **BOX HILL INSTITUTE** ABN 76 268 630 462 of 465 Elgar Road, Box Hill, Victoria, Australia ("BHI")
2. **HANOI COLLEGE FOR ELECTRO-MECHANICS** of 160 Mai Dich Street, Cau Giay District, Hanoi, Vietnam ("HCEM")

together referred to as parties and separately as a party.

RECITALS

- A. BHI is registered training organization no. 4687 established under the *Education and Training Reform Act 2006* (Vic).
- B. BHI is a Victorian public sector entity which is a leading vocational and higher education provider that offers a wide range of programs from secondary education to postgraduate Masters.
- C. HCEM is a state-owned educational institution in Hanoi, Vietnam, one of 45 high-quality vocational colleges under the Decision 761/QD-TTg dated 23 May 2014 of the Prime Minister.
- D. BHI and HCEM have entered into a Memorandum of Understanding dated 10 December 2018 ("MoU"), evidencing the parties' intention to work cooperatively to provide teacher training and dual award joint programs at HCEM's campus in Vietnam.
- E. Further to the MoU, the parties have agreed to establish an Australia Vietnam Centre of Excellence ("AVCOE") Centre at HCEM's campus in Vietnam on the terms and conditions outlined in this Agreement.

CLAUSES

1. Establishment of AVCOE Centre

The parties agree to establish an AVCOE Centre at HCEM's campus on the terms and conditions outlined in this Agreement.

2. Term

- 2.1 This Agreement shall be effective for five (5) years from the Commencement Date, unless terminated earlier in accordance with clause 12 of this Agreement.

3. Obligations of HCEM

3.1 HCEM acknowledges and agrees that it shall:

- (a) provide suitable building space and facilities at HCEM's campus in Vietnam for operation of the AVCOE Centre ("AVCOE Centre Premises") in accordance with course requirements, student numbers and BHI requests from time to time;
- (b) maintain the AVCOE Centre Premises to a standard suitable for operation of the AVCOE Centre;
- (c) pay all costs and expenses for the AVCOE Centre Premises;
- (d) provide an alternative location for the AVCOE Centre if the AVCOE Centre Premises is unavailable for any reason;
- (e) take responsibility for enrolment of students when required or applicable for education standard requirements and relevant courses at the AVCOE Centre;
- (f) maintain appropriate levels of insurance in line with corporate and educational requirements under the laws of the Territory;
- (g) maintain all licences, permits and registrations required in the Territory for operation of the AVCOE Centre.

4. Obligations of BHI

4.1 BHI acknowledges and agrees that it shall:

- (a) take responsibility for enrolment of students when required or applicable for education standard requirements and relevant courses;
- (b) maintain appropriate levels of insurance for any BHI staff members delivering courses at the AVCOE Centre.

4.2 Subject to the terms and conditions of any delivery agreement entered into by the parties, BHI shall:

- (a) deliver Certificate IV in Training and Assessment courses in Australia for teachers/trainers through the AVCOE Centre;
- (b) deliver International Skills Training courses at the AVCOE Centre;
- (c) provide quality assurance services for other educational institutions in the Territory through the AVCOE Centre, subject to payment of the relevant fee;
- (d) confer the relevant course award on eligible students whom BHI assesses as having successfully completed a relevant course;
- (e) deliver any other programs, courses or services as agreed between the parties from time to time.

5. Delivery of courses

The parties acknowledge and agree that no courses, training or study tours will be delivered at the AVCOE Centre prior to execution of a delivery agreement by the parties.

6. Logo

6.1 HCEM acknowledges and agrees that it may not use BHI's logo or name in any way, without the prior written permission of BHI.

6.2 BHI grants HCEM use of the AVCOE logo, in Schedule 1 of this Agreement, solely for the following purposes:

- (a) marketing of the AVCOE Centre;
- (b) signage on the AVCOE Centre;
- (c) documentation for the AVCOE Centre;
- (d) documentation and training materials for courses to be delivered at the AVCOE Centre;
- (e) other uses with the prior written consent of BHI.

7. Intellectual Property

7.1 The parties warrant that they are entitled to use any Intellectual Property which may be used by them in connection with this agreement.

7.2 The parties indemnify and shall at all times keep the other party indemnified against any action, claim, suit or demand, including a claim, suit or demand for or liability to pay compensation or damages and costs or expenses arising out of or in respect of any breach of any third party's Intellectual Property rights relating to the provision of information or materials under this agreement.

7.3 Any new Intellectual Property created under this agreement will be subject to a separate agreement.

7.4 Neither party will use the other's Intellectual Property including its name or logo without prior written consent.

8. Confidentiality and Privacy

8.1 Each party will keep the Confidential Information of the other party secret and not make any unauthorised use or disclosure thereof.

8.2 The parties agree that their employees, agents, directors, partners, shareholders or consultants shall not disclose to any person, any Confidential Information or information relating to other party or the affairs of others which may have come to their knowledge as a result of this Agreement. All Confidential Information provided by each party under this Agreement shall remain the

property of that party and (where possible) shall be returned to that party on termination of this Agreement. The parties' obligations under this clause shall not extend to:

- (a) disclosure of information on a confidential and 'as needs' basis, to the Victorian Government, or the parties' professional advisors including banks, architects and consultants;
- (b) information already in the public domain; or
- (c) any disclosure required by law.

8.3 The parties shall observe all applicable Commonwealth and State privacy laws in relation to any personal information that is collected as a result of the Agreement including the Information Privacy Principles contained in the *Privacy and Data Protection Act 2014 (Vic)*.

9. All things necessary

The parties will do all things reasonably necessary to effect this Agreement and the transactions contemplated hereunder.

10. Force Majeure

If a Force Majeure arises so as to wholly or partly prevent or delay either party performing its obligations under this Agreement, the affected party shall:

- (a) use reasonable endeavours to remove the Force Majeure as quickly as practicable, but shall not be liable to settle any strike, lockout or other labour difficulty on terms not reasonably acceptable to that party; and
- (b) notify the other party of the Force Majeure, its likely duration and the period (in that party's opinion) of any consequent delays or other relevant events, and the said dates will be so extended unless the other party disputes the delay period within 7 days of receipt of the notice in which case the parties shall consult in an endeavour to agree upon a satisfactory extension of time and failing agreement within 7 further days either party may refer the matter to the dispute resolution process under clause 11.

11. Dispute resolution

11.1 In the event of a dispute arising between the parties out of or in connection with this Agreement, either party may issue the other with a notice ("Dispute Notice"), detailing the dispute.

11.2 Upon a Dispute Notice being issued by either party, the chief executive officer or nominee of each party shall meet and in good faith endeavour to resolve the dispute.

11.3 In the event that the dispute cannot be resolved within 30 days, or such other period as the chief executive officers or their nominees agree, then the parties agree to submit the matter to the courts of the State of Victoria in Australia and either party may commence litigation proceedings.

11.4 Any proceeding shall be conducted in the English language.

12. Termination

- 12.1 Subject to this clause 12, this Agreement shall terminate automatically at the end of the Term.
- 12.2 Either party may terminate this Agreement by giving one (1) month written notice to the other party.
- 12.3 Either party may terminate this Agreement immediately if:
- (a) in the terminating party's reasonable opinion, the other party or any of its employees or agents are, in relation to its responsibilities under this agreement:
 - (i) guilty of any fraud, dishonesty, or any other serious misconduct;
 - (ii) have acted without the standard due diligence and skill required.
 - (b) the other party voluntarily or compulsorily goes into liquidation or becomes insolvent or comes under administration.
- 12.4 Upon termination of this Agreement HCEM will return any Confidential Information to BHI.

13. Key Representatives

- 13.1 In order to ensure the good management of this Agreement, each party will appoint one of its personnel to be in charge of the day-to-day operation of this Agreement:

BHI

Kien Chai

Manager, International Business Development

Address: 465 Elgar Rd, Box Hill, Victoria 3128 Australia

Tel: +61 (03) 9286 9044

Email: kien.chai@boxhill.edu.au

HCEM

Nguyen Quang Huy

Head of Science and International Cooperation Department

Address: 160 Mai Dich Street, Cau Giay District, Hanoi,
Vietnam

Tel: +84 936 187 332

Email: nguyenquang.huy@hotmail.com

14. No partnership

Nothing in this Agreement shall create a partnership or joint venture between the parties and save as expressly provided in this Agreement neither party shall enter into or have authority to enter into any engagement or make any representation or warranty on behalf of or pledge the credit of or otherwise bind or oblige the other party.

The parties acknowledge their intention to collaborate to achieve the objectives outlined in this Agreement and the MoU.

15. Entire Agreement and Conflicts

15.1 This Agreement sets out the entire agreement and understanding between the parties and supersedes all prior agreements, understandings or arrangements (oral or written) in respect of the subject matter of this Agreement.

15.2 The parties acknowledge that they have entered into this Agreement in reliance only upon the representations, warranties and promises specifically contained or incorporated in this Agreement and, save as expressly set out in this Agreement, shall have no liability in respect of any other representation, warranty or promise made prior to the date of this Agreement unless it was made fraudulently.

15.3 If the parties have entered into this Agreement in both an English version and a version in a language other than English, then in the event and to the extent of any conflict between the English version and the version in the language other than English, the English version shall prevail.

16. Counterparts

This Agreement may be executed in any number of counterparts and all of those counterparts taken together will be deemed to constitute the same instrument.

17. Attorneys

Each attorney who executes this Agreement on behalf of a party declares that the attorney has no notice of the revocation or suspension of the Power of Attorney under the authority of which the attorney executes this Agreement.

18. Amendment

This Agreement may only be amended in writing signed by all the parties and may not be amended in any other manner.

19. Severance

If any provision of this Agreement shall be held to be invalid or in any way unenforceable, it shall be severed and the remaining provisions shall not in any way be affected or impaired and this Agreement shall be construed so as to most nearly give effect to the parties' intention when it was originally executed.

20. Releases and Waivers

20.1 The rights, powers and remedies conferred on any party by this Agreement and remedies available to any party are cumulative and are additional to any right, power or remedy which it may have under general law or otherwise.

20.2 No single or partial exercise or delay in exercising any right, power or remedy by either party shall constitute a waiver by that party of, or preclude any further exercise of, that or any right,

power or remedy arising under this Agreement or otherwise.

21. Assignment

This Agreement shall be binding upon and accrue for the benefit of the successors in title of the parties but shall not be assignable by any party without the prior written consent of the other.

22. Governing law and Jurisdiction

22.1 Any dispute arising out of or in connection with the subject matter of this Agreement shall be governed and construed in accordance with the laws of the State of Victoria, within the Commonwealth of Australia. The parties submit to the non-exclusive jurisdiction of the courts of the State of Victoria and any courts that may hear appeals from those courts in respect of any proceeding in connection with this Agreement.

22.2 In carrying out its obligations and responsibilities under this Agreement, the parties will:

- (a) comply with all country, federal, state and local laws, ordinances, codes, regulations, rules, policies, licensing requirements, regulations and procedures, including, without limitation, such laws and regulations related to recycling or take-back programs for packaging, the use of products under telecommunications laws/regulations, and all applicable anti-corruption laws (collectively, the "Applicable Laws");
- (b) not take any action or permit or authorize any action which may render the other in violation of Applicable Laws;
- (c) will not, and ensure that their employees, agents, representatives, affiliates and any person who performs services in connection with this Agreement, (or in respect of any other agreement or understanding between BHI and HCEM), will not bribe, or attempt to bribe (which shall include without limitation, any offer of any form of payment, gift or other form of inducement, reward or advantage, charitable donations, facilitation payments, and/or political contributions (whether of money or anything of value)) any Students or potential Students, any public or government officials or employees, public international organisations, political parties, or private individuals or other entities.
- (d) That they have not, prior to the date of this Agreement, bribed or attempted to bribe another person in order to secure and/or retain any business from the other party either in connection with this Agreement or otherwise.

23.3 The parties are not obliged to take any action or omit to take any action that the relevant party believes, in good faith, would cause it to be in violation of any Laws identified in this Agreement or the Applicable Laws.

23.4 If a party discovers that it has or may have violated any of the provisions in this clause 23, it will immediately notify the other party in writing and cooperate with any investigations by the other party into such matters.

23.5 Notwithstanding any other provision in this Agreement, a party may terminate this Agreement immediately upon written notice if the other party breaches any of the representations and warranties set forth in this clause 23. The party in breach of this clause will indemnify and hold

harmless the other party, its directors, officers, employees, agents, affiliates and subsidiaries against any and all liabilities, losses and expenses, including any fines imposed by any relevant government or regulatory authority and any legal fees, costs and expenses, which that party or its directors, officers, employees, agents and affiliates and subsidiaries may incur as a result of the second party's breach of this clause 23.

24. Anti-bribery and anti-money laundering

The parties shall at all times comply with all applicable anti-money laundering, anti-bribery, anti-corruption, counter-terrorism financing, and economic or trade sanctions laws and regulations of:

- (a) the Commonwealth of Australia; and
- (b) any jurisdiction in which that party performs obligations under this Agreement

25. Dictionary

25.1 In this Agreement unless the context otherwise requires:

"AVCOE Centre" means the Australia Vietnam Centre of Excellence Centre to be established by the parties pursuant to this Agreement.

"Commencement Date" means the date on which this Agreement has been executed by the last of the parties to do so.

"Confidential Information" means all information passing from the Disclosing Party to the Receiving Party relating to the business of the Disclosing Party including business and technical information (such as, but not limited to, customer lists, financial information, sales and marketing information) other information and know-how not generally known to the public or otherwise designated by the Disclosing Party as confidential, trade secrets, intellectual property, projections, arrangements and agreements with third parties, customer information, customer lists, concepts not reduced to material form and processes, equipment and techniques used by the Disclosing Party in the course of its business, but does not include any information which:

- (a) is generally available in the public domain except where that is as a result of disclosure by the Disclosing Party, its employees, agents or subcontractors in breach of this Agreement; and
- (b) was known to the Receiving Party prior to the disclosure by the Disclosing Party, its employees, representatives or associates. The burden of showing that any Confidential Information is publicly available rests on the Receiving Party.

"Disclosing Party" means a party that discloses Confidential Information.

"Force Majeure" means any event or condition not existing at the date of this Agreement, not reasonably foreseeable as of such date and not reasonably within the control of any party, which prevents in whole or in material part the performance by one of the parties of its obligations hereunder or which renders the performance of such obligations so difficult or costly as to make such performance commercially unreasonable, including (but not limited to):

- (a) war or warlike conditions, riot or civil commotion, terrorism, mobilisation, insurrections;
- (b) import or export bans, blockades or embargoes;
- (c) statutory or union contract reductions in working hours, strike or lockout or other labour conflicts;
- (d) natural catastrophe, earthquakes, storms, floods, fires, epidemics;
- (e) travel advisories Issued by the Australian Department of Foreign Affairs and Trade recommending against travel to the Territory;

"Intellectual Property" means all present and future rights conferred by law in or in relation to copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable.

"Territory" means the Socialist Republic of Vietnam.

"Receiving Party" means a party that receives Confidential Information, including a party that discovers Confidential Information in the course of its due diligence of the Disclosing Party.

EXECUTED AS AN AGREEMENT:

SIGNED by and on behalf of **BOX HILL INSTITUTE** by its authorised officer in the presence of:



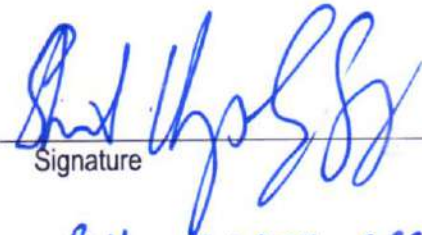
Nguyễn Quang Huy

Witness

13/3/2019

Date

)
)
)
)
)



Signature

S. HUMP HREYS-GREY

Name

SIGNED by and on behalf of **HANOI COLLEGE FOR ELECTRO-MECHANICS** by its authorised officer in the presence of:



Phạm Thị Thủy Huyền

Witness

13/3/2019

Date

)
)
)
)
)



Signature

HIỆU TRƯỞNG

Đông Văn Ngọc

Name

SCHEDULE 1 – AVCOE LOGO



AUSTRALIA VIETNAM
CENTRE OF EXCELLENCE



AUSTRALIA VIETNAM
CENTRE OF EXCELLENCE