



**DEPARTMENT OF THE PRIME MINISTER AND CABINET
RESEARCH SUPPORT FOR NATIONAL SECURITY**

FUNDING DEED

ORGANISATION		
PROJECT CODE		
PROJECT TITLE		
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The Deed

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DEPARTMENT OF THE PRIME MINISTER AND CABINET RESEARCH SUPPORT FOR NATIONAL SECURITY

Parties

This Funding Deed is made between and binds the following parties:

1. **COMMONWEALTH OF AUSTRALIA**, ('the Commonwealth'), as represented by, and acting through, the Department of the Prime Minister and Cabinet, ABN 18 108 001 191; and
2. [Insert Details], ('You' or 'Your'), ABN [Insert Details].

Context

This Funding Deed is made in the following context:

- A. The Commonwealth administers the Research Support for National Security Program, which provides funding for strategically-focussed research and development activities.
- B. The objective of the Program is to enhance Australia's national security capabilities.
- C. You are committed to helping achieve the objective of the Program through Your conduct of the Project.
- D. As a result of this commitment, the Commonwealth has agreed to support the Project by providing Funding to You, subject to the terms and conditions of this Deed.
- E. The Commonwealth is required by law to ensure accountability for public money, and to be accountable for all Funds it provides.
- F. You agree to accept the Funding for the purposes, and subject to the terms and conditions, set out in this Deed.

Operative provisions

In consideration of the mutual promises contained in this document, the Parties to this Funding Deed agree to the terms and conditions set out in this document.

Executed by the Parties as a Deed on the date of the signature of the representative of the Department of the Prime Minister and Cabinet.

Signed, sealed and delivered for, and on behalf of, the DEPARTMENT OF THE PRIME MINISTER AND CABINET by Mr Duncan Lewis	<hr/> Signature <hr/> Date
In the presence of: <hr/> Name of Witness	<hr/> Signature

Signed for and on behalf of [INSERT DETAILS] by [Insert Name]	<hr/> Signature <hr/> Date
In the presence of: <hr/> Name of Witness	<hr/> Signature

1. INTERPRETATION

- 1.1 Capitalised terms are defined in clause 39.
- 1.2 In this Deed, unless the contrary intention appears:
- a. words in the singular number include the plural and vice versa;
 - b. words importing a gender include any other gender;
 - c. words importing persons include a partnership and a body whether corporate or otherwise;
 - d. all references to clauses are to clauses in this Deed;
 - e. all references to dollars are to Australian dollars and include GST unless otherwise stated;
 - f. reference to any statute or other legislation is to a statute or other legislation of the Commonwealth as amended from time to time;
 - g. an uncertainty or ambiguity in the meaning of a provision will not be interpreted against a Party just because that Party prepared the provision; and
 - h. where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.3 The Schedule, and any other Annexures or documents incorporated by reference within the Deed, forms part of this Deed. This Deed must also be read in the context of the Program Guidelines. In the event of any conflict or inconsistency between any document, the document higher in the following list will take precedence:
- a. the terms and conditions contained in the clauses of this Deed;
 - b. the Schedule;
 - c. the Project Guidelines;
 - d. any Annexures; and
 - e. any other documents, including those incorporated by reference.

2. TERM OF THIS DEED

- 2.1. The Term of this Deed commences on the Date of this Deed and, unless terminated earlier, expires on the Completion Date.

3. PERFORMANCE OF THE PROJECT

- 3.1 You must carry out the Project:
- a. in good faith and in accordance with this Deed and the Program Guidelines;
 - b. diligently, effectively and to a high professional standard and in compliance with any applicable Laws; and
 - c. so as to meet the Milestones in the manner, and by the dates specified, in the Schedule.
- 3.2 In conducting the Project, You must perform the activities and achieve the Milestones specified in clause 2 of the Schedule to the satisfaction of the Commonwealth including all actions that are incidental to the achievement of the Project.
- 3.3 You acknowledge that the Commonwealth has no obligation to manage or maintain some or all of the Project before, during or after the Completion Date.
- 3.4 You agree that You are fully responsible for performing the Project in accordance with this Deed and the Schedule, even though Your performance of the Project will be subject to regular review by the Project Committee.
- 3.5 You must inform the Commonwealth whenever there is a change in Your Constitution, structure, management or operations which could reasonably be expected to affect Your eligibility for the Funding or have an adverse effect on Your ability to comply with Your obligations under this Deed. To this end, You must also provide a copy of Your Constitution to the Commonwealth upon request at any time.

4. CONFLICT OF INTEREST

- 4.1 You warrant that, to the best of Your knowledge after making diligent inquiry, at the Date of this Deed no Conflict exists or is likely to arise in the performance of Your obligations under this Deed.
- 4.2 Without limiting the operation of this clause 4, You must, during the Term of this Deed, ensure that no Conflict arises through Your involvement with any parties listed in Item 10 of the Schedule.
- 4.3 If during the Term of this Deed, a Conflict arises, You must:
- a. immediately notify the Commonwealth 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 the Commonwealth of all relevant information relating to the Conflict; and
 - c. take such steps as the Commonwealth may, if it chooses to, reasonably require to resolve or otherwise deal with that Conflict.

4.4 If You fail to notify the Commonwealth under this clause 4, or are unable or unwilling to resolve or deal with the Conflict as required, the Commonwealth may terminate this Deed in accordance with clause 31.

4.5 For the purposes of this clause, “Conflict” means a conflict of interest, or risk of a conflict of interest, or an apparent conflict of interest arising through Your engagement in the Project or obtaining any interest that is likely to conflict with or restrict Your fair and independent performance of the Project.

5. PROVISION OF THE FUNDING

5.1 Subject to sufficient funds being available for the Program, and compliance by You with this Deed, the Commonwealth will provide You with the Funding set out in sub-clause 3.1 of the Schedule. This Funding shall be paid in the amounts, at the times and on the conditions specified in the Schedule.

5.2 Without limiting its rights, the Commonwealth may withhold or suspend any payment of Funds in whole or in part:

- a. if You have not performed Your obligations (including obligations to meet Milestones or provide a Report) under this Deed or to the Commonwealth’s satisfaction;
- b. if You have outstanding or unacquitted moneys under any arrangement (whether contractual or statutory) with the Australian Government in relation to the Project, including but not limited to this Deed; or
- c. if a Progress or Financial Report is not accurate, complete or indicates that You currently have unspent Funds.

5.3 Where the Commonwealth is satisfied that You do not have the capacity to manage the Funding, it may immediately suspend, reduce or cease the release of Funding to You on providing You with written notice of this decision.

5.4 In the event of any off-setting, deferral or suspension of any payment of Funding under this clause 5, You must continue to perform Your obligations under this Deed, unless the Commonwealth otherwise agrees in writing.

6. USE OF THE FUNDING

6.1 The Funding must be spent by You only for purposes of the Project and in accordance with this Deed.

6.2 You agree to bear all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Project.

6.3 You may not claim from the Commonwealth any amount for which You can obtain an input tax credit.

6.4 Unless otherwise specified in the Schedule, You must not use the Funds:

- a. to cover costs You incurred prior to the Date of the Deed;
- b. for the preparation of, or in the course of, any litigation;

- c. for capital expenditure (such as office furniture and equipment, motor vehicles, computers, printers, photocopiers, construction, renovation and utilities) other than the Assets specified in the Schedule;
- d. marketing activities or market research;
- e. debt financing; or
- f. costs relating to the establishment or maintenance of a retailing or trade showroom.

7. PAYMENT OF THE FUNDING

- 7.1 You must provide the Commonwealth with a Tax Invoice before any amount is payable by the Commonwealth. Invoices must be correctly addressed and include the following information:
- a. title of research task;
 - b. the name and ABN of You;
 - c. the amount to be invoiced;
 - d. a description of the Milestones to which this invoice relates; and
 - e. bank account details for payment of the invoice by electronic funds transfer.
- 7.2 Subject to clause 3 and sub-clause 7.3, the due date for payment of Funding will be 20 Business Days after delivery of a correctly rendered invoice to the Commonwealth.
- 7.3 The Commonwealth must be satisfied, and may require further evidence to prove, that You have met all obligations prior the payment of Funding. This includes, but is not limited to, the following:
- a. Compliance with the reporting requirements in clauses 16 and 17, falling up to and on the date the payment is due;
 - b. satisfactory completion of the relevant Milestone;
 - c. an ability to demonstrate that the Funds already provided by the Commonwealth have been fully spent or will be fully spent in the near future; and
 - d. the provision of Your and Other Contributions in the amounts specified in sub-clause 3.1 of the Schedule.

8. MANAGEMENT OF THE FUNDING

- 8.1 You must ensure that the Funds are held in an account in Your name, and which You solely control, with an authorised deposit-taking institution authorised under the *Banking Act 1959* to carry on banking business in Australia.
- a. Unless You are a sole director company, You must ensure that at a minimum two signatories, who have Your authority to do so, are required to operate the account.
- 8.2 You must keep financial accounts and Records relating to the Project so as to enable:

- a. all receipts and payments related to the Project to be identified and reported in accordance with this Deed;
 - b. the preparation of financial statements in accordance with Australian Accounting Standards;
 - c. the audit of those Records in accordance with Australian Auditing Standards
- 8.3 You must do all things necessary to ensure that all payments from the Funds that You make to third parties (including subcontractors) are correctly made and properly authorised and that You maintain proper and diligent control over the incurring of all liabilities.
- 8.4 If the GST Act requires You to provide an Adjustment Note (as defined in section 195-1 of the GST Act and including where You are required to repay any Funds under this Deed), You must provide the Adjustment Note to the Commonwealth within 20 Business Days of the date of the adjustment.

9. REPAYMENT OF THE FUNDING

- 9.1 Where the Commonwealth is satisfied that all or part of the Project is unable to be performed by You in accordance with this Deed, the Funding relating to that part of the Project must be repaid to the Commonwealth. The Commonwealth will notify You of the amount You should repay to it.
- 9.2 If, at any time, an overpayment of Funds occurs then that amount of the Funding or the overpayment must be:
- a. repaid to the Commonwealth within 20 Business Days of a written notice from the Commonwealth specifying the amount to be repaid to it; or
 - b. otherwise dealt with as directed in writing by the Commonwealth.
- 9.3 For the purposes of sub-clause 9.2, an overpayment of Funds includes:
- a. where an invoice is found to have been incorrectly rendered by You after payment by the Commonwealth; and
 - b. where, on or after the expiration or earlier termination of this Deed, some or all of the Funding has not been spent or legally committed in accordance with this Deed or acquitted to the Commonwealth's satisfaction;
- 9.4 If the Commonwealth requires You to repay an amount under sub-clauses 9.1, 9.2, 11.6 or 11.7 and that amount is not repaid to the Commonwealth within 20 Business Days, or other period specified by the Commonwealth in its notice requiring the repayment, Interest is payable on the amount outstanding after the expiry of that period until the amount is paid in full.
- 9.5 Without prejudice to any other rights available to the Commonwealth, any amount owed to the Commonwealth under sub-clauses 9.1, 9.2, 11.6 or 11.7 and any Interest owed under sub-clause 9.4, is recoverable as a debt by the Commonwealth without requiring further proof of the debt.
- 9.6 The operation of this clause 9 survives the expiration or earlier termination of this Deed.

10. YOUR CONTRIBUTIONS AND OTHER CONTRIBUTIONS

- 10.1 You must provide any Contributions for the Project specified in sub-clause 3.1 of the Schedule.
- 10.2 Unless otherwise specified by the Commonwealth in the Schedule, it is a condition precedent to the payment of Funds that:
- a. You ensure all organisations identified in sub-clause 3.1 of the Schedule as providing Other Contributions to the Project supply the Commonwealth with satisfactory written evidence that they will provide the contribution listed, including the terms and conditions of the provision of these contributions; and
 - b. the basis on which these Other Contributions are to be provided must be satisfactory to the Commonwealth.
- 10.3 The written evidence required by paragraph 10.2.a must be provided to the Commonwealth within 10 Business Days of the Date of the Deed, failing which the Commonwealth may terminate Funding in accordance with clause 31.
- 10.4 You must notify the Commonwealth immediately if You become aware that You will not be able to obtain an Other Contribution. If You are not able to obtain an Other Contribution, or do not obtain it in time to enable completion of the Project, then:
- a. payment of all or part of the Funds may be suspended until the Other Contribution is received; or
 - b. the Project may be terminated by the Commonwealth in accordance with clause 31.
- 10.5 You must inform the Commonwealth in writing within 10 Business Days of entering into any arrangement (whether contractual or statutory) under which You are entitled to receive any additional monetary or in-kind contributions in respect of the Project that is not identified in sub-clause 3.1 of the Schedule. Any such additional contributions that You become entitled to receive after the commencement of the Project constitute Other Contributions for the purpose of this Deed.
- 10.6 If You receive any other funding (other than the Funding) from the Australian Government in relation to the Project, a breach of any other arrangement (whether contractual or statutory) under which You receive that funding may be regarded by the Commonwealth as a breach of this Deed.

11. ASSETS

- 11.1 You may only use Funding to acquire or create an Asset, where:
- a. the Asset is listed in clause 9 of the Schedule; or
 - b. the Commonwealth has granted prior written approval, which may be given subject to conditions.
- 11.2 Should You be given approval to acquire Assets as per sub-clause 11.1, an Asset register must be maintained by You containing the following information regarding each Asset:
- a. the Asset number;

- b. description of the Asset, including model and serial number where available;
- c. if purchased, the vendor, purchase price and date of purchase;
- d. if leased, the lessor, total lease cost, the date the lease commenced and the term of the lease;
- e. location of the Asset; and
- f. method by which, and date on which, the Asset was Disposed of or written-off.

11.3 Throughout the Term of this Deed, You must:

- a. not encumber or Dispose of any Asset, or deal with or use any Asset other than in accordance with this clause 11, without the Commonwealth's prior written approval;
- b. hold all Assets securely and safeguard them against theft, loss, damage, or unauthorised use;
- c. maintain all Assets in good working order;
- d. maintain all appropriate insurances for all Assets to their full replacement value noting any Commonwealth interest in the Asset under this Deed and provide satisfactory evidence of this to the Commonwealth on its request;
- e. if required by law, maintain registration and licensing of all Assets;
- f. be fully responsible for, and bear all risks relating to, the use or Disposal of all Assets;
- g. as and when requested by the Commonwealth, provide copies of the Assets register to the Commonwealth.

11.4 If You Dispose of an Asset during the Term of this Deed (which must be with the Commonwealth's prior written consent and subject to any conditions it may impose), a proportion of the market value of the Asset at the time of the Disposal, which reflects the proportion of the cost of the Asset that was met by the Funding, must be returned to the Commonwealth.

11.5 During the Term of this Deed, You must deal with the Assets as required by the Commonwealth in its absolute discretion and as provided to You in writing, with effect from the date specified in the written notice (or 10 Business Days after You receive the notice if no date is specified).

11.6 If any of the Assets are lost, damaged or destroyed, You must promptly reinstate the Assets including from the proceeds of the insurance and this clause 11 continues to apply to the reinstated Assets. The proportion of any surplus from the proceeds of the insurance, which reflects the proportion of the acquisition cost of the Asset that was met by the Funding, must be repaid to the Commonwealth.

11.7 After the expiration or earlier termination of this Deed, the Commonwealth may require You to pay it a proportion of the current market value of any Asset that You hold, which is equivalent to the proportion of the cost of the Asset that was met by the Funding.

11.8 If the Commonwealth requires You to repay an amount under sub-clauses 11.6 or 11.7, then the terms set out in clauses 9.4 and 9.5 apply.

11.9 The operation of this clause 11 survives the expiration or earlier termination of this Deed.

12. INSURANCE

- 12.1 You must, for as long as any obligations remain in connection with this Deed, maintain the following insurance:
- a. workers' compensation insurance for an amount required by the relevant State or Territory legislation;
 - b. public liability insurance for \$10,000,000 or more per claim or occurrence giving rise to a claim, in respect to activities undertaken under this Deed;
 - c. professional indemnity insurance for \$5,000,000 or more per claim; and
 - d. insurance against any loss or damage to an Asset for its full reinstatement or replacement cost including, where relevant, the costs of demolition and removal of debris and the cost of architects, engineers and other consultants..
- 12.2 All insurance required under this Deed is to be taken out with an insurer recognised by the Australian Prudential Regulation Authority or regulated by a State/Territory Auditor-General.
- 12.3 Whenever requested, You must provide the Commonwealth, within 10 Business Days of the request, with evidence satisfactory to the Commonwealth that You have complied with Your obligation to insure.
- 12.4 The operation of this clause 12 survives the expiration or earlier termination of this Deed.

13. INDEMNITY

- 13.1 You indemnify the Commonwealth (and keep it indemnified) against any:
- a. loss or liability the Commonwealth incurs;
 - b. loss of or damage to Commonwealth property; or
 - c. loss or expense the Commonwealth incurs in dealing with any claim, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by the Commonwealth,
- arising from:
- d. any act or omission by You or Your Personnel in connection with the Assets or this Deed, where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, or expense;
 - e. any breach by You of Your obligations or warranties under this Deed;
 - f. the use of Assets; or
 - g. the Commonwealth's use of the Reports or Existing Material in accordance with this Deed, including any claims by third parties about the ownership or right to use the Reports or Existing Material.

- 13.2 Your liability to indemnify the Commonwealth under this clause 13 will be reduced proportionally to the extent that any fault on the part of the Commonwealth contributed to the relevant loss, damage, expense, or liability.
- 13.3 The Commonwealth's right to be indemnified under this clause 13 is in addition to, and not exclusive of, any other right, power, or remedy provided by law, but the Commonwealth is not entitled to be compensated in excess of the amount of the relevant liability, damage, loss, or expense.
- 13.4 In this clause 13, "fault" means any negligent or unlawful act or omission or wilful misconduct.
- 13.5 The operation of this clause 13 survives the expiration or earlier termination of this Deed.

14. LIAISON AND MONITORING

- 14.1 You must:
- a. liaise with and provide information to the Commonwealth as reasonably required by the Commonwealth; and
 - b. comply with all of the Commonwealth's reasonable requests, directions, or monitoring requirements.
- 14.2 The Commonwealth may nominate, from time to time, a person within the Commonwealth who has authority to liaise with You, receive and sign notices and written communications for the Commonwealth and give any request or direction in relation to the Project.
- 14.3 You may nominate, from time to time, a person who has authority to liaise with the Commonwealth, receive and sign notices and written communications for You and accept any request or direction in relation to the Project.
- 14.4 At the Schedule Date, the persons referred to in sub-clauses 14.2 and 14.3 are the persons specified in clause 14 of the Schedule.

15. RECORDS

- 15.1 You must create and maintain full and accurate accounts and Records of the conduct of the Project including, without limitation, progress against the Milestones, the receipt and use of Funding, Your Contributions (if any) and Other Contributions (if any), the acquisition and Disposal of Assets and the creation of Intellectual Property Rights in Project Material.
- 15.2 Records and accounts maintained under this clause must be retained by You for a period of no less than 7 years after the expiration or earlier termination of this Deed.
- 15.3 In the event that the Commonwealth considers that the Project is not being carried out in accordance with this Deed and the Schedule, the Commonwealth may require You to produce for inspection all accounts and Records related to the conduct of the Project.
- 15.4 The operation of this clause 15 survives the expiration or earlier termination of this Deed.

16. PROGRESS REPORTS

- 16.1 You agree that the Commonwealth may provide all Progress Reports to the Project Committee and to the Users listed in the Schedule.
- 16.2 All Progress Reports provided by You must be approved by the Commonwealth. In granting that approval the Commonwealth will consider the Project Committee's satisfaction with a Report.
- 16.3 You must provide Progress Reports to the Commonwealth at the times stated in clause 3.2 of the Schedule and in the following manner:
- a. Progress Reports must include information on all on all aspects of the Milestones listed in the table in clause 3.2 of the Schedule, including progress against the Milestones' activities, outcomes, outputs and performance indicators as identified in 2.1 of the Schedule; and
 - b. three copies of all Progress Reports must be provided to the Commonwealth, of which, one copy must be bound, one copy must be unbound and one copy must be in electronic format
- 16.4 The following conditions apply to the submission of the final Progress Report:
- a. the final Progress Report must be able to be read as a self-contained and stand-alone document; and
 - b. You must include in the final progress Report any other information that the Commonwealth notifies You it requires be included at least 10 Business Days before the due date for the Report.
- 16.5 The Commonwealth may at any time make a written request for an interim Progress Report to be provided by You to the Commonwealth within 10 Business Days. You must include in an interim Report any information that the Commonwealth notifies You it requires be included in the Report.

17. FINANCIAL REPORTS

- 17.1 You agree that the Commonwealth may provide all Financial Reports to the Project Committee and to the Users listed in the Schedule.
- 17.2 All Progress Reports must be accompanied by a Financial Report covering the period since the submission of the previous Financial Report or, in the instance of the first Financial Report, since the commencement of the Project. The Financial Report accompanying the final Progress Report must meet the additional requirements set out in sub-clause 17.6.
- 17.3 A Financial Report must contain the following information for the period covered:
- a. a financial statement detailing all Project income and expenditure, including Your Contributions and Other Contributions;
 - b. a statement of any current liabilities arising from legal commitments entered into by You for the performance of the Project;
 - c. a statement of the total Funds in Your possession; and

- d. any other information which the Commonwealth notifies You that it requires.
- 17.4 A Financial Report must be accompanied by a written certificate from the duly authorised representative of You, as set out in sub-clause 17.5, which certifies that:
- a. the information included in the Financial Report is true and fair and based on proper accounts and Records;
 - b. all Funding received was spent for the purposes of the Project and in accordance with this Deed;
 - c. You have complied with all terms and conditions set out in this Deed;
 - d. all salaries and allowances paid to persons involved in the Project were in accordance with any applicable award or agreement in force under any relevant law on industrial or workplace relations;
 - e. at the time of the Financial Report, You are able to pay all Your debts, as and when they fall due; and
 - f. unless the Project has been terminated or completed, any unspent portion of the Funds is available for use within the next reporting period.
- 17.5 The written certificate required by sub-clause 17.4 must be provided by the following representative(s), dependent on Your status:

Status	Required representative
Incorporated body	Your Chairperson, Chief Executive Officer, Chief Financial Officer or a person authorised by You to execute documents and legally bind You by their execution.
Unincorporated association or partnership	a majority of the members; or by a person or persons authorised by a majority of the members to act on behalf of the members in accordance with Your Constitution.
Joint venture	the Chief Executive Officer or Chief Financial Officer of each joint venturer
Individual	You

- a. Satisfactory evidence of the authorisation is to be provided to the Commonwealth before provision of a certificate.
- 17.6 The Financial Report accompanying the final Progress Report must contain the following information:
- a. information covering both the period since the submission of the previous Financial Report and the entire duration of the Project;
 - b. a copy of a letter or report to You from an Approved Auditor containing the information required under sub-clause 17.7.

- 17.7 Under sub-clauses 17.6 and 17.9, the Commonwealth may request you to provide a copy of a letter or report to You from an Approved Auditor which contains:
- a. specific comment on the adequacy of Your financial controls;
 - b. specific comment on Your financial position as it relates to Your ability to repay surplus Funds or complete the Project with the available Funds;
 - c. specific comment on Your ability to meet Your taxation liabilities and any costs associated with any court or tribunal orders made against or involving You;
 - d. specific comment on Your compliance with Your obligations to pay superannuation entitlements;
 - e. where there are any qualifications or limitation on the audit, an outline of the reasons for any qualifications or limitations on the audit and the remedial action recommended;
 - f. an itemised list of fees paid to Your Directors (if any), stating how much was paid, to whom, when and what travel costs were involved; and
 - g. any other information which the Commonwealth notifies You that it requires.
- 17.8 Financial Reports must comply with Australian Accounting and Auditing Standards and, if requested by the Commonwealth, be prepared by a person who is a member of the Institute of Chartered Accountants in Australia, CPA Australia or the National Institute of Accountants.
- 17.9 The Commonwealth may at any time make a written request for the following to be provided by You to the Commonwealth:
- a. within 10 Business Days, an interim Financial Report covering any period and containing all the information required under sub-clause 17.3 and 17.4, as well as any information that the Commonwealth notifies You it requires;
 - b. within 20 Business days, a copy of a letter or report to You from an Approved Auditor containing the information required under sub-clause 17.7
- 17.10 The operation of this clause 17 survives the expiration or earlier termination of this Deed.

18. PROJECT COMMITTEE

- 18.1 A Project Committee shall be established, with the membership as set out in clause 5 of the Schedule, to review the progress of the Project on a regular basis. The Project Committee will offer any advice or direction on the Project it sees fit.
- 18.2 In determining its satisfaction with activities undertaken or Reports provided by You, the Commonwealth will consider the Project Committee's satisfaction with Your performance of those activities.
- 18.3 A representative of You and any requested Specified Personnel must attend Project Committee meetings as required by the Commonwealth and provide detailed information to the Project Committee regarding the progress and performance of the Project.

- 18.4 The Commonwealth is responsible for calling meetings of the Project Committee and members of the Project Committee will be responsible for bearing the costs related to holding or attending meetings.

19. INTELLECTUAL PROPERTY - COMMONWEALTH MATERIAL

- 19.1 Ownership of all Commonwealth Material, including Intellectual Property Rights in that Material, remains vested at all times in the Commonwealth. However the Commonwealth grants You a licence to use, copy and reproduce that Material for the purposes of the Project and in accordance with any conditions or restrictions specified in clause 10 of the Schedule or in any written direction by the Commonwealth.
- 19.2 Upon the expiration or earlier termination of this Deed, You may retain all Australian Government Material remaining in Your possession, unless otherwise specified in clause 9 of the Schedule.
- 19.3 You must keep safely and maintain all Commonwealth Material given to You for the purposes of the Project.
- 19.4 The operation of this clause 19 survives the expiration or earlier termination of this Deed.

20. INTELLECTUAL PROPERTY – EXISTING AND PROJECT MATERIAL

- 20.1 Subject to this clause 20, as between the Commonwealth and You (but without affecting the position between You and a third party) Intellectual Property Rights in Project Material vest immediately in You.
- 20.2 You grant the Commonwealth a permanent, irrevocable, free, world-wide, non-exclusive licence to use and reproduce the Intellectual Property Rights in the Reports for any Commonwealth purpose. This:
- a. includes distribution of the Reports to the Users; and
 - b. includes a right to grant sub-licences to the Users only, provided all sub-licences issued by the Commonwealth prevent the Users from granting any further sub-licences; but
 - c. does not include commercial exploitation of the information in the Reports; and
- 20.3 This clause 20 does not affect the ownership of any Intellectual Property Rights in any Existing Material, as specified in clause 11 of the Schedule. However, to the extent that the Commonwealth needs to use any Existing Material in order to exercise the right granted to it under sub-clause 20.2, You grant to the Commonwealth or must arrange for a grant to the Commonwealth a licence with the same conditions as those set out in sub-clause 20.2
- 20.4 You:
- a. must, if requested by the Commonwealth to do so, and at Your own cost, bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 20;

- b. warrant that You are entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Reports and the Existing Material in the Reports in accordance with this clause 20; and
 - c. must not deal with Intellectual Property Rights in the Reports in a manner that is inconsistent with this clause 20 during the Term of this Deed except as otherwise agreed to in writing by the Commonwealth.
- 20.5 For this clause 20, 'Specified Acts' means any of the following classes or types of acts or omissions by or on behalf of the Commonwealth:
- a. doing, with or without attribution of authorship, things that are within the scope of the licence granted in clause 20.2;
 - b. using, reproducing, adapting or exploiting all or any part of the Reports, with or without attribution of authorship
 - c. using the Reports in a different context to that originally envisaged;
 - d. supplementing the Reports with any other Material; and
 - e. using the Reports in a different context to that originally envisaged;
- but does not include false attribution of authorship.
- 20.6 You agree to obtain from each author of any Reports, and provide to the Commonwealth, a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly:
- a. to the performance of the Specified Acts by the Commonwealth or any person claiming under or through the Commonwealth; and
 - b. for the Commonwealth's benefit in relation to such Material used, reproduced, and communicated in conjunction with the Reports; and
- 20.7 This clause 20 does not apply to any Commonwealth Material incorporated in Project Material.
- 20.8 The operation of this clause 20 survives the expiration or earlier termination of this Deed.

21. CONFIDENTIAL INFORMATION

- 21.1 Subject to clause 21.5:
- a. You must not, without the Commonwealth's prior written approval, disclose any Commonwealth Confidential Information to a third party; and
 - b. the Commonwealth must not, without the prior written approval of You, disclose any Your Confidential Information to a third party.
- 21.2 In giving written consent to use or disclose its Confidential Information, a Party may impose such conditions as it thinks fit, and the other Party agrees to comply with these conditions.
- 21.3 The Commonwealth may at any time require You to arrange for any person engaged in, or in relation to, the performance or management of the Project to give written

undertakings, in a form required by the Commonwealth, relating to the non-disclosure of Commonwealth Confidential Information.

- 21.4 If You receive a request under clause 21.3, You must promptly arrange for all such undertakings to be given.
- 21.5 The obligations on a Party under this clause 21 will not be breached to the extent that information:
- a. is disclosed by the Commonwealth to a Commonwealth Minister;
 - b. forms part of a Report, which is distributed by the Commonwealth to a User;
 - c. is disclosed by You or the Commonwealth, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - d. is authorised or required by law or the other Party to be disclosed; or
 - e. is in the public domain otherwise than due to a breach of this clause 21.
- 21.6 The obligations under this clause 21 continue, notwithstanding the expiration or earlier termination of this Deed:
- a. in relation to an item of information described in clause 12 of the Schedule – for the period set out in that clause in respect of that item; and
 - b. in relation to any information which the Parties agree in writing after the Schedule Date is to constitute Confidential Information for the purposes of this Deed – for the period agreed by the Parties in writing in respect of that information.
- 21.7 Nothing in this clause 21 derogates from any obligation which You may have either under the *Privacy Act* or under this Deed, in relation to the protection of Personal Information.

22. PROTECTION OF PERSONAL INFORMATION

- 22.1 In this clause 22, the terms 'agency', 'Approved Privacy Code' (APC), 'Information Privacy Principles' (IPPs), and 'National Privacy Principles' (NPPs) have the same meaning as they have in section 6 of the *Privacy Act*, and 'subcontract' and other grammatical forms of that word has the meaning given in section 95B(4) of the *Privacy Act*.
- 22.2 This clause 22 applies only where You deal with Personal Information when, and for the purpose of, conducting the Project under this Deed.
- 22.3 You agree to be treated as a 'contracted service provider' within the meaning of section 6 of the *Privacy Act*.
- 22.4 In respect to the conduct of the Project under this , you must:
- a. use or disclose Personal Information obtained during the course of conducting the Project under this Deed, only for the purposes of this Deed;
 - b. not do any act or engage in any practice that would breach an IPP contained in section 14 of the *Privacy Act*, which if done or engaged in by an agency, would be a breach of that IPP;

- c. carry out and discharge the obligations contained in the IPPs as if You were an agency under the *Privacy Act*;
 - d. notify individuals whose Personal Information You hold, that complaints about Your acts or practices may be investigated by the Privacy Commissioner who has power to award compensation against You in appropriate circumstances;
 - e. notify individuals whose Personal Information You hold that their Personal Information may be disclosed and passed on to the Commonwealth and the Users and members of the Project Committee for purposes associated with the Funding and this Deed;
 - f. not use or disclose Personal Information or engage in an act or practice that would breach section 16F (direct marketing), an NPP (particularly NPPs 7 to 10) or an APC, where that section, NPP or APC is applicable to You, unless:
 - A. in the case of section 16F - the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this Deed; or
 - B. in the case of an NPP or an APC - the Project or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Deed;
 - g. disclose in writing to any person who asks, the content of the provisions of this Deed (if any) that are inconsistent with an NPP or an APC binding a Party to this Deed;
 - h. immediately notify the Commonwealth if You become aware of a breach or possible breach of any of the obligations contained in, or referred to in this clause 22, whether by You or any subcontractor;
 - i. comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner to the extent that they are not inconsistent with the requirements of this clause 22; and
 - j. ensure that any of Your Personnel who are required to deal with Personal Information for the purposes of this Deed are made aware of Your obligations set out in this clause 22.
- 22.5 You agree to ensure that any subcontract entered into for the purpose of fulfilling Your obligations under this Deed contains provisions to ensure that the subcontractor has the same awareness and obligations as You have under this clause 22, including the requirement in relation to any further subcontracts.
- 22.6 You agree to indemnify the Commonwealth in respect of any loss, liability or expense it suffers or incurs which arises directly or indirectly from a breach of any of Your obligations under this clause 22, or from a subcontractor under the subcontract provisions referred to in subclause 22.5.
- 22.7 You agree that the Commonwealth may deal, as permitted by the *Privacy Act*, with Personal Information You provide to it for the purposes of administering this Deed (including the provision of Personal Information to a User). You agree to notify relevant individuals that their Personal Information may be provided to the Commonwealth.
- 22.8 The operation of this clause 22 survives the expiration or earlier termination of this Deed.

23. ACKNOWLEDGMENT AND PUBLICITY

- 23.1 You must, in all publications, promotional and advertising materials, public announcements and activities by You or on Your behalf in relation to the Project, or any products, processes or inventions developed as a result of it, acknowledge the financial and other support You have received from the Australian Government, in either of the following ways:
- a. An acknowledgment which reads, "This project is financially supported by the Australian Government through the National Security Science and Technology Branch within the Department of the Prime Minister and Cabinet. This support does not represent an endorsement of the contents or conclusions of the project."; or
 - b. another manner approved by the Commonwealth prior to the use of the publication, material, announcement or Project.
- 23.2 During the Term of this Deed (but not after its expiration or earlier Termination), You must seek approval from the Commonwealth prior to You releasing any publications, promotional and advertising material or undertaking any public announcements and activities in relation to the Project, or any products, processes or inventions developed as a result of it.
- 23.3 The Commonwealth reserves the right to publicise and report on the awarding of Funding to You. The Commonwealth may do this by including in media releases, general announcements about the Funding and in annual reports references to You, the amount of the Funds given to You, the title of the Project and a brief description similar to that provided in clause 1.2 of the Schedule.
- 23.4 Where You have been provided with Funding to produce any publication, a copy of the publication must be provided to the Commonwealth. You agree that the Commonwealth may provide any such publications to the Users.
- 23.5 The operation of this clause 23 (with the exception of sub-clause 23.2) survives the expiration or earlier termination of this Deed for a period of 7 years.

24. SECURITY

- 24.1 You must comply with, and agree to ensure that Your Personnel comply with:
- a. all relevant security requirements specified in the Commonwealth Protective Security Manual 2005 as provided to You;
 - b. all security requirements specified in this clause 24 and sub-clause 13 of the Schedule; and
 - c. all further variations or additions to these security requirements required by the Commonwealth in its absolute discretion and provided to You in writing, with effect from the date specified in the written notice (or 10 Business Days after You receive the notice if no date is specified).
- 24.2 You agree to ensure that all Your Personnel involved in the Project:
- a. are of good fame and character;

- b. are properly qualified for the tasks they are to perform;
 - c. will act in all circumstances in a fit and proper manner while they are carrying out work under this Deed; and
 - d. who work in Australian Government premises, comply with all security procedures regarding those premises.
- 24.3 The Commonwealth may require any or all members of Your Personnel:
- a. hold a particular level of Commonwealth security clearance;
 - b. undergo some form of personal vetting; and/or
 - c. sign a non-disclosure agreement in the form required by the Commonwealth.
- 24.4 Only if You have obtained prior written authorisation from the Commonwealth, have met any conditions imposed by the Commonwealth, and if it is required for the purposes of the Project, may You permit Your Personnel to:
- a. enter secure areas in Australian Government buildings or places;
 - b. work with Australian Government Personnel for extended periods; or
 - c. have access to Security Classified Information.
- 24.5 The Commonwealth may give notice requiring You to remove or suspend Personnel (including Specified Personnel) from work in respect of the Project, without any liability whatsoever and without provision of reasons to You. You must at Your own cost:
- a. promptly arrange for the removal of such Personnel from work in respect of the Project;
 - b. promptly put in place arrangements that prevent such Personnel from accessing any Project Material, Security Classified Information, Official Information, Official Resources or Commonwealth Confidential Information;
 - c. promptly provide a written report to the Commonwealth detailing all steps You have taken to comply with paragraphs a and b of this sub-clause 24.5; and
 - d. within a reasonable time, arrange for replacement Personnel acceptable to the Commonwealth.
- 24.6 You acknowledge that in performing this Deed, You may become subject to certain statutory provisions relating to the security of Official Resources, and agree to ensure that Your Personnel are aware of, and comply, with those statutory provisions.
- 24.7 You agree not to perform any part of the Project outside Australia, or transfer any Security Classified Information or Official Information outside Australia without the Commonwealth's prior written authorisation.
- 24.8 You agree to protect or control any Official Resources in Your possession to the same extent as if You were the Commonwealth, including ensuring that unauthorised persons cannot access any Official Information.
- 24.9 You agree to provide promptly to the Commonwealth any information it reasonably requests regarding:
- a. Your security arrangements; and

- b. Your Personnel.
- 24.10 For the purpose of this clause 24, “Reportable Security Event” means any of the following events:
- a. a breach or violation of Your security arrangements;
 - b. a breach or violation of the arrangements specified in this clause 24;
 - c. Your Personnel being approached or contacted by an individual seeking unauthorised access to Official Resources;
 - d. the accessing of Security Classified Information, Commonwealth Confidential or Official Resources in Your possession or control by an unauthorised person; and
 - e. a change in the circumstances of any of Your Personnel authorised by the Commonwealth that, in Your reasonable opinion, is likely to affect the Commonwealth’s authorisation of that person.
- 24.11 You must inform the Commonwealth immediately You become aware of a Reportable Security Event. In addition to this immediate notification, within three Business Days, You must supply a written report to the Commonwealth containing the following information:
- a. all information relating to the Reportable Security Event;
 - b. any steps You have taken or will take in response to the Reportable Security Event; and
 - c. any other information which the Commonwealth reasonably requires.
- 24.12 If You fail to comply with a security requirement specified in this clause 24, the Commonwealth may terminate this Deed under clause 31.
- 24.13 The operation of this clause 24 survives the expiration or earlier termination of this Deed.

25. ACCESS TO PREMISES AND RECORDS

- 25.1 You must give the Commonwealth, the Auditor-General, the Privacy Commissioner, the Office of the Employment Advocate and persons authorised by the Commonwealth (referred to in this clause 25 collectively as ‘those permitted’) access to all premises at which accounts, Records and Material associated with this Deed are stored or work under the Project is undertaken at all reasonable times and allow those permitted to inspect and copy accounts, Records and Material, in Your possession or control, for purposes associated with this Deed or any review of performance under this Deed. You must also give those permitted access to any Assets, wherever they may be located, and reasonable access to Your Personnel, for the same purposes.
- 25.2 You must provide all reasonable assistance requested by those permitted when they exercise the rights under sub-clause 25.1 including:
- a. making available all information, documentation and data, in any medium, required by those permitted at Your registered office or (with the Commonwealth’s consent or the consent of those permitted) Your principal place of business or other place; and

- b. making available Your Personnel who must provide access to Your accounts and Records and copies of documentation, including computer discs or other forms of electronic data.
- 25.3 The rights referred to in subclause 25.1 are subject to:
 - a. the provision of reasonable prior notice by those permitted (except where they believe that there is an actual or apprehended breach of the law); and
 - b. Your reasonable security procedures.
- 25.4 The requirement for access as specified in sub-clause 25.1 does not in any way reduce Your responsibility to perform Your obligations in accordance with this Deed.
- 25.5 You must ensure that any subcontract entered into for the purpose of this Deed contains an equivalent clause allowing those permitted to have access as specified in this clause 25.
- 25.6 The operation of this clause 25.12 survives the expiration or earlier termination of this Deed for a period of 7 years.

26. SUBCONTRACTING

- 26.1 You must not, without the Commonwealth's prior written approval, subcontract the performance of any obligations under this Deed. In giving written approval, the Commonwealth may impose such terms and conditions as it thinks fit. The subcontractors the Commonwealth has approved at the Date of this Deed, and any terms and conditions relating to their use, are identified in clause 7 of the Schedule.
- 26.2 You are fully responsible for the performance of all of Your obligations under this Deed, even though You may have subcontracted some or all of them. Despite any approval the Commonwealth may give under this clause 26, You are responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that such work meets the requirements of this Deed.
- 26.3 The Commonwealth may revoke its 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 the Commonwealth.
- 26.4 Despite the Commonwealth exercising its rights under subclause 26.3, You remain liable to perform all of Your obligations under this Deed and for the past acts or omissions of Your subcontractors as if they were current subcontractors.
- 26.5 You must, in any subcontract, reserve a right of termination to take account of the Commonwealth's right of termination under clauses 30 and 31, and the Commonwealth's rights under sub-clause 26.3, and You must, where appropriate, make use of that right in the event of any such termination or revocation under this Deed.
- 26.6 You must not enter into a subcontract under this Deed 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*.

26.7 For the avoidance of doubt, the use of students to perform part of the Project does not constitute a subcontract.

27. SPECIFIED PERSONNEL

- 27.1 You must ensure that any Specified Personnel listed in clause 6 of the Schedule undertake activities in respect of the Project in accordance with the terms of this Deed.
- 27.2 If any Specified Personnel are not able to complete the activities listed in clause 6 of the Schedule and You are unable to provide replacement Personnel acceptable to the Commonwealth, it may terminate this Deed in accordance with the provisions of clause 31.

28. NEGATION OF EMPLOYMENT, PARTNERSHIP OR AGENCY

- 28.1 You and Your Personnel will not, by virtue of this Deed, be or for any purpose be deemed to be the Commonwealth's legal employees, partners or agents.
- 28.2 You must not, and must ensure that Your Personnel do not, represent You or themselves as being the Commonwealth's employees, officers, volunteers, partners or agents or as otherwise able to bind or represent the Commonwealth.

29. DELAY

- 29.1 You must take all reasonable steps to minimise delay in completion of the Project.
- 29.2 If You become aware that You or a subcontractor will be delayed in progressing or completing the Project in accordance with this Deed, You must immediately notify the Commonwealth in writing of the cause and nature of the delay. You must detail in the notice the steps You will take to contain the delay.
- 29.3 On receipt of a notice of delay, the Commonwealth may notify You in writing:
- a. of a period of extension to complete the Project and vary this Deed accordingly;
 - b. of reduction in the scope of the Project and any adjustment to the Funds for You to complete the reduced Project and vary this Deed accordingly; or
 - c. that the Commonwealth is terminating this Deed under clause 31 or taking such other steps as are available under this Deed.
- 29.4 Unless the Commonwealth takes action under sub-clause 29.3, You are required to comply with the time frame for progressing and completing the Project as set out in this Deed.
- 29.5 If You do not notify the Commonwealth of any delay in progressing or completing the Project in accordance with sub-clause 29.2 the Commonwealth may, at its sole discretion, terminate this Deed under clause 31.

30. TERMINATION WITH COSTS

- 30.1 The Commonwealth may, at any time by written notice to You, terminate this Deed in whole or reduce the scope of this Deed without prejudice to the rights, liabilities, or obligations of either Party accruing prior to the date of Termination. If the Project is terminated or reduced in scope the Commonwealth will only be liable for:
- a. subject to sub-clause 30.3, payments under the payment provisions of this Deed; and
 - b. subject to subclauses 30.5, 30.6 and 30.7, any reasonable costs incurred by You and directly attributable to the termination or reduction in scope of this Deed.
- 30.2 Upon receipt of a notice of termination or reduction in scope You must:
- a. cease or reduce the performance of Its obligations under this Deed in accordance with the notice; and
 - b. immediately do everything possible to mitigate all losses, costs, and expenses, arising from the termination or reduction in scope contained in the notice; and
 - c. immediately return to the Commonwealth any Funds in accordance with sub-clause 30.4; or
 - d. deal with any such Funds as the Commonwealth may direct in writing.
- 30.3 Where the Commonwealth terminates this Deed under clause 30.1, the Commonwealth will not be obliged to pay You any outstanding amount of the Funds except to the extent that those monies have been legally committed for expenditure by You in accordance with this Deed and payable by You as a current liability (written evidence of which will be required) by the date on which the notice of termination given under sub-clause 30.1 is deemed to be received in accordance with sub-clause 36.3.
- 30.4 Where the Commonwealth terminates this Deed under clause 30.1, the Commonwealth will be entitled to recover from You any part of the Funds, which:
- a. has not been legally committed for expenditure by You in accordance with this Deed and payable by You as a current liability (written evidence of which will be required) by the date on which the notice of termination given under sub-clause 30.1 is deemed to be received in accordance with sub-clause 36.3; or
 - b. has not, in the Commonwealth's opinion, been spent by You in accordance with the terms and conditions of this Deed,
- and all such Funds will, without prejudice to any other rights available to the Commonwealth under this Deed or at law or in equity, be regarded at the Commonwealth's discretion as a debt due to the Commonwealth by You capable of being recovered as such in any court of competent jurisdiction.
- 30.5 If there is a reduction in scope of the obligations under this Deed, the Commonwealth's liability to pay any part of the Funding will, in the absence of agreement to the contrary, abate proportionately to the reduction in the obligations under this Deed.
- 30.6 The Commonwealth's liability to pay any compensation under or in relation to this clause 30 is subject to:

- a. Its strict compliance with this clause 30; and
 - b. Its substantiation of any amount claimed under paragraph 30.1b.
- 30.7 The Commonwealth will not be liable to pay compensation for loss of prospective profits for a termination or reduction in scope under this clause 30 or loss of any benefits that would have been conferred on You had the termination or reduction not occurred.

31. TERMINATION FOR DEFAULT

- 31.1 In the case of any one or more of the following events , the Commonwealth may immediately terminate this Deed by giving written notice to You of the termination:
- a. You fail to fulfil, or are in breach of any of Your obligations under this Deed (including those that are not expressly subject to the Commonwealth's right of termination under this clause), and do not rectify the omission or breach within 20 Business Days of receiving a notice in writing from the Commonwealth to do so;
 - b. You are unable to pay all of Your debts as and when they become due and payable or You fail to comply with a statutory demand within the meaning of sections 459E and 459F of the *Corporations Act 2001*;
 - c. proceedings are initiated with a view to obtaining an order for Your winding up or any shareholder, member or director convenes a meeting for the purpose of considering or passing any resolution for Your winding up;
 - d. You have applied to come under, received a notice requiring You to show cause why You should not come under, or have otherwise come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* or equivalent provisions in Incorporated Associations legislation of the States and Territories or Parts IV and V of the *Aboriginal Councils and Associations Act 1976*, or an order has been made for the purpose of placing You under external administration;
 - e. in relation to this Deed, You breach any law of the Commonwealth, or of a State or Territory;
 - f. You cease to carry on business;
 - g. the Commonwealth is satisfied that any statement made in Your application for Funding is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the Funding;
 - h. notice is served on You or proceedings are taken to cancel Your incorporation or registration or to dissolve You as a legal entity;
 - i. You are in receipt of Commonwealth funding in relation to the Project under any other agreement made with the Commonwealth and breach that other agreement; or
 - j. being an individual, You become bankrupt or enter into a scheme of arrangement with creditors.

- 31.2 Where the Commonwealth terminates this Deed under sub-clause 31.1, the Commonwealth will not be obliged to pay You any outstanding amount of the Funds except to the extent that those monies have been legally committed for expenditure by You in accordance with this Deed and are payable by You as a current liability (written evidence of which will be required) by the date the notice of termination given under sub-clause 31.1 is deemed to be received in accordance with sub-clause 36.3.
- 31.3 Where the Commonwealth terminates this Deed under sub-clause 31.1, the Commonwealth will be entitled to recover from You any part of the Funds, which:
- a. has not been legally committed for expenditure by You in accordance with this Deed and payable by You as a current liability (written evidence of which will be required) by the date the notice of termination given under sub-clause 31.1 is deemed to be received in accordance with sub-clause 36.3; or
 - b. has not, in the Commonwealth's opinion, been spent by You in accordance with the terms and conditions of this Deed.
- 31.4 If You do not repay the amount referred to in sub-clause 31.3 to the Commonwealth within 10 Business Days of receipt of the notice of termination (or if a different period is stated in the notice of termination, that period) You must also pay the Commonwealth Interest on the outstanding amount. The amount set out in the notice, and Interest owed under this clause will, without prejudice to any other rights available to the Commonwealth under this Deed or at law or in equity, be recoverable by the Commonwealth as a debt due to it by You without further proof of the debt being necessary.
- 31.5 Subclause 31.2 does not limit or exclude any of the Commonwealth's other rights, including the right to recover any other amounts from You on termination of this Deed.

32. ENTIRE AGREEMENT, VARIATION AND SEVERANCE

- 32.1 This Deed records the entire agreement between the Parties in relation to its subject matter.
- 32.2 Except for action the Commonwealth is expressly authorised to take elsewhere in this Deed, no variation of this Deed is binding unless it is agreed in writing and signed by the Parties.
- 32.3 If You consider there is a need to vary any aspect of the Project specified in the Schedule, You must immediately notify the Commonwealth in writing of the proposed variation, the reasons for it and its likely impact on the Project. No variation notified to the Commonwealth under this clause 32.3 is effected until it is agreed to by the Commonwealth in accordance with sub-clause 32.1.
- 32.4 If a court or tribunal says any provision of this Deed has no effect or interprets a provision to reduce an obligation or right, this does not invalidate any other provision.

33. WAIVER

- 33.1 If either Party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.
- 33.2 A single or partial exercise by a Party of any of its rights does not prevent the further exercise of any right.
- 33.3 Waiver of any provision of, or right under, this Deed:
- 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.
- 33.4 In this clause 28, 'rights' means rights or remedies provided by this Deed or at law.

34. ASSIGNMENT, NOVATION AND SECURITISATION

- 34.1 You must not assign Your rights under this Deed without the prior written approval of the Commonwealth.
- 34.2 You agree not to enter into negotiations with any other person for the purposes of entering into an arrangement that will require novation of this Deed without first obtaining the prior written approval of the Commonwealth.
- 34.3 Except with the prior written approval of the Commonwealth, You must not use any of the following as security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest:
- a. the Funds;
 - b. this Deed or any of the Commonwealth's obligations under this Deed; or
 - c. any Assets or Intellectual Property Rights in Project Material.

35. DISPUTE RESOLUTION

- 35.1 In respect of any dispute arising under this Deed which cannot be resolved by informal discussion, both Parties agree, subject to sub-clauses 35.3 and 35.4, not to commence any legal proceedings until the procedures provided by this clause 35 have been utilised.
- 35.2 Both Parties agree that any dispute arising during the course of this Deed is dealt with as follows:
- a. the Party claiming that there is a dispute will send the other a written notice setting out the nature of the dispute;
 - b. the Parties will try to resolve the dispute through direct negotiation by persons who have been given authority to resolve the dispute;
 - c. the Parties have 10 Business Days (or such longer period as agreed between the Parties before the expiration of the 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.

- 35.3 Either Party may only commence legal proceedings if the following the steps outlined in sub-clause 35.2 having been undertaken and if:
- a. there is no resolution of the dispute;
 - b. there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
 - c. 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 such extended time as the Parties may agree in writing before the expiration of the 15 Business Days.
- 35.4 This clause 35 does not apply to the following circumstances:
- a. either Party commences legal proceedings for urgent interlocutory relief;
 - b. action by the Commonwealth under, or purportedly under, clauses 4, 5, 6, 8, 10, 24, 25, 27, 30 and 31;
 - c. an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the law by You.
- 35.5 Each Party will bear its own costs of complying with this clause 35, and the Parties must bear equally the cost of any third person engaged under paragraph 35.2.
- 35.6 Despite the existence of a dispute, You must (unless requested in writing by the Commonwealth not to do so) continue to perform Your respective obligations in accordance with this Deed.
- 35.7 The operation of this clause 35 survives the expiration or earlier termination of this Deed.

36. NOTICES

- 36.1 A Party giving notice or notifying in relation to the Project must do so in writing or by electronic mail or facsimile transmission:
- a. directed to the recipient's address, as varied by any notice; and
 - b. hand delivered or sent by pre-paid post or transmitted by electronic mail or facsimile transmission ('electronically') to that address. If a notice is sent electronically a copy is also to be sent to the addressee by pre-paid post.
- 36.2 The Parties' address details as at the Date of the Deed are specified in clause 14 of the Schedule.
- 36.3 A notice given in accordance with sub-clause 36.1 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 unless it has been received earlier; and
 - c. if transmitted electronically, upon actual receipt by the addressee.

37. COMPLIANCE WITH LAWS AND POLICIES

- 37.1 You must, in carrying out Your obligations under this Deed, comply with the provisions of all Laws, including the Laws specified elsewhere in this act and particularly:
- a. *Equal Opportunity for Women in the Workplace Act 1999*;
 - b. *Racial Discrimination Act 1984*;
 - c. *Sex Discrimination Act 1984*;
 - d. *Disability Discrimination Act 1992*;
 - e. *Crimes Act 1914*;
 - f. *Criminal Code Act 1995*;
 - g. all relevant occupational health and safety legislation.
- 37.2 You should note that under the *Criminal Code Act 1995*, section 137.1, giving false or misleading information is a serious offence.
- 37.3 You must, in carrying out Your obligations under this Deed, comply with any of the Commonwealth's policies as notified, referred or made available by the Commonwealth to You in writing (including by reference to an internet site).
- 37.4 You must, when using Commonwealth or Australian Government premises or facilities, comply with all reasonable directions and procedures relating to occupational health and safety and security in effect at those premises or in regard to those facilities, as notified by the Commonwealth or other Australian Government Agency or as might reasonably be inferred from the use to which the premises or facilities are being put.

38. APPLICABLE LAW AND JURISDICTION

- 38.1 The laws of the Australian Capital Territory apply to this Deed.
- 38.2 Both Parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect to any dispute under this Deed.

39. DEFINITIONS

- 39.1 Unless the contrary intention appears a term in bold type has the meaning shown opposite it:

ABN	has the same meaning as it has in section 41 of the <i>A New Tax System (Australian Business Number) Act 1999</i> (Cth);
Agency	means any Australian Government department or agency other than the Commonwealth;
Annexure	means an annexure or attachment to the Deed or Schedule;
Approved Auditor	means a person: who is registered as a company auditor under the Corporations Act 2001(Cth), or a member of the Institute of Chartered Accountants in

	Australia, or of CPA Australia or the National Institute of Accountants; and
Asset	means any item of tangible property created, leased or acquired wholly or in part with the Funds and that has a value of over \$5,000 inclusive of GST, but does not include Project Material;
Auditor-General	means the office established under the <i>Auditor-General Act 1997</i> (Cth) and includes any other entity that may, from time to time, perform the functions of that office;
Australian Accounting Standards	refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth);
Australian Auditing Standards	refers to the standards of that name maintained by the Australian Auditing and Assurance Standards Board created by section 227A of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth);
Australian Government Material	means any Material provided to You by the Commonwealth for the purposes of this Deed or which is copied or derived from Material so provided, except for Project Material;
Business Day	means in relation to taking any action in a place, any day other than a Saturday, Sunday or public holiday in that place;
Commonwealth	means the Department of the Prime Minister and Cabinet (or any other Commonwealth authority, department or agency that is, from time to time, responsible for the administration of the Funding);
Commonwealth Material	means any Material provided by the Commonwealth for the purposes of the Project or which is copied or derived from Material so provided, except for Project Material;
Completion Date	means the day after You has done all that it is required to do under this Deed and the Schedule to the Commonwealth's satisfaction in relation to the Project;
Confidential Information	means 1. the information described in Item clause 12 of the Schedule; and 2. information that is agreed between the Parties after the Schedule Date as constituting Confidential Information for the purposes of the Project.
Constitution	means (depending on the context): a. a company's constitution, which (where relevant) includes any rules and amendments that are part of the company's constitution; or b. in relation to any other kind of body: i. the body's charter, rules or memorandum; or ii. any instrument or law constituting or defining the constitution of the body or governing the activities of the body or its members;
Date of this Deed	means the date of the signature of the representative of the Department of the Prime Minister and Cabinet on the execution page of the Deed.
Deed	means this document and includes any Schedules and Annexures;
Dispose	means to sell, licence, lease or sub-lease, or otherwise transfer or give up ownership or the right to occupy or use, or to enter into an agreement to do any of the preceding acts and ' Disposal ' means the method of so disposing;
Existing Material	means all Material in existence prior to the Date of this Deed: incorporated in; supplied with, or as part of; or required to be supplied with, or as part of,

	the Project Material;
Financial Report	means a financial Report provided in accordance with clause 16 of this Deed
Funding or Funds	means the amount or amounts (in cash or kind) payable under this Deed by the Commonwealth as specified in Item 3.1 of the Deed and includes Project Generated Income;
GST	has the meaning given in section 195-1 of the GST Act;
GST Act	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);
Guidelines	refers to the guidelines for the Program, as published from time to time by the Commonwealth;
Intellectual Property Rights	includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions, plant varieties, registered or unregistered trade marks (including service marks), designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields but does not include Moral Rights, the rights of performers or rights in relation to Confidential Information;
Interest	means interest calculated at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the <i>Tax Administration Act 1953</i> , on a daily compounding basis;
Laws	includes: Acts of the Commonwealth of Australia and the State(s) and Territory(s) in which the Project will be undertaken, and any other relevant State or Territory; ordinances, regulations, by-laws, orders and proclamations or other instruments of legal effect made under those Acts referred to in paragraph (a); directions by any person exercising statutory powers regarding the Project; and all the requirements and standards of a government department, authority, agency or regulatory body that commonly applies in any State or Territory where the Project is carried out;
Material	means the subject matter of any category of Intellectual Property Rights and 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;
Milestone	means a stage of completion of the Project set out in the Schedule;
Moral Rights	includes the following rights of an author of copyright Material: the right of attribution of authorship; the right of integrity of authorship; the right not to have authorship falsely attributed;
Official Information	means any information developed, received or collected by the Commonwealth or on the Commonwealth's behalf through its agencies and contracted providers (including You);
Official Resources	includes: Official Information; people who work for or with the Commonwealth; and assets belonging to the Commonwealth or in its possession;
Other	means the financial or in-kind resources (with in-kind resources valued at

Contributions	cost), other than the Funding or You Contributions, which are specified in the Schedule and are used by You to perform the Project;
Outcomes	means the Project's outcomes described in 1.1 of the Schedule;
Party	means a party to this Deed;
Personal Information	has the same meaning as it has in section 6 of the Privacy Act;
Personnel	means a Party's officers, employees, volunteers, partners, agents, advisers sub-contractors and/or contractors;
Privacy Act	refers to the <i>Privacy Act 1988</i> (Cth);
Privacy Commissioner	means the Office of the Privacy Commissioner established under the Privacy Act and includes any other entity that may, from time to time, perform the functions of that Office;
Program	means the Commonwealth's Research Support for National Security Program under which the Commonwealth provides the Funding to You;
Progress Report	means a periodic Report provided in accordance with clause 16 of this Deed
Project	means the project described in clause 1 of the Schedule and covers the relationship established between the Parties for the purposes of cooperation on this project.
Project Committee	means the committee referred to in clause 18 of the Deed;
Project Material	means all Material: c. brought into existence for the purpose of performing the Project; d. incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a); or e. copied or derived from Material referred to in paragraphs (a) or (b);
Schedule	refers to the schedule to this Deed and may include Annexures and incorporate other documents, including by reference;
Schedule Date	means the date on which You accepts the offer made by the Commonwealth within the Schedule.
Project Material	means all Material: brought into existence for the purpose of performing the Project; incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a); or copied or derived from Material referred to in paragraphs (a) or (b);
Records	includes documents, information and data stored by any means and all copies and extracts of the same;
Report	means Project Material that is provided to the Commonwealth for reporting purposes on the matters stipulated in clause 16 of this Deed.
Security Classified Information	means Official Information that, if compromised, could have adverse consequences for the Commonwealth;
Specified Personnel	means the personnel (whether Your officers, employees or subcontractors), or people with specific skills, specified in clause 6 of the Schedule as Personnel required to undertake the Project or any part of the work constituting the Project;
Tax Invoice	means an invoice drawn up in accordance with the GST Act
Term of this Deed	refers to the period described in clause 2;
Termination	Refers to when a Party terminates formally its involvement in a Project through the Deed and Schedule;

User	means: a body, organisation or entity that is listed as a “User” in Item 4.1 of the Deed; and any body, organisation or entity that the Parties agree after the Date of this Deed is a User for the purposes of this Deed;
You	means the party listed at the start of this document and, where the context admits, includes its officers, employees, agents, volunteers, subcontractors and successors.
Your Contributions	means the contributions, if any, specified in the Schedule, that You are required to provide for the purposes of the Project.

DRAFT



**DEPARTMENT OF THE PRIME MINISTER AND CABINET
RESEARCH SUPPORT FOR NATIONAL SECURITY**

**SCHEDULE TO THE DEED
PROJECT-SPECIFIC TERMS AND CONDITIONS**

ORGANISATION	
PROJECT CODE	
PROJECT TITLE	

Schedule to the Deed
Project-specific terms and conditions

1. Project

1.1 The Project is required to produce the following Outcomes by [Insert End Date of final Milestone]:

a. [Insert Project Outcomes]

1.2 The following is a description of the Project for general distribution in accordance with clause 23.3 of the Deed:

a. [Insert Project Description (no more than 300 words)]

2. Milestones

2.1 The Project shall be performed in the following manner:

Milestone [Insert Milestone Number]	
Start Date	[Insert Details]
End Date	[Insert Details]
Aims	[Insert Details]
Activities	[Insert Details]
Outputs	[Insert Details]
Personnel involved	[Insert Details]
Performance Indicators	[Insert Details]

3. Funding

3.1 The Project will be funded through the following means:

Source	Cash amount	In-kind value
Your Contribution	[Insert Amount]	[Insert Amount]
Other Contribution – [Insert organisation]	[Insert Amount]	[Insert Amount]
Other Contribution – [Insert organisation]	[Insert Amount]	[Insert Amount]
Commonwealth Funding	[Insert Amount]	[Insert Amount]
Total	[Insert Amount]	[Insert Amount]

- a. You agree to meet the obligations contained in clause 10 of the Deed regarding Your Contributions and Other Contributions set out in the table above.
- b. Commonwealth Funding will be provided subject to the terms and conditions set out in the Deed and shall be paid in the instalments set out in clause 3.2 below.

3.2 You must deliver the following Reports to the Commonwealth. Subject to clause 3.2.b, the Commonwealth shall then make the following Funding instalment payments:

Payment of Funding to be made following Commonwealth acceptance of:	Report must detail activities on the following Milestones:	Report due on	Amount of Funding due following Commonwealth acceptance, subject to clause 3.2.b
The Deed (i.e. following signing)	NA	NA	[Insert Amount]
Progress Report Number [Insert]	[Insert Milestone Number(s)]	[Insert Date]	[Insert Amount]
Final Progress Report	[Insert Milestone Number(s)]	[Insert Date]	[Insert Amount]

- a. Progress Reports must be submitted in accordance with clause 16 of the Deed.
- b. The payment of Commonwealth Funding instalments in accordance with the above table is dependent on You completing the Milestones, meeting the reporting requirements set out in clauses 16 and 17 of the Deed, submitting correctly rendered invoices in accordance with sub-clause 7.1 of the Deed and otherwise meeting Your obligations under the Deed.

3.3 The expenses of the Project are as follows:

Milestone	Expense Type	Expense Amount
[Insert Milestone Number]	[Insert Expense Type]	[Insert Expense Amount]
	[Insert Expense Type]	[Insert Expense Amount]
	[Insert Expense Type]	[Insert Expense Amount]
	[Insert Expense Type]	[Insert Expense Amount]
Total Expenses		[Insert Amount]

4. Users

- 4.1 You agree that the following bodies, organisations or entities are Users for the purposes of this Deed:
 - a. [Insert relevant agency]

5. Project Committee

- 5.1 The Project Committee will comprise of one representative from:
 - a. the Commonwealth (who will act as Chair of the Project Committee)
 - b. [Insert relevant agency]

6. Specified Personnel

- 6.1 The following persons or entities must complete the following part(s) of the Project

Name	Role
[Insert Details]	[Insert Details]
[Insert Details]	[Insert Details]

7. Subcontractors

- 7.1 The Commonwealth approves the use of the following subcontractors:

Name	Role
[Insert Details]	[Insert Details]
[Insert Details]	[Insert Details]

8. Conflict of interest

- 8.1 You must, during the Term of this Deed, ensure that no Conflict arises through Your involvement with the following parties:

Name	Details
[Insert Details]	[Insert Details]
[Insert Details]	[Insert Details]

9. Assets

- 9.1 Only the following Assets may be created or acquired using Funding:

Item	Description and purpose
------	-------------------------

[Insert Details]	[Insert Details]
[Insert Details]	[Insert Details]

10. Intellectual Property - Commonwealth Material

10.1 List any terms or conditions associated with the use of Commonwealth Material, including any limitations on the period of use by You:

- a. [Insert Details]

11. Intellectual Property - Existing and Project Material

11.1 List any terms or conditions associated with the use of Intellectual Property:

- a. [Insert Details]

12. Confidential Information

12.1 Commonwealth Confidential Information is:

Item	Period of Confidentiality
[Insert Details]	[Insert Details]

12.2 Your Confidential Information

Item	Period of Confidentiality
[Insert Details]	[Insert Details]

13. Additional Security Requirements

13.1 The following additional security requirements apply:

- a. [Insert Details]

14. Contact Information

14.1 The Commonwealth’s contact and notice details are as follows:

Dr Richard Davis
Assistant Secretary
National Security Science and Technology Branch,
Office of National Security
Department of the Prime Minister and Cabinet
PO Box 6500
Canberra ACT 2600

Email: nsst@pmc.gov.au

14.2 Your contact and notice details are as follows:

[Insert Name]

[Insert Details]

[Insert Details]

Email: [Insert Details]



DEPARTMENT OF THE PRIME MINISTER AND CABINET
RESEARCH SUPPORT FOR NATIONAL SECURITY

[Insert Organisation]

[Insert Details]

[Insert Details]

[Insert Details]

[Insert Date]

Dear [Insert Name],

I am pleased to advise that [Insert Organisation] ('You') have been approved to receive funding from the Department of the Prime Minister and Cabinet ('the Department') for the following project:

Project Code	[Insert Details]
Project Name	[Insert Details]
Project Funding	[Insert Details] (GST Inclusive)

I enclose two copies of a funding deed ('Deed') which sets out details of the proposed project. Please read the Deed carefully.

If You are able to undertake the project on the terms and conditions set out in the Deed, please have Your authorised representatives sign each copy of the Deed. Your authorised representatives' signatures should be witnessed by another person. Both copies of the Deed must be then returned to the Department, marked for my attention.

The Deed will commence when the Department's representative signs and dates the documents. One copy of the Deed will be returned to You for Your records. You must not make any commitments in anticipation of the Deed until You have received confirmation from us that the Department has signed the Deed.

This offer lapses if You do not return the signed and unaltered documents to me within 20 Business Days of the date of this letter.

Please contact me if you have any questions.

Yours sincerely

Dr Richard Davis
Assistant Secretary
National Security Science and Technology Branch
Office of National Security