

**AGREEMENT BETWEEN THE GOVERNMENT OF INDIA  
AND THE AGENCY KNOWN AS  
THE COMMONWEALTH OF LEARNING  
REGARDING THE  
COMMONWEALTH EDUCATIONAL MEDIA CENTRE FOR ASIA**

The Government of India and the Agency known as the Commonwealth of Learning wishing to conclude an agreement respecting the establishment in New Delhi, India, of the Commonwealth Educational Media Centre for Asia, have agreed as follows:

**ARTICLE I  
Definitions**

In this Agreement:

- (a) The term **“Agency”** means, The Commonwealth of Learning.
- (b) The term **“Centre”** means The Commonwealth Educational Media Centre for Asia of the Commonwealth of Learning.
- (c) The term **“premises of the Centre”** means the premises occupied by the Centre for purposes of carrying out its activities, but does not include the residences of its personnel.
- (d) The term **“Agency Members”** means the states that are members of the Commonwealth.
- (e) The term **“Officials of the Agency/Centre”** means the President of the Agency and all persons employed full time by the Agency/Centre and subject to its staff regulations, other than persons recruited locally and assigned to hourly rates of pay. The term **“Officials of the Agency/Centre”** includes Members of the Agency’s Board of Governors and members of the Centre’s Advisory Council.
- (f) The term **“Senior Official”** means the following officials of the Agency:
  - (i) The President
  - (ii) The Vice-President
  - (iii) The Assistant Vice-Presidents

**ARTICLE II**  
**Status of the Agency/Centre**

1. The Agency/Centre shall possess juridical personality. It shall have the capacity:
  - (a) to contract;
  - (b) to acquire and dispose of immovable and movable property;
  - (c) to institute and defend legal proceedings.
  
2. The Agency/Centre, its property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case the Agency/Centre has expressly waived its immunity.
  
3.
  - (a) The premises of the Centre headquarters/offices shall be inviolable;
  - (b) The property and assets of the Centre, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action, except with the consent of the President of the Agency;
  - (c) The local authorities may enter the premises of the Centre's headquarters in the event of a fire;
  - (d) The Centre shall not allow its headquarters to be used as a refuge for persons seeking to avoid arrest, or the service or execution of legal process.
  
4. The archives of the Agency/Centre and, in general all documents belonging to it or held by it, shall be inviolable wherever located.
  
5. Without being restricted by financial controls, regulations or moratoria of any kind, the Centre may:
  - (a) hold funds or currency of any kind and operate accounts in any currency;
  - (b) transfer its funds or currency from one country to another or within India, and convert any currency held by the Centre into any other currency;

- (c) may have bank accounts and may hold foreign exchange to the extent permissible under the relevant rules.

In exercising its rights under this section, the Centre shall pay due regard to any representations made by the Government of India, insofar as it is considered that effect can be given to such representations without detriment to its interests.

- 6. The Agency/Centre, its assets, income and other property shall be:
  - (a) exempt from all direct taxes. However, the exemption shall not extend to taxes that are no more than charges for public utility services;
  - (b) exempt from customs duties on imports in respect of articles imported by the Centre for its official use.
  - (c) exempt from all import, export duties, with respect to its publications, including audio-visual material for its official use.
  
- 7. When goods are purchased under appropriate certificates from manufacturers or wholesalers who are licensed under the Central Excise and Salt Act, 1944, the Agency/Centre shall be eligible to claim for the remission or refund of the Excise Duty and/or the Consumption or Sales Tax for goods imported or purchased in India, for the official use of the Agency/Centre, as a body, provided, however, that any article which is exempted from these taxes, other than publications of the Agency/Centre shall be subject thereto at existing rates if sold or otherwise disposed of within a period of three years from the date of purchase, and the vendor shall be liable for such tax. Furthermore, any motor vehicle which is imported and for which customs relief is provided shall be sold or transferred only to the State Trading Corporation of India or to any privileged person/agency or shall be reexported. Its sale in open market will not be allowed.

8. The Agency/Centre shall enjoy in the territory of India, for its official communications, treatment not less favourable than that accorded to diplomatic missions in India, in matters of communications priorities.
9. When arbitration proceedings, are taken in relation to written contract for which a compulsory arbitration clause shall be inserted in all contracts entered into by the Centre, and the specific reference to the capacity to contract shall be mentioned in the agreement with the Commonwealth of Learning.

### **ARTICLE III**

#### **Representatives of Members**

1. When they are invited to a meeting convened by the Agency/Centre, the representatives of Agency Members shall, while exercising their functions and during their journeys to and from the place of meeting, enjoy the following privileges and immunities in India:
  - (a) immunity from personal arrest or detention and from seizure of their personal baggage, and in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process in respect of words spoken or written and all acts done by them shall continue to be accorded notwithstanding that the persons concerned are no longer representatives of the Members;
  - (b) inviolability for all papers and documents;
  - (c) exemption from immigration restrictions;
  - (d) the same facilities in respect of currency or exchange restrictions as are accorded to diplomatic envoys.
2. The privileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the Agency/Centre. Consequently, a Member not only has the right, under a duty to waive the immunity of its representative in any case where in the opinion of the Member, the immunity would impede the course of

justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.

**ARTICLE IV**  
**Officials of the Agency/Centre**

1. The officials of the Agency/Centre:
  - (a) shall be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
  - (b) shall be exempt from taxation on the salaries and emoluments paid to them by the Agency;
  - (c) shall be immune from national service obligations;
  - (d) shall be immune, together with their spouses and dependent children, from immigration restrictions and alien registration;
  - (e) shall be accorded the same privileges in respect of exchange facilities as are accorded to officials of comparable rank forming part of diplomatic missions to India;
  - (f) shall have the right to import free of duty their furniture and household effects (including automotive vehicles) at the time of first taking up their post in India.
  
2. In addition to the privileges and immunities specified in Section 1, the Senior Officials of the Agency other than those specified in Section 3 shall:
  - (a) The import/purchase of motor vehicles without payment of customs duty is subject to the conditions as laid down under Foreign Privileged Persons Rules, 1957 as amended from time to time;
  - (b) Be eligible to claim exemption from excise and/or sales tax on domestic spirits, wine and tobacco products when purchased directly from licensed manufacturers for the personal use of the applicant, and on automobiles, ale, beer and stout when purchased under appropriate certificate from licensed manufacturers, provided that any article which was exempted from these existing rates if sold or otherwise disposed of within a period of three years from the date of purchase and the vendor shall be liable for such tax.

3. In addition to the privileges and immunities specified in Section 1, the President and the Vice-President of the Agency shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys in India subject to the corresponding conditions and obligations.
4. The immunity provided in Section 1(a) does not apply in the event of a motor traffic offence committed by an official, or damages caused by an automotive vehicle belonging to or driven by him.
5. The provisions of Section 1, subparagraphs (b) and (c) shall not apply to any Indian citizen residing in or ordinarily resident in India. The provisions of Section 2 shall not apply to any Indian citizen or to any permanent resident of India. Moreover, an official of the Agency/Centre who is or who becomes a resident of India upon retirement will not enjoy exemption from taxation on the pension which may be paid to the official by the Agency/Centre.
- 6(a) Privileges and immunities are granted to officials in the interest of the Agency/Centre and not for the personal benefit of the individuals themselves. The President of the Agency shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interest of the Agency/Centre. In the case of the President of the Agency, the Board of Governors of the Agency shall have the right to waive the immunity;
- (b) If in any proceedings any question arises whether or not any person is entitled to any privileges or immunity under this Agreement; a certificate issued by or under the authority of the Secretary to the Government of India in the Ministry of Human Resource Development stating any fact relating to that question shall be conclusive evidence of that fact;

- (c) Also the Centre cooperate at all times with the appropriate authorities of the Government of India to facilitate the proper administration of justice, secure the observance of police regulations and prevent any abuse of privileges, immunities, exemption and facilities mentioned in this Agreement.
- 7. The President of the Agency shall submit the names and titles of the officials of the Agency and Centre to the Minister for External Affairs for this Agreement.
- 8. The Indian Director:
  - (a) To have immunity from jurisdiction and inviolability in respect of official acts performed in the exercise of his functions except in respect of motor accidents and motor offences;
  - (b) He will be exempted from Indian Income tax on the perquisites and other allowances provided to him by the Centre, and will be liable to pay such taxes only on his salary and pension.

Note: The Indian Director means any Indian national recruited internationally by CEMCA and appointed to hold the office of Director, CEMCA.

## ARTICLE V

### Experts on Missions for the Agency/Centre

- 1. Experts (other than officials coming within the scope of Article IV), performing missions for the Agency/Centre, shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions. In particular, they shall be accorded the following privileges and immunities:
  - (a) immunity from legal process in respect of words spoken or written and acts done by them in the course of the performance of their mission;

- (b) inviolability for all papers and documents;
  - (c) the same facilities in respect of currency or exchange restriction as are accorded to representatives of foreign governments on temporary official missions.
2. Privileges and immunities are granted to experts in the interest of the Agency/Centre and not for the personal benefit of the individuals themselves. The President of the Agency shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interest of the Agency/Centre.

**ARTICLE VI**  
**Abuse of Privileges**

1. If the Government of India considers that an abuse of a privilege or immunity conferred by this Agreement has occurred, consultation shall take place between the Government and the Agency in order to determine whether such an abuse has occurred, and, if so, to endeavour to prevent its repetition.
2. The Government of India may not require representatives of the Members, or officials and experts, to leave India on account of an activity carried out by them in their official capacity. However, in the case of the abuse of privileges of residence by these persons resulting from activities outside their official functions, the Government of India may require any such person to leave provided that:
- (a) the representatives of Members and the Senior Officials designated in Article IV, Section 3, shall be required to leave India in accordance with the diplomatic procedure applicable to diplomatic envoys accredited to India;
  - (b) the other officials shall be required to leave India after the Agency has been informed by the Minister for External Affairs.



**ARTICLE VII**  
**Settlement of Disputes**

1. The Agency/Centre shall make provisions for an appropriate mode of settlement of:
  - (a) disputes arising out of contracts or other disputes of a private character to which the Agency/Centre is a party;
  - (b) disputes involving any official of the Agency if his immunity has not been waived in accordance with the provisions of Article IV, Section 7.
  
2. Any dispute between the Agency/Centre and the Government of India concerning the interpretation or application of this Agreement or any supplementary agreement which is not settled by negotiation or other agreed mode of settlement shall be referred to a tribunal of three arbitrators for final decision. One arbitrator shall be designated by the President of the Agency, and another by the Minister for External Affairs of India. The two arbitrators shall appoint a third arbitrator.

**ARTICLE VIII**  
**Miscellaneous Provisions**

1. Nothing in this Agreement shall be construed as in any way diminishing, abridging or weakening the right of the Indian authorities to safeguard the security of India provided that the Agency shall be immediately informed in the event that the Government of India shall find it necessary to take any action against any person specified in this Agreement.
  
2. The Agency and the State or Union Territory of India may conclude an understanding on the activities of the Agency or on privileges in respect of matters coming under provincial law insofar as that understanding is not inconsistent with the provisions of this Agreement.

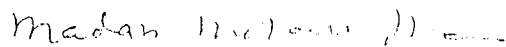
**ARTICLE IX**  
**Final Provisions**

This Agreement shall enter into force on the date of its signature and remain in force for indefinite period of time.

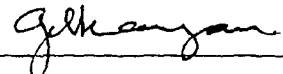
This Agreement may be revised at the request of either Party. To do so, the two Parties shall consult on the modifications in question. In the event that their negotiations should fail to produce an agreement within the time period of one year, this Agreement may be renounced by either Party, upon giving notice of two years.

In WITNESS WHEREOF, the undersigned authorised by the Government of India and The Commonwealth of Learning Agency have signed this Agreement.

DONE in duplicate at Vancouver, British Columbia, Canada, this 31st day of August 1998, in the English language.



Madan Mohan Jha  
Joint Secretary to the Govt. of India  
Department of Education  
Ministry of Human Resource Development  
For the Government of India



Dr Gajaraj Dhanarajan  
President & Chief  
Executive Officer  
For The Agency known as  
The Commonwealth of Learning