

Department of Innovation, Industry,
Science and Research

Australian Space Research Program Funding Agreement
number [insert]

Commonwealth of Australia (**Commonwealth**)
[insert] (**Recipient**)

[Innovation: If a Consortium Member is the Commonwealth please amend the following clauses to include the name of the relevant Consortium Member:

- Background, item D;

- clause 1.1, definition of Commonwealth;

- clause 4.1A,

- clause 4.1B,

- clause 4.3(c) and (f),

- clause 8.3,

- clause 17.2(b);

- clause 17.3(a),

- clause 17.4;

- clause 18.1(b);

- clause 19(d),

- clause 22.9;

- clause 23.4; and

- clause 24.1]

However, if the Commonwealth is not a Consortium Member, please remove shaded references in the above clauses.]

Details

Date

_____/_____/_____
day month year

Parties

Name The Commonwealth of Australia as represented by the Department of Innovation, Industry, Science and Research

Short form name **Commonwealth**

Name [insert name of Recipient]

Short form name **Recipient**

[Note: The Commonwealth reserves the right to require a parent company guarantee (or equivalent, for example from a company with common ownership with the recipient), or other security, if the Recipient has limited share capital or financial resources.]

Background

- A The Commonwealth has established the Australian Space Research Program (**ASRP**) to develop Australia's niche space capabilities by supporting space-related research, innovation and skills in areas of national significance or excellence.
- B The Commonwealth provides Funds under the ASRP to support space related activities including the Project.
- C The Recipient and Consortium Members have entered into the Consortium Agreement to participate in the ASRP and to achieve the Project, and otherwise manage and govern their relationship.
- D One of the Consortium Members is the Commonwealth of Australia as represented by the [insert department] and using the trading name [insert name of Commonwealth Consortium Member].
- E The Commonwealth is required by law to ensure accountability for the Funds and accordingly the Recipient is required to be accountable for all Funds received.
- F The Commonwealth has agreed to provide the Funds to the Recipient for the purposes of the Project, subject to the terms and conditions of this Agreement.
- G The Recipient accepts the Funds for the purposes of the Project, and subject to the terms and conditions of this Agreement.

Funding Agreement

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SAMPLE

Agreed terms

Part 1 – Project and Funds

1. Definitions and interpretation

1.1 Defined terms

In this Agreement, except where the contrary intention is expressed, the following definitions are used:

Account	the account the Recipient must establish under clause 10.3(a)
Accounting Standards	(a) 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)) or other accounting standards which are generally accepted and consistently applied in Australia; or (b) for Overseas Based Consortium Members, accounting standards which are generally accepted and consistently applied in the country where that Overseas Based Consortium Member's place of business is located.
Advisers	(a) the financial or legal advisers of a party; and (b) the respective officers and employees of those financial or legal advisers.
Agreed Terms	clauses 1 to 31 of this Agreement, which set out terms and conditions agreed by the parties.
Agreement	this agreement between the Commonwealth and the Recipient, as varied from time to time in accordance with clause 31.4, and includes its schedules and any attachments.
Agreement Material	any Material provided, or required to be provided, to the Commonwealth under this Agreement including Material: (a) developed before, on or after the Commencement Date; and (b) developed by the Recipient, a Consortium Member or any third party.
Agreement Period	the period from the Commencement Date to the End Date.
Annual Report	means a report the Recipient must prepare and provide to the Commonwealth under clause 12.6.
ASRP	means the Australian Space Research Program.
Asset	any item of tangible property purchased, leased, created or otherwise brought into existence either wholly or in part with use of the Funds, but does not include Agreement Material.
Budget	the budget (if any) set out in Schedule 5, as varied from time to time in accordance with this Agreement.

Business Day	a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the act is to be performed or where the Notice is received.
Cash Contribution	means money, which is not a loan, provided by the Consortium, which is immediately available for use by the Recipient details of which are set out in Table 4 of Schedule 5.
Commencement Date	the date on which this Agreement commences, as specified in item 6 of Schedule 1.
Commonwealth	the Commonwealth as specified in item 1 of Schedule 1. For the avoidance of doubt, references in this Agreement to “the Commonwealth” do not include [insert name of relevant Consortium member], other than the reference in Recital D.
Commonwealth Material	any Material provided to the Recipient by the Commonwealth, including the Material (if any) specified in item 14 of Schedule 1.
Commonwealth Representative	the person identified in item 3 of Schedule 1.
Confidential Agreement Provisions	any provisions of this Agreement identified as confidential in item 19 of Schedule 1.
Confidential Information	information that is by its nature confidential and: <ul style="list-style-type: none"> (a) is designated by a party as confidential and is described in item 19 of Schedule 1; or (b) a party knows or ought to know is confidential, but does not include: <ul style="list-style-type: none"> (c) information that is or becomes public knowledge otherwise than by breach of this Agreement or any other confidentiality obligation.
Contribution	means In-Kind Contributions, Cash Contributions and Other Cash.
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
Consortium	means the consortium formed for the purposes of the ASRP and the Project, which includes the Recipient and all other Consortium Members.
Consortium Agreement	means the agreement between the Consortium Members to establish the Consortium.
Consortium Members	means those persons, bodies or organisations listed as consortium members in Schedule 3 from time to time, including the Recipient.
Constitutional Corporation	means a trading, financial or foreign corporation within the meaning of section 51(xx) of the Commonwealth of Australia Constitution Act.
DIISR	the Department of Innovation, Industry, Science and Research.
End Date	the date on which this Agreement will end (unless terminated earlier), as specified in item 7 of Schedule 1.

Financial Year	a period of 12 months ending on 30 June each year, or where the context necessitates a part of such period.
Funds	the amounts payable by the Commonwealth under this Agreement as specified in Schedule 4 and any interest earned on those amounts.
GST	has the same meaning as in the GST Law.
GST Law	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Guidelines	means the ASRP guidelines issued by the Minister pursuant to the ASRP.
Head of Expenditure	any category of expenditure provided for in Schedule 5.
Industry Association	means a not-for-profit incorporated association or other incorporated body that has as its principal or main purpose the promotion and enhancement of one or more Australian industries or Australian industry sectors.
Industry Partner	means an Australian incorporated private sector organisation operating in Australia on a for-profit or not for-profit basis. A Research Institution is not considered to be an industry partner.
In-Kind Contribution	Contributions from Consortium Members other than Cash Contributions as set out in Tables 2 and 3 of Schedule 5.
Intellectual Property Rights	all intellectual property rights, including: <ul style="list-style-type: none"> (a) copyright, patents, trademarks (including goodwill in those marks), designs, trade secrets, know how, rights in circuit layouts, domain names, inventions and discoveries, all other rights resulting from intellectual activity in the scientific field, and any right to have confidential information kept confidential; (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere, <p>whether or not such rights are registered or capable of being registered.</p>
Law	any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and rules of equity as applicable from time to time.
LEADR	the dispute resolution association with that name and the Australian Business Number 69 008 651 232.

Material	includes property, information, software, firmware, documented methodology or process, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.
Milestone	a stage of completion of the Project as set out in Schedule 2.
Minister	means the Minister for DIISR.
Moral Rights	the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the <i>Copyright Act 1968</i> (Cth).
Notice	a notice, demand, consent, approval or communication issued under this Agreement.
Other Cash	money provided by a person outside the Consortium, which is immediately available for use by the Recipient for the Project and may include donations and grants from other funding programs, but does not include anticipated future earnings as set out in Table 5 of Schedule 5.
Other Partner	means a University, Industry Partner, Research Institution, educational institution or any other legal entity, whether based in Australia or internationally, and includes State Government Departments and Industry Associations.
Outcomes	the outcomes for the Project, as set out in Schedule 2.
Overseas Based Consortium Member	means a Consortium Member incorporated, or otherwise established, outside of Australia.
Personnel	in relation to the Commonwealth, any employee, officer, agent, or professional adviser of the Commonwealth, and in the case of the Recipient, any Specified Personnel, employee, officer, agent, or professional adviser of either the Recipient or other Consortium Members, or subcontractors of the Recipient or other Consortium Members (including subcontractors of subcontractors, at any level).
Program	the Program referred to in item 5 of Schedule 1.
Project	the Project described in Schedule 2.
Qualified Accountant	means: <ol style="list-style-type: none"> 1) a person registered as a company auditor or a public accountant under a law in force in a State or Territory; or 2) a member of the Institute of Chartered Accountants in Australia or a CPA member of the Australian Society of Certified Practising Accountants or a Professional National Accountant Member of the National Institute of Accountants; who is independent of the Consortium and the management of the Project and free of any business or other relationship that could materially interfere with the exercise of their judgement.

Quarter(s)	a period of 3 months or, where the context necessitates part or multiples of that period, ending on 31 March, 30 June, 30 September or 31 December.
Recipient	the party specified in item 2 of Schedule 1.
Recipient Representative	the person identified in item 4 of Schedule 1.
Reports	the reports to be provided under clause 12.2.
Research Institution	means: <ul style="list-style-type: none"> 1) all publicly funded research agencies established by a Commonwealth Act of Parliament; or 2) an Australian organisation primarily involved in undertaking research or research related activities. <p>A state or territory government department or agency or an Industry Partner is not considered to be a research institution.</p>
Schedules	the schedules to this Agreement.
Shortfall	any deficit in the total Contributions received by the Recipient during a Financial Year and the Contributions which should have been received by the Recipient during that Financial Year as specified in Schedule 5.
Specified Personnel	means those persons specified in Schedule 6 as undertaking work as part of the Project.
Trust	means the trust referred to in item 2A of Schedule 1.
University	means all Table A, Table B and Table C providers under the <i>Higher Education Support Act 2003 (Cth)</i> .

1.2 Interpretation

In this Agreement, except where the contrary intention is expressed:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph or schedule is to a clause or paragraph of, or schedule to, this Agreement;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Canberra, Australia time;
- (g) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;

- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (k) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (l) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (m) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it;
- (n) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day;
- (o) headings are for ease of reference only and do not affect interpretation; and
- (p) any words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law.

1.3 Completion of Schedules

To the extent that the parties have not completed items in a Schedule, unless otherwise stated in the Schedule, those items will be taken to be 'not applicable' for the purpose of this Agreement.

2. Priority of documents

If there is inconsistency between any of the documents forming part of this Agreement, those documents will be interpreted in the following order of priority to the extent of any inconsistency:

- (a) Agreed Terms;
- (b) Schedules;
- (c) any attachments to the Schedules; and
- (d) documents incorporated by reference in this Agreement.

3. Duration of Agreement

This Agreement begins on the Commencement Date and continues until the End Date unless terminated in accordance with clause 28.

The Recipient acknowledges that the Agreement Period cannot be extended.

4. Project

4.1 Undertaking the Project

The Recipient must:

- (a) undertake the Project to achieve the Outcomes;

- (b) undertake the Project diligently, effectively, to a high professional standard and in accordance with:
 - (i) all applicable Laws;
 - (ii) any guidelines and principles specified in item 8 of Schedule 1; and
 - (iii) any Commonwealth policies and specific requirements set out in item 9 of Schedule 1;
- (c) complete the Project within the Agreement Period; and
- (d) meet the due dates for the Milestones, as specified in Schedule 2.

4.1A [Insert name] involvement in the Consortium¹

[Insert name of Commonwealth Consortium Member] is a Consortium Member and will be a party to the Consortium Agreement. This means that the Commonwealth of Australia will be a party to this Agreement (as the provider of the Funds), as well as a party to the Consortium Agreement (as represented by [Insert name of Commonwealth Consortium Member]). Accordingly, amendments have been made to this Agreement to address the Commonwealth of Australia's involvement as both the provider of the Funds and as a Consortium Member. These amendments are intended to:

- (a) clarify the application of provisions of this Agreement as those provisions may be flowed through to Consortium Members in the Consortium Agreement. Noting, however, that there are a minimum number of provisions which must be included in the Consortium Agreement under Appendix 3 of the Guidelines; and
- (b) ensure that the protections afforded to the Commonwealth under this Agreement are not affected by [Insert name of Commonwealth Consortium Member]'s involvement in the Consortium.

Notwithstanding clause 4.3(f), the following provisions of this Agreement are not required to be flowed through to [Insert name of Commonwealth Consortium Member] under the Consortium Agreement:

- (c) clause 4.3(c) (Warranties)
- (d) clause 8.3 (Consortium Members);
- (e) clause 17.2 (Intellectual Property Rights in Agreement Material);
- (f) clause 17.3 (Warranty);
- (g) clause 17.4 (Remedy for breach of warranty);
- (h) clause 18 (Moral Rights);
- (i) clause 19 (Indemnity);
- (j) clause 20 (Insurance);
- (k) clause 22.9 (Return of information); and
- (l) clause 23.4 (Indemnity);
- (m) clause 24.1 (Warranty).

¹ Please note that clauses 4.1A and 4.1B and subsequent shaded sections are only applicable if the Commonwealth of Australia is a Consortium Member as described in clause 4.1A.

The Recipient acknowledges that [Insert name of Commonwealth Consortium Member] being a Consortium Member does not affect the Commonwealth's rights and liabilities under this Agreement.

4.1B [Insert name] involvement in the Funding Agreement

The Commonwealth will ensure that none of its Personnel engaged in administering this Agreement have any role within or in connection with [Insert name of Commonwealth Consortium Member].

4.2 Acknowledgement of support

The Recipient must, in all publications, promotional and advertising materials, public announcements, events and activities in relation to the Project, or any products, processes or inventions developed as a result of it, acknowledge the financial and other support received from the Commonwealth, in the manner (if any) specified in item 10 of Schedule 1 or otherwise approved by the Commonwealth prior to its use.

4.3 Warranties

The Recipient represents and warrants that, at the Commencement Date and for the Agreement Period:

- (a) it has the right to enter into this Agreement on behalf of the Consortium;
- (b) it is a Constitutional Corporation, and that it will perform parts of the Project.
- (c) it and its Consortium Members (other than [Insert name of Commonwealth Consortium Member]), subcontractors and Personnel, have the necessary experience, skill, knowledge, expertise and competence to undertake the Project and (where appropriate) will hold such licences, permits or registrations as are required under any State, Territory or Commonwealth legislation to undertake the Project (and where a Consortium Member is an Overseas Based Consortium Member and performing activities overseas, the equivalent licences, permits or registrations required under the relevant jurisdiction), and are fit and proper people;
- (d) it is not a trustee, unless specifically disclosed in item 2A of Schedule 1;

[Note: if the Recipient is a trustee, full details need to be disclosed to the Commonwealth and additional requirements will apply. See Item 2A of Schedule 1]

- (e) it will remain a party to the Consortium Agreement;
- (f) the Consortium Agreement will require the Consortium to:
 - (i) conduct the Project at the times and in the manner specified in Schedule 2 and this Agreement;
 - (ii) make the Contributions to the Recipient which are specified in this Agreement;
 - (iii) cooperate with and provide to the Recipient any information about the Contributions or the conduct of the Project reasonably required by the Recipient; and
 - (iv) subject to clause 4.1A, be bound to equivalent terms and conditions to those of this Agreement relevant to the Consortium, including at a minimum clauses 22, 23 and 26; and
- (g) where terms of this Agreement are expressed to survive termination or expiry of this Agreement, the equivalent terms used in the Consortium Agreement are expressed to survive termination or expiry of the Consortium Agreement.

5. Project governance

5.1 In the event the Recipient is unable to meet obligations

The Recipient must notify the Commonwealth immediately upon becoming aware of any circumstances that are likely to adversely affect the Recipient's ability to comply with the terms of this Agreement, in particular its solvency or ability to ensure that the Project is carried out in accordance with this Agreement or the Consortium Agreement.

The giving of Notice by the Recipient pursuant to this clause 5.1, will not, in any way, limit the obligations of the Recipient under this Agreement or excuse the Recipient in any way from the performance of those obligations.

5.2 Changes to the Consortium Agreement

The Recipient must:

- (a) ensure that the Consortium Agreement is consistent with, and otherwise complies with the obligations under, this Agreement and the Guidelines, and allows the Recipient to meet its obligations under this Agreement;
- (b) ensure no variation is made to the Consortium Agreement (including any material change in the Consortium, such as but not limited to, a change to the Consortium Members or their Contributions) that is, or may be, inconsistent with this Agreement or the Guidelines, without the prior written consent of the Commonwealth; and
- (c) provide the Commonwealth with details (including a revised version of the Consortium Agreement) of any variation (including a variation made with the Commonwealth's approval under paragraph (b) above) made to the Consortium Agreement within 10 Business Days of execution of the variation.

5.3 Breach of the Consortium Agreement

The Recipient must, promptly after becoming aware of a breach or suspected breach of the Consortium Agreement that would affect the Recipient's ability to comply with its obligations under this Agreement:

- (a) provide Notice to the Commonwealth of that breach or suspected breach;
- (b) provide all information reasonably required by the Commonwealth in relation to the breach or suspected breach;
- (c) identify to the Commonwealth the steps the Recipient and the Consortium intend to take to address the matter;
- (d) keep the Commonwealth informed of any action the Recipient and the Consortium takes, including action requiring remedy of the breach; and
- (e) provide Notice to the Commonwealth once the breach is remedied, or if not remedied upon the matter being resolved.

If a breach of the Consortium Agreement remains unresolved or not remedied by the Consortium to the satisfaction of the Commonwealth, acting reasonably, the Recipient acknowledges that the Commonwealth may exercise its rights to reduce, suspend or terminate the Funds under clauses 8.2, 8.4 and 28 (respectively).

6. Consortium Members

6.1 Consortium Member

The Consortium Members at the date of this Agreement are listed in Schedule 3. The parties agree to update this list from time to time to reflect any approved change under clause 5.2. The Recipient must ensure that the list of Consortium Members includes, at all times during the Agreement Period: [

(a) one University and one Other Partner (Stream A);

(b) one University or Research Institution and at least one Industry Partner (Stream B).

Note: delete the stream requirement that is not applicable].

6.2 Change of Consortium Member

Subject to clauses 4.3, 6.1, and 6.3 and any further obligations under this Agreement, the Recipient may substitute or change Consortium Members in accordance with the notice procedure set out in clause 6.3.

6.3 Notification of change of Consortium Members

In addition to any other obligations under this Agreement, the Recipient must notify the Commonwealth 60 days prior to any proposed substitution or change of Consortium Member. This Notice must include:

- (a) the details of the exiting Consortium Member, any incoming Consortium Member, and a breakdown comparison of their contributions;
- (b) the amount of any Shortfall in the Budget for that Financial Year, or any future Financial Years that is anticipated to arise from the substitution or change in Consortium Members, and any steps the Recipient proposes to take to resolve or otherwise deal with the Shortfall;
- (c) an assessment as to the degree to which the Consortium's viability or capacity to undertake the Project and achieve the Milestones is likely to be affected.

After receiving a Notice under this clause 6.3, the Commonwealth may in its sole discretion and on 10 Business Days Notice to the Recipient, and without limiting any of its other rights under this Agreement or at law, exercise its rights to reduce, suspend or terminate the Funds under clauses 8.2, 8.4 and 28 (respectively) where it considers that the proposed substitution or change of a Consortium Member is likely to impact on the continued viability of the Consortium or its capacity to undertake the Project or achieve the Milestones.

7. Contributions

7.1 Consortium Contributions

Each Financial Year the Recipient must procure, and apply for the benefit of the Project, on behalf of the Consortium:

- (a) In-Kind Contributions;
- (b) Cash Contributions; and
- (c) any Other Cash,

specified in Schedule 5 for that Financial Year. The Recipient must ensure In-Kind Contributions are not sourced from:

- (d) Commonwealth, State, Territory or foreign Government program funds already secured for another approved project or activity; or
- (e) cash or in-kind resources that are used to meet a Cooperative Research Centre partners' obligations under a Cooperative Research Centre Commonwealth Agreement.

7.2 Shortfall in Consortium Contributions

The Recipient must notify the Commonwealth, as part of each Annual Report, of any Shortfall in the Contributions, as specified in Schedule 5 for the corresponding Financial Year. The notification of any Shortfall in an Annual Report must include the following:

- (a) the amount and value of the Shortfall;
- (b) the reasons for the Shortfall;
- (c) any remedial action proposed or undertaken; and
- (d) any impact the Shortfall is expected to have on the current or future capacity of the Recipient to undertake the Project and meet its obligations under this Agreement.

The Recipient must promptly notify the Commonwealth if at any stage during a Financial Year it considers that there will be a Shortfall in the Contributions, and provide any information reasonably requested by the Commonwealth, promptly on request.

The Commonwealth will not require notification under this clause 7.2 or issue a Notice under clause 7.3, unless the Shortfall is equal to, or exceeds 10% of the:

- (a) Cash Contributions specified in Schedule 5; or
- (b) non-staff In-Kind Contributions specified in Schedule 5; or
- (c) staff In-Kind Contributions specified in Schedule 5

for that Financial Year.

7.3 Recipient to make good any Shortfall in Consortium Contributions

Where the Recipient is required to provide notification of a Shortfall under clause 7.2 the Commonwealth may, by Notice, require the Recipient to make good the Shortfall and to report on any matters specified in the Notice within the period specified in the Notice (or if not specified within 10 Business Days). The Recipient must comply with any such Notice issued by the Commonwealth within the time period specified.

If the Recipient does not make good the Shortfall to the Commonwealth's satisfaction within the period specified in the Notice, or report on any matters specified in the Notice, the Commonwealth may in its absolute discretion, and without limiting any of its other rights under this Agreement or at law, reduce the total amount of Funds by all or a part of the value of the Shortfall.

Nothing in clause 7.3 affects the Commonwealth's rights under clauses 8.2, 8.4 and 28.

8. Funds

8.1 Payment

Subject to:

- (a) clauses 8.4 and 8.5;
- (b) sufficient funding being available for the Program; and
- (c) the Recipient complying with this Agreement,

the Commonwealth will pay the Funds to the Recipient as set out in Schedule 4.

8.2 Disqualifying event

The Commonwealth is not obliged to make any payment of the Funds if the Commonwealth has at any time during the Agreement Period reasonable grounds for considering that the Consortium will not be able to complete the Project on time, or to a standard reasonably acceptable to the Commonwealth.

8.3 Consortium Members

The Recipient acknowledges that at any time during the Agreement Period, the Commonwealth may require, as a precursor to the Funds being released, any or all other Consortium Members (other than [insert name of Commonwealth Consortium Member]) to:

- (a) be named as a party to this Agreement as detailed in a form of deed of variation acceptable to the Commonwealth; or
- (b) enter into a separate agreement in a form acceptable to the Commonwealth, under which the other Consortium Members will guarantee or indemnify the Recipient's performance of this Agreement.

8.4 Suspension

- (a) Without limiting any other right or remedy of the Commonwealth, the Commonwealth may suspend payment of the Funds (or any part of the Funds) if:
 - (i) any Contributions due to be provided before the date for payment have not been provided, until those Contributions have been provided;
 - (ii) the Recipient has not provided a Report due to be provided before the date for payment, until the Report is provided;
 - (iii) a Report provided by the Recipient is not accurate or complete, until an accurate and complete replacement Report is provided;
 - (iv) the Recipient has not achieved a Milestone that was due to be achieved before the date for payment, until the Milestone is achieved;
 - (v) the Recipient has not otherwise undertaken the Project to the satisfaction of the Commonwealth, until the Recipient remedies its performance; or
 - (vi) the Recipient has not spent Funds previously paid to the Recipient, until the Recipient has done so.
- (b) Despite any suspension, the Recipient must continue to perform its obligations under this Agreement.

8.5 Reduction

Without limiting any other right or remedy of the Commonwealth, the Commonwealth may reduce the amount of any instalment of the Funds:

- (a) if by the date for payment of the instalment the Recipient has not spent, or committed Funds previously paid to the Recipient, by the amount that has not been spent or committed;
- (b) if, in the Commonwealth's opinion, Funds have been spent other than in accordance with this Agreement, by the amount that, in the Commonwealth's opinion, was spent other than in accordance with this Agreement; and

- (c) if any Contributions due to be provided before the date for payment of the instalment has not been provided, by an amount that represents the same proportion of the total Funds as those Contributions bear to the total Contributions .

8.6 Recipient to provide invoice

The Recipient must provide a correctly rendered invoice to the Commonwealth for the Funds in accordance with the requirements specified in Schedule 4.

8.7 Due date for payment

Unless otherwise specified in Schedule 4, the Commonwealth must make payment of a correctly rendered invoice within 30 days after receiving the invoice and provision of a satisfactory report as set out in clause 12.

8.8 Incorrect invoices, under/over payment

If an invoice is found to have been rendered incorrectly after payment, any underpayment or overpayment will be recoverable by or from the Recipient, as the case may be.

8.9 Taxes

The Recipient must pay all:

- (a) stamp duty (including penalties and interest) assessed or payable in respect of this Agreement and the Project; and
- (b) subject to clause 9, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.

9. GST

9.1 Construction

In this clause 9 words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law.

9.2 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

9.3 Payment of GST

If GST is payable by a supplier on any supply made under this Agreement, the recipient of the supply will pay to the supplier an amount equal to the GST payable on the supply, in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.

9.4 Tax invoice

- (a) Except where clause 9.4(b) applies:
 - (i) the supplier must deliver a tax invoice or an adjustment note to the recipient of the supply before the supplier is entitled to payment of an amount under clause 9.3; and
 - (ii) the recipient of the supply can withhold payment of the amount payable under clause 9.3 until the supplier provides a tax invoice or an adjustment note as appropriate.
- (b) If GST is imposed on any supply made by the Recipient to the Commonwealth under this Agreement in return for all or any part of the Funds, the Commonwealth may issue a 'recipient created tax invoice' to the Recipient for the supply in question (and an adjustment note for any adjustment event in respect of that supply) and the Recipient must

not issue a tax invoice (or adjustment note) for or in respect of the supply. Each party warrants that it is GST registered and agrees that it will promptly notify the other party if it ceases to be GST registered.

9.5 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a supplier under this Agreement the amount payable by the recipient of the supply under clause 9.3 will be recalculated to reflect the adjustment event and a payment will be made by the recipient of the supply to the supplier or by the supplier to the recipient of the supply as the case requires.

9.6 Reimbursements

No party may claim from the other an amount for which the first party can obtain an input tax credit.

10. Use of Funds

10.1 What Funds can be used for

- (a) The Recipient must spend the Funds only in accordance with the Budget.
- (b) Subject to clause 10.1(c), the Recipient may vary the Budget by re-allocating expenditure to items specified in the Budget.
- (c) Any variation under clause 10.1(b) which increases the amount allocated to an item of expenditure by more than 10% cannot be made without the Commonwealth's prior written approval.

10.2 Commonwealth direction

- (a) Without limiting any other right or remedy of the Commonwealth, the Commonwealth may by Notice direct the Recipient not to spend Funds if:
 - (i) the Recipient has not completed a Report that was due before the date of notification;
 - (ii) the Recipient has not achieved a Milestone that was due to be achieved before the date of notification; or
 - (iii) the Recipient is otherwise in breach of this Agreement.
- (b) The Recipient must not spend any Funds after it receives notice from the Commonwealth under subclause (a) unless and until the Commonwealth notifies the Recipient otherwise.

10.3 Bank account

The Recipient must:

- (a) ensure that Funds paid to the Recipient are held in a separate bank account in the Recipient's name, and which the Recipient solely controls, with an authorised deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia, which is solely used for receipt of the Funds and interest (the **Account**). If the Recipient is a University, the Funds may be held in a separate financial ledger account rather than in a separate bank account;
- (b) unless specified otherwise in Schedule 4, ensure that the Account is:
 - (i) established solely for the purposes of accounting for, and administering, any Funds paid to the Recipient;
 - (ii) an account that bears a rate of interest reasonably required by the Commonwealth; and

- (iii) separate from the Recipient's other operational accounts;
- (c) unless the Recipient is a sole director company or an individual, ensure that two signatories, who have the Recipient's authority to do so, are required to operate the Account;
- (d) notify the Commonwealth, prior to the receipt of any Funds, of details sufficient to identify the Account;
- (e) on notification from the Commonwealth, provide the Commonwealth and the authorised deposit-taking institution with an authority for the Commonwealth to obtain any details relating to the use of the Account;
- (f) if the Account changes, promptly notify the Commonwealth, providing the Commonwealth with details of the new account, and comply with clause 10.3(e) in respect of the new account; and
- (g) identify the receipt and expenditure of the Funds separately within the Recipient's accounting records so that at all times the Funds are identifiable and ascertainable.

10.4 No additional Funds

The Commonwealth is not responsible for the provision of additional money to meet any expenditure in excess of the Funds.

11. Repayment

11.1 During the Agreement Period

The Commonwealth is entitled to recover from the Recipient any amount of money which, at any time, in the Commonwealth's opinion, has been spent:

- (a) other than in accordance with this Agreement; or
- (b) by the Recipient or by the Consortium in a manner which will reduce the benefits that were expected by the Commonwealth to be generated by the Project.

11.2 At the end of the Agreement Period

After the End Date (or, at the Commonwealth's discretion, at any time during this Agreement), the Commonwealth is entitled to recover from the Recipient:

- (a) any Funds which have not been spent or legally committed for expenditure by the Recipient in accordance with this Agreement (including any interest earned by the Recipient) and payable by the Recipient as a current liability (written evidence of which will be required); and
- (b) the amount of any Funds which, in the Commonwealth's opinion, have been spent other than in accordance with this Agreement.

11.3 Repayment notice

- (a) The Commonwealth may give the Recipient a notice requiring the Recipient to repay to the Commonwealth (or deal with as specified by the Commonwealth) an amount which the Commonwealth is entitled to recover under clause 11.1 or 11.2.
- (b) If the Commonwealth gives a notice under clause 11.3(a), the Recipient must repay the amount specified in the notice in full (or deal with it as specified by the Commonwealth) within 30 days of the date of the notice.

11.4 Commonwealth options

Nothing in this clause 11 affects the right of Commonwealth to recover from the Recipient, either under this Agreement or otherwise, the whole of any debt owed by the Recipient.

12. Monitoring progress

12.1 Progress meetings

The parties will meet at the times and in the manner reasonably required by the Commonwealth to discuss any issues in relation to this Agreement or the Project. The Recipient must ensure that the Recipient Representative, and the Commonwealth must ensure the Commonwealth Representative, is reasonably available to attend such meetings and answer any queries relating to the Project raised by either party.

12.2 Reporting

The Recipient must provide the Commonwealth with reports in accordance with this clause 12. The Recipient must comply with any direction issued by the Commonwealth under this clause 12 or which the Commonwealth is taken to have issued under clause 12.3.

12.3 Contents of Reports

The Commonwealth may from time to time notify the Recipient of:

- (a) the required format for a report under this Agreement (or for part of the report);
- (b) the required information the Recipient is to include in a report (or part of the report);
- (c) the person or persons who is required to certify that the information contained in a report (or part of a report) is accurate; or
- (d) a template report with any or all of the above requirements.

The Recipient must comply with the requirements or template notified, within the timeframe notified by the Commonwealth (which will be at least 60 days).

12.4 Provision of Reports

If any of the Reports provided to the Commonwealth under this clause 12 are not provided within the time required by or under that clause or do not meet the satisfaction of the Commonwealth, in the Commonwealths' sole discretion, the Commonwealth may, without limiting any of its other rights under this Agreement or at law, reduce, suspend or terminate the Funds under clauses 8.2, 8.4 and 28 (as applicable).

12.5 Quarterly Reports

The Recipient must provide the Commonwealth a Quarterly Report pertaining to the Project and the Account within 30 days of the end of each Quarter incorporating the following:

- (a) in relation to the Project, each Quarterly Report must include:
 - (i) the name of the Recipient;
 - (ii) the Project title;
 - (iii) the period to which the Report relates;
 - (iv) a description and analysis of the progress of the Project, including:
 - (I) the Milestones achieved during the period to which the Report relates and reasons why any Milestones have not been met, the effect this will have on the Project and the action the Recipient proposes to take to address this;

- (II) whether the Project is proceeding in accordance with the Budget and, if it is not, an explanation of why the Budget is not being met, the effect this will have on the Project and the action the Recipient proposes to take to address this;
 - (III) progress on achieving the Outcomes;
 - (IV) any major issues or developments which have arisen and the effect they will have on the Project; and
 - (V) any proposed changes to the Project; and
- (b) in relation to the Account, each Quarterly Report must include:
- (i) a statement of the Funds received;
 - (ii) the amount remaining in the Account;
 - (iii) a cash (not accrual) report in respect of that Quarter indicating all the sources of all Cash Contributions from the Consortium and any Other Cash funding to the Project;
 - (iv) cash (not accrual) report in respect of that Quarter on the expenditure of Funds for the Project against each Head of Expenditure; and
 - (v) a declaration by [if the Recipient is a university, the Deputy Vice-Chancellor / if the Recipient is a company, the Chief Executive Officer] certifying the accuracy of the particulars provided under paragraph (iii) and (iv) including a statement that the Funds have been expended only for the Project and otherwise in accordance with this Agreement.

The parties agree that the Quarterly Report for 30 June each year of the Agreement Period will be the Annual Report.

12.6 Annual Report

The Recipient must provide to the Commonwealth a comprehensive and detailed Annual Report in accordance with clause 12.7, within:

- (a) 2 months of the end of each Financial Year for the duration of this Agreement; and
- (b) if the Commonwealth terminates this Agreement, 2 months of the date of termination; and
- (c) within 2 months of expiry of this Agreement.

12.7 Contents of the Annual Report

In addition to meeting any requirements specified in clause 12.5 for the June quarter, the Guidelines and by the Commonwealth from time to time, the Annual Reports required under clause 12.6 must report on and contain the following:

- (a) Report on the Project:
 - (i) identifying progress in the Project including how the Recipient has met, or progressed towards meeting, the Milestones specified in Schedule 2;
 - (ii) including information about the utilisation of any Agreement Material (including any prospective use); and
 - (iii) including a list of the members of the Consortium during the Financial Year.
- (b) Financial Report:

- (i) including an accrual accounting report on revenues, expenses, assets, liabilities and cash flows.
- (c) Report on Contributions:
 - (i) including a report that identifies Contributions for the Financial Year, including Cash Contributions, non-staff In-Kind Contributions and the level and quality of staff In-Kind Contributions (and notice of any Shortfall in accordance with clause 7.2);
 - (ii) reporting each Consortium Member's Contribution individually.
- (d) Audit:
 - (i) subject to clause 12.7(d)(ii), including a statement by a Qualified Accountant, that the reports specified under this clause 12.7(b) and 12.7(c) present fairly that the Funds and the Contributions have been expended solely for the Project, and in accordance with Schedule 5 of this Agreement and Australian accounting concepts and applicable Accounting Standards;
 - (ii) if the End Date falls within the period 30 June to 31 December during the final year of the Project, the Recipient is not required to produce an annual audit report under clause 12.7(d)(ii) but must provide a final audit report in accordance with clause 12.8(f).

12.8 Final report

Within 2 months after the end of the Agreement Period, the Recipient must provide a report which includes:

- (a) the name of the Recipient;
- (b) the Project title;
- (c) the amount of Funds paid under this Agreement;
- (d) a final statement of the Funds and Contributions received and spent;
- (e) the amount (if any) remaining in the account referred to in clause 10.3;
- (f) a description and analysis of the progress of the Project, including:
 - (i) evidence that the Project has been completed, and the Milestones have been achieved;
 - (ii) details of the extent to which the Project achieved the Outcomes;
 - (iii) any highlights, breakthroughs or difficulties encountered; and
 - (iv) conclusions or recommendations (if any) arising from the Project; and
- (g) a final audit report in accordance with the minimum requirements set out in clause 12.7(d)(i).

13. Audit or evaluation

Without limiting any of its obligations under this Agreement the Recipient must assist the Commonwealth with, and respond and participate in, within the timeframe and in the manner required by the Commonwealth in any guideline or Notice issued by the Commonwealth from time to time, any:

- (a) audit, review or final evaluation of the:

- (i) performance of the Consortium;
 - (ii) conduct of the Project;
 - (iii) Recipient's compliance with this Agreement;
- (b) surveys, questionnaires and other evaluation procedures related to the performance of the Recipient, Consortium or the ASRP; and
- (c) preparation of reports reasonably required under this clause 13.

SAMPLE

Part 2 – General requirements

14. Subcontractors and Personnel

14.1 Subcontracting

- (a) The Recipient must:
- (i) not subcontract the performance of any of its obligations under this Agreement other than to those entities set out in item 11 of Schedule 1 without the prior written approval of the Commonwealth, which will not be unreasonably withheld;
 - (ii) not, in any event, enter into a subcontract under this Agreement with a subcontractor named by the Director of Equal Opportunity for Women in the Workplace in a report to the responsible Minister as an employer currently not complying with the reporting requirements of the *Equal Opportunity for Women in the Workplace Act 1999* (Cth); and

[Note: Any subcontractors performing a material part of the Project, or who are material to the Project for other reasons (e.g. they hold key IP or play an important strategic role in the Project) must be disclosed to the Commonwealth. Note that the matching funding must be provided from Consortium Members, not subcontractors.]

- (iii) ensure that any subcontractor and its Personnel approved under this Agreement complies with:
 - (A) Clause 10 (Use of funds);
 - (B) Clause 12 (Monitoring progress);
 - (C) Clause 20 (Insurance);
 - (D) Clause 21 (Publicity);
 - (E) Clause 22 (Confidentiality and privacy);
 - (F) Clause 23 (Protection of personal information);
 - (G) Clause 24 (Conflict of interest); and
 - (H) Clause 26 (Audit and access).
- (b) The Recipient is fully responsible for undertaking the Project even if the Recipient subcontracts any aspect of the Project and for the performance of all of the Recipient's obligations under this Agreement.

14.2 Use of Specified Personnel

The Recipient must ensure that the Specified Personnel as nominated in Schedule 6 or any persons who are appointed to replace them in accordance with clause 14.4 below, perform their role in the Project as described in Schedule 6.

14.3 If the Specified Personnel are not available

Subject to clause 14.4, the Recipient must notify the Commonwealth in writing of any change to the Specified Personnel within 10 working days of the relevant change taking effect. Approval for a change in Specified Personnel is not required.

14.4 Replacement of Specified Personnel, subcontractors or Personnel

When replacing Specified Personnel, Personnel or subcontractors the Recipient must ensure that any such replacement personnel has the time commitment, qualifications and competency to

undertake that role or part of the Project to the standard required by this Agreement, and have similar expertise and ability to those of the Specified Personnel, Personnel or subcontractors they are replacing.

15. Assets

15.1 Ownership

Subject to the terms of any lease or other arrangement, the Recipient must own, or ensure that Consortium Members own, all of the Assets.

15.2 Use and dealings

- (a) During the Agreement Period, the Recipient must (and must ensure Consortium Members) use any Asset only for the purposes of the Project, or other purposes consistent with the Outcomes.
- (b) During the Agreement Period, the Recipient and/or the relevant Consortium Member (as the case may be) must:
 - (i) obtain good title to all Assets (other than Assets which the Recipient or a Consortium Member leases);
 - (ii) not encumber or dispose of any Asset valued at \$50,000 or more (excluding GST), or deal with or use any Asset valued at \$50,000 or more (excluding GST) other than in accordance with this clause 15, without the Commonwealth's prior approval;
 - (iii) hold all Assets securely, safeguard them against theft, loss, damage or unauthorised use and ensure that they are adequately insured;
 - (iv) maintain all Assets in good working order;
 - (v) if required by Law, maintain registration and licensing of all Assets; and
 - (vi) fully responsible for, and bear all risks relating to, the use or disposal of all Assets.
- (c) The Recipient must, and must ensure Consortium Members, do not sell, transfer or dispose of any Asset valued at \$50,000 or more (excluding GST) during the Agreement Period, without the prior consent of the Commonwealth. The Commonwealth may impose conditions on that consent, including return of a proportion of the proceeds to the Commonwealth.

15.3 Assets register

- (a) If specified in item 13 of Schedule 1, the Recipient must maintain an Assets register containing the details as described in item 13 of Schedule 1.
- (b) The Recipient must provide a copy of the Assets register to the Commonwealth on request.

16. Commonwealth Material

The Commonwealth will provide to the Recipient the Commonwealth Material and the Recipient must ensure that the Commonwealth Material is used strictly in accordance with any conditions or restrictions specified in item 14 of Schedule 1 and any direction by the Commonwealth.

17. Intellectual Property Rights

17.1 Third Party Permissions

The Recipient must obtain all necessary copyright and other Intellectual Property Rights permissions before making any Agreement Material available for the purpose of this Agreement or the Project.

17.2 Intellectual Property Rights in Agreement Material

- (a) All Intellectual Property Rights in the Agreement Material vest in the Recipient or the relevant Consortium Member or third party (as the case may be) on creation.
- (b) Subject to clause 17.2(c) the Recipient grants to, or must obtain for, the Commonwealth a world-wide, perpetual, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate the Agreement Material in connection with the Project or Program, or for any other Commonwealth purpose. The Recipient is not required to grant or obtain for the Commonwealth a licence on these terms for Agreement Material provided by [insert name of Commonwealth Consortium Member].
- (c) The licence granted to the Commonwealth under clause 17.2(b) does not include:
 - (i) a right to exploit the Agreement Material for commercial purposes; or
 - (ii) a right to use the results of any scientific research or technology developed by the Recipient or the Consortium Members or third parties for the purposes of undertaking the Project.
- (d) The Commonwealth grants to the Recipient, subject to any conditions or restrictions specified in item 14 of Schedule 1 and any directions from the Commonwealth, a world-wide, royalty-free, non-exclusive, non-transferable licence (including the right to sublicense) for the term of this Agreement to use, reproduce, adapt, modify and communicate any Commonwealth Material provided to the Recipient under this Agreement, for the purpose of undertaking the Project and performing its obligations under this Agreement.

17.3 Warranty

The Recipient warrants that:

- (a) the Agreement Material (excluding, for the avoidance of doubt, material provided by [insert name of Commonwealth Consortium Member]) and the Commonwealth's use of the Agreement Material will not infringe the Intellectual Property Rights of any person; and
- (b) it has the necessary rights to vest the Intellectual Property Rights and grant the licences as provided for in this clause 17.

17.4 Remedy for breach of warranty

If someone claims, or the Commonwealth reasonably believes that someone is likely to claim, that all or part of the Agreement Material (including, for the avoidance of doubt, material provided by [insert name of Commonwealth Consortium Member]) infringes their Intellectual Property Rights, the Recipient must, in addition to the indemnity under clause 19 and to any other rights that the Commonwealth may have against it, promptly, at the Recipient's expense:

- (a) use its best efforts to secure the rights for the Commonwealth to continue to use the affected Agreement Materials (as contemplated by this Agreement) free of any claim or liability for infringement; or

- (b) replace or modify the affected Agreement Materials so that the Agreement Materials or the use of them by the Commonwealth (as contemplated by this Agreement) does not infringe the Intellectual Property Rights of any other person without any degradation of the performance or quality of the affected Agreement Materials.

18. Moral Rights

18.1 Obtaining consents

To the extent permitted by applicable Laws and for the benefit of the Commonwealth, the Recipient must:

- (a) give, where the Recipient is an individual, in a form acceptable to the Commonwealth;
- (b) use its best endeavours to ensure that each of the Personnel used by the Recipient and other Consortium Members (other than [Insert name of Commonwealth Consortium Member]) in the production or creation of the Agreement Material gives, in a form acceptable to the Commonwealth; and
- (c) use its best endeavours to ensure that any holder of Moral Rights in the Agreement Material gives,

genuine consent in writing to the use of the Agreement Material for the Specified Acts, even if such use would otherwise be an infringement of its or their Moral Rights. The Recipient acknowledges the Commonwealth is not required to attribute authorship of any Agreement Material, or any content in the Agreement Material (including literary, dramatic, artistic works and cinematograph films within the meaning of the *Copyright Act 1968* (Cth)).

18.2 Specified Acts

- (a) In this clause 18, unless otherwise specified in item 17 of Schedule 1, Specified Acts means:
 - (i) materially altering the style, format, colours, content or layout of the Agreement Material and dealing in any way with the altered Agreement Material;
 - (ii) reproducing, communicating, adapting, publishing or exhibiting any Agreement Material; and
 - (iii) adding any additional content or information to the Agreement Material.

19. Indemnity

- (a) The Recipient indemnifies the Commonwealth, its officers and employees (referred to in this clause 19 as "those indemnified") from and against any loss or liability, including:
 - (i) loss of, or damage to, property of the Commonwealth;
 - (ii) claims by any person in respect of personal injury or death;
 - (iii) claims by any person in respect of loss of, or damage to, any property; and
 - (iv) costs and expenses including the costs of defending or settling any claim referred to in clause 19(a)(ii) or clause 19(a)(iii),arising out of or as a consequence of:
 - (v) use or disposal of Assets;

- (vi) an infringement, or an alleged infringement, of the Intellectual Property Rights or Moral Rights of any person, which occurred by reason of an act done by the Commonwealth in relation to any part of the Project;
 - (vii) any actual, likely or threatened breach of the Recipient's, its Personnel's, subcontractor's or other Consortium Member's obligations relating to Confidential Information or personal information; or
 - (viii) without limiting the preceding paragraphs, any breach of this Agreement by the Recipient, or negligence on the part of the Recipient, its Personnel, subcontractors or other Consortium Members or wrongful or unlawful act or omission on the part of the Recipient, its Personnel, subcontractors or other Consortium Members.
- (b) The Recipient's liability to indemnify those indemnified under clause 19(a) will be reduced proportionally to the extent that any negligent act or omission of those indemnified contributed to the loss.
 - (c) The Recipient indemnifies the Commonwealth against any compensation, remuneration or other amount payable to a third party for the use or exploitation of the Agreement Material (or any of it), or exercise of any Intellectual Property Right of a third party embodied in the Agreement Material, by the Commonwealth (or any person authorised by the Commonwealth) in circumstances where that use, exploitation or exercise is permitted under legislation without infringing the third party's Intellectual Property Right, and against all loss, liability, cost and expense arising out of or in connection with a claim for payment of any such compensation, remuneration or other amount.
 - (d) A reference to a Consortium Member in this clause 19 does not include [insert name of Commonwealth Consortium Member]

20. Insurance

20.1 Obligation to maintain insurance

Unless otherwise specified in item 18 of Schedule 1, in connection with the Project, the Recipient must have and maintain:

- (a) Workers' compensation insurance for an amount required by the relevant State or Territory legislation;
- (b) Public liability insurance for \$10,000,000 (ten million dollars) or more per claim; and
- (c) Professional indemnity insurance for \$1,000,000 (one million dollars) or more per claim.

20.2 Certificates of currency

The Recipient must, on request by the Commonwealth, provide current relevant confirmation of insurance documentation from its insurers or insurance brokers certifying that it has insurance as required by clause 20.1.

21. Publicity

- (a) The Commonwealth reserves the right to publicise and report on the awarding of the Funds, and may do this by, amongst other means, including the Recipient's name, the amount of the Funds and the title and a brief description of the Project in media releases, general announcements about the Program, annual reports, and on the DIISR website.
- (b) The Recipient must and must ensure Consortium Members, before making a public announcement in connection with this Agreement or any transaction contemplated by it,

obtain the Commonwealth's written consent to the announcement, except if required by Law or a regulatory body (including a relevant stock exchange). The Commonwealth will not unreasonably withhold its consent to an announcement.

- (c) If the Recipient is required by Law or a regulatory body to make a public announcement in connection with this Agreement or any transaction contemplated by this Agreement, the Recipient must, to the extent practicable, first consult with and take into account the reasonable requirements of the Commonwealth.
- (d) At its sole discretion the Commonwealth may provide a standing consent in writing for future publications or announcements of specific information. Subsequent publications or announcements of such specific information within the scope of the approval are exempt from the requirement for further consent in clause 21(b).
- (e) The Recipient and the Consortium must, in all publications (including reprints, and despite whether published by the Recipient or other persons), promotional and advertising materials, public announcements, events and activities in relation to the Project, or any products, processes or inventions developed as a result, acknowledge the financial and other support received from the Commonwealth:
 - (i) through reference to this support and the ASRP; and
 - (ii) by reference to any acknowledgement specified in item 10 of Schedule 1 or as otherwise approved by the Commonwealth prior to its use.

22. Confidentiality and privacy

22.1 Prohibition on disclosure

- (a) Subject to clause 22.4, the Recipient must not, without the prior written consent of the Commonwealth, disclose any Commonwealth Confidential Information to a third party.
- (b) Subject to clause 22.4, the Commonwealth must not, without the prior written consent of the Recipient, disclose any Recipient Confidential Information to a third party.

22.2 Conditions of approval

In giving written consent to use or disclose Commonwealth Confidential Information, the Commonwealth may impose such conditions as it thinks fit. The Recipient must comply with any term or condition imposed by the Commonwealth under this clause 22.2.

22.3 Advisers and third parties

The Commonwealth may at any time require the Recipient to arrange for:

- (a) its Advisers;
- (b) its Specified Personnel, Personnel, subcontractors, and other Consortium Members involved in the Project; or
- (c) any other third party, to whom Commonwealth Confidential Information may be disclosed pursuant to clause 22.4(a) or clause 22.4(b),

to give a written undertaking relating to the use and non-disclosure of the Commonwealth's Confidential Information in the form approved by the Commonwealth.

22.4 Exceptions to obligations

The obligations on each party under clause 22.1 or 22.10 will not be taken to have been breached to the extent that Confidential Information of the other party:

- (a) is disclosed by a party to its Advisers or employees solely in order to comply with obligations, or to exercise rights, under this Agreement;
- (b) is disclosed to a party's internal management personnel, solely to enable effective management or auditing of activities related to this Agreement;
- (c) is disclosed by the Commonwealth to the responsible Minister;
- (d) is disclosed by the Commonwealth, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- (e) is shared by the Commonwealth within DIISR, or with another Commonwealth agency, where this serves the Commonwealth's legitimate interests;
- (f) is disclosed by the Commonwealth to the Auditor-General, Ombudsman or Privacy Commissioner;
- (g) is required by Law to be disclosed; or
- (h) is in the public domain otherwise than due to a breach of this Agreement.

22.5 Obligation on disclosure

Where a party discloses Confidential Information of the other party to another person:

- (a) pursuant to clauses 22.4(a), (b) or (e), the disclosing party must:
 - (i) notify the receiving person that the information is Confidential Information; and
 - (ii) not provide the information unless the receiving person agrees to keep the information confidential, including in the case of Commonwealth Confidential Information, the receiving person giving the Commonwealth a legally binding undertaking to that effect in the form approved by the Commonwealth; or
- (b) pursuant to clauses 22.4(c) and (d), the disclosing party must notify the receiving party that the information is Confidential Information of the other party.

22.6 Additional confidential information

- (a) The parties may agree in writing after the date of this Agreement that certain additional information is to constitute Confidential Information for the purposes of this Agreement.
- (b) Where the parties agree in writing after the date of this Agreement that certain additional information is to constitute Confidential Information for the purposes of this Agreement, this documentation is incorporated into, and becomes part of this Agreement, on the date by which both parties have signed this documentation.

22.7 Period of confidentiality

The obligations under this clause 22 continue, notwithstanding the expiry or termination of this Agreement:

- (a) in relation to an item of information described in item 19 of Schedule 1, for the period set out in that Schedule in respect of that item; and
- (b) in relation to any information which the parties agree in writing after the date of this Agreement is to constitute Confidential Information for the purposes of this Agreement, for the period agreed by the parties in writing in respect of that information.

22.8 No reduction in privacy obligations

Nothing in this Agreement derogates from any obligation which either party may have under the *Privacy Act 1988* (Cth) as amended from time to time, in relation to the protection of personal information as defined in that Act or information that is protected by the *Census and Statistics Act*

1905 (Cth), or any other Act, regulation or other legislative instrument requiring secrecy or confidentiality in dealing with information.

22.9 Return of information

At the Commonwealth's request or on the expiry or termination this Agreement, the Recipient must promptly return all of the Commonwealth's physical and written records containing Commonwealth Confidential Information, and all documentation relating to that Commonwealth Confidential Information (including copies), to the Commonwealth in a form reasonably requested by the Commonwealth. Alternatively, if requested by the Commonwealth, the Recipient must destroy such items in the manner specified by the Commonwealth and promptly certify to the Commonwealth in writing that it has done so. For the avoidance of doubt, this does not extend to information provided to the Recipient by [insert name of Commonwealth Consortium Member] in relation to the Consortium Agreement.

22.10 Confidential Agreement Provisions

Notwithstanding any other provision of this Agreement, the Commonwealth may disclose the provisions of this Agreement except the Confidential Agreement Provisions.

23. Protection of personal information

23.1 Application of this clause

This clause 23 applies only where the Recipient deals with personal information when, and for the purpose of, undertaking the Project under this Agreement.

23.2 Obligations

The Recipient agrees to be treated as a 'contracted service provider' within the meaning of section 6 of the *Privacy Act 1988* (Cth) (**the Privacy Act**), and agrees, in undertaking the Project under this Agreement:

- (a) to use or disclose personal information obtained during the course of undertaking the Project under this Agreement, only for the purposes of this Agreement;
- (b) not to 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) to carry out and discharge the obligations contained in the IPPs as if it were an agency under the Privacy Act;
- (d) to notify individuals whose personal information the Recipient holds, that complaints about acts or practices of the Recipient may be investigated by the Privacy Commissioner who has power to award compensation against the Recipient in appropriate circumstances;
- (e) not to use or disclose personal information or engage in an act or practice that would breach section 16F of the Privacy Act (direct marketing), an NPP (particularly NPPs 7 to 10) or an APC, where that section, NPP or APC is applicable to the Recipient, unless:
 - (i) in the case of section 16F – the use or disclosure is necessary, directly or indirectly, to discharge an obligation of this Agreement; or
 - (ii) in the case of an NPP or an APC – where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Agreement, and the activity or practice which is authorised by this Agreement is inconsistent with the NPP or APC;

- (f) to disclose in writing to any person who asks, the content of the provisions of this Agreement (if any) that are inconsistent with an NPP or an APC binding a party to this Agreement;
- (g) to immediately notify the Commonwealth if the Recipient becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 23, whether by the Recipient, other Consortium Member or any subcontractor;
- (h) to 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 23; and
- (i) to ensure that any employee of the Recipient who is required to deal with personal information for the purposes of this Agreement is made aware of the obligations of the Recipient set out in this clause 23.

23.3 Subcontracts

The Recipient must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Agreement contains provisions to ensure that the subcontractor has the same awareness and obligations as the Recipient has under this clause 23, including the requirement in relation to subcontracts.

23.4 Indemnity

The Recipient agrees to indemnify the Commonwealth in respect of any loss or liability suffered or incurred by the Commonwealth which arises directly or indirectly from a breach of any of the obligations of the Recipient under this clause 23, or a subcontractor under the subcontract provisions referred to in clause 23.3. For the avoidance of doubt, this clause does not apply to a breach by [insert name of Commonwealth Consortium Member] of its corresponding obligations under the Consortium Agreement.

23.5 Definitions

In this clause 23, 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 ‘personal information’, which also has the meaning it has in section 6 of the Privacy Act, means:

‘information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion’.

24. Conflict of interest

24.1 Warranty

The Recipient warrants that, to the best of its knowledge after making reasonable inquiries of the individuals involved in the Project or the Program and the Consortium Members (other than [insert name of Commonwealth Consortium Member]), at the date of signing this Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement.

24.2 Other projects

The Recipient must, during the Agreement Period, ensure that no conflict of interest arises through the Recipient or the Consortium’s involvement with any other parties, programs or projects.

24.3 Notification of a conflict of interest

If, during the Project a conflict of interest arises, or appears likely to arise, the Recipient must:

- (a) notify the Commonwealth immediately in writing;
- (b) make full disclosure of all relevant information relating to the conflict; and
- (c) take such steps as the Commonwealth requires to resolve or otherwise deal with the conflict.

25. Books and records

25.1 Recipient to keep books and records

The Recipient must:

- (a) keep and require its subcontractors and other Consortium Members to keep adequate books and records, in accordance with Accounting Standards, in sufficient detail to enable:
 - (i) all receipts and payments related to the Project to be identified and reported in accordance with this Agreement; and
 - (ii) the amounts payable by the Commonwealth under this Agreement to be determined; and
- (b) retain and require its subcontractors and other Consortium Members to retain for a period of seven years after the expiry or termination of this Agreement, all books and records relating to the Project.

25.2 Costs

The Recipient must bear its own costs of complying with this clause 25.

25.3 Survival

This clause 25 applies for the Agreement Period and for a period of seven years from the expiry or termination of this Agreement.

26. Audit and access

26.1 Right to conduct audits

The Commonwealth or a representative may conduct audits relevant to the performance of the Recipient's obligations under this Agreement. Audits may be conducted of:

- (a) the Assets;
- (b) the Recipient's operational practices and procedures as they relate to this Agreement;
- (c) the accuracy of the Recipient's invoices and Reports;
- (d) the Recipient's compliance with its confidentiality and privacy obligations under this Agreement;
- (e) Material (including books and records) in the possession of the Recipient relevant to the Project or this Agreement; and
- (f) any other matters determined by the Commonwealth to be relevant to the Project or this Agreement.

26.2 Access by the Commonwealth

- (a) The Commonwealth may, at reasonable times and on giving reasonable notice to the Recipient and Consortium, for the purpose of the Project and to the extent relevant to the performance of this Agreement:
- (i) subject to clause 26.2(c), access the premises of the Recipient and all members of the Consortium, or premises occupied by the Consortium;
 - (ii) require the provision by the Recipient, its employees, agents or subcontractors of records and information in a data format and storage medium accessible by the Commonwealth by use of the Commonwealth's existing computer hardware and software;
 - (iii) inspect and copy documentation, books and records, however stored, in the custody or under the control of the Recipient and the Consortium, its employees, agents or subcontractors; and
 - (iv) require assistance in respect of any inquiry into or concerning the Project or this Agreement. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to DIISR), any request for information directed to the Commonwealth, and any inquiry conducted by Parliament or any Parliamentary committee.
- (b) The Recipient and Consortium must provide access to its computer hardware and software to the extent necessary for the Commonwealth to exercise its rights under this clause 26, and provide the Commonwealth with any reasonable assistance requested by the Commonwealth to use that hardware and software.
- (c) For the avoidance of doubt, clause 26.2(a)(i) does not apply to Overseas Based Consortium Members.

26.3 Conduct of audit and access

The Commonwealth must use reasonable endeavours to ensure that:

- (a) audits performed pursuant to clause 26.1; and
 - (b) the exercise of the general rights granted by clause 26.2 by the Commonwealth,
- do not unreasonably delay or disrupt in any material respect the Recipient's performance of its obligations under this Agreement or its business.

26.4 Costs

Unless otherwise agreed in writing, each party must bear its own costs of any reviews and/or audits.

26.5 Auditor-General and Privacy Commissioner

The rights of the Commonwealth under clause 26.2(a)(i) to 26.2(a)(iii) apply equally to the Auditor-General or a delegate of the Auditor-General, or the Privacy Commissioner or a delegate of the Privacy Commissioner, for the purpose of performing the Auditor-General's or Privacy Commissioner's statutory functions or powers.

26.6 Recipient to comply with Auditor-General's requirements

The Recipient must do all things necessary to comply with the Auditor-General's or his or her delegate's or the Privacy Commissioner's or his or her delegate's requirements, notified under clause 26.2, provided such requirements are legally enforceable and within the power of the Auditor-General, the Privacy Commissioner, or his or her respective delegate.

26.7 No reduction in responsibility

The requirement for, and participation in, audits does not in any way reduce the Recipient's responsibility to perform its obligations in accordance with this Agreement.

26.8 Subcontractor requirements

The Recipient must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause granting the rights specified in this clause 26.

26.9 No restriction

Nothing in this Agreement reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner. The rights of the Commonwealth under this Agreement are in addition to any other power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner.

26.10 Survival

This clause 26 applies for the Agreement Period and for a period of seven years from the expiry or termination of this Agreement.

27. Dispute resolution

27.1 No arbitration or court proceedings

If a dispute arises in relation to the conduct of this Agreement (**Dispute**), a party must comply with this clause 27 before starting arbitration or court proceedings except proceedings for urgent interlocutory relief. After a party has sought or obtained any urgent interlocutory relief, that party must follow this clause 27. Nothing in this clause 27 affects a parties rights under clause 28.

27.2 Notification

A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.

27.3 Parties to resolve Dispute

During the 14 days after a notice is given under clause 27.2 (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts through a meeting of CEOs or equivalent (or their nominees) to resolve the Dispute. If the parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator if one of them requests.

27.4 Appointment of mediator

If the parties to the Dispute cannot agree on a mediator within seven days after a request under clause 27.3, the chairperson of LEADR or the chairperson's nominee will appoint a mediator.

27.5 Role of mediator and obligations of parties

The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a party to the Dispute except if the party agrees in writing. Unless agreed by the mediator and parties, the mediation must be held within 21 days of the request for mediation in clause 27.3. The parties must attend the mediation and act in good faith to genuinely attempt to resolve the Dispute.

27.6 Confidentiality

Any information or documents disclosed by a party under this clause 27:

- (a) must be kept confidential; and

- (b) may only be used to attempt to resolve the Dispute.

27.7 Costs

Each party to a Dispute must pay its own costs of complying with this clause 27. The parties to the Dispute must equally pay the costs of any mediator.

27.8 Termination of process

A party to a Dispute may terminate the dispute resolution process by giving notice to each other party after it has complied with clauses 27.1 to 27.5. Clauses 27.6 and 27.7 survive termination of the dispute resolution process.

27.9 Breach of this clause

If a party to a Dispute breaches clauses 27.1 to 27.8, the other party does not have to comply with those clauses in relation to the Dispute.

28. Termination

28.1 Termination and reduction for convenience

- (a) The Commonwealth may, at any time, by notice, terminate this Agreement or reduce the scope of the Project.
- (b) On receipt of a notice of termination or reduction the Recipient must:
 - (i) take all available steps to minimise loss resulting from that termination or reduction and to protect Commonwealth Material and Agreement Material; and
 - (ii) continue to undertake any part of the Project not affected by the notice.
- (c) If this Agreement is terminated under this clause 28.1, the Commonwealth is liable only for:
 - (i) subject to clause 28.4(a)(i), payments under clause 8 in accordance with this Agreement before the effective date of termination; and
 - (ii) subject to clause 28.1(e) and (f), reasonable costs actually incurred by the Recipient and directly attributable to the termination (excluding redundancies and the cost of terminating subcontracts).
- (d) If the scope of the Project is reduced, the Commonwealth's liability to pay the Funds or to provide Commonwealth Material abates in accordance with the reduction in the Project.
- (e) The Commonwealth is not liable to pay compensation under clause 28.1(c)(ii) for an amount which would, in addition to any amounts paid or due, or becoming due, to the Recipient under this Agreement, exceed the total Funds payable under this Agreement.
- (f) The Recipient is not entitled to compensation for loss of prospective profits.

28.2 Termination for default

- (a) Without limiting any other rights or remedies the Commonwealth may have against the Recipient arising out of or in connection with this Agreement, the Commonwealth may terminate this Agreement effective immediately by giving notice to the Recipient if:
 - (i) the Recipient breaches a material provision of this Agreement where that breach is not capable of remedy;
 - (ii) the Recipient breaches any provision of this Agreement and fails to remedy the breach within 14 days after receiving notice requiring it to do so;

- (iii) in the opinion of the Commonwealth, a conflict of interest exists which would prevent the Recipient from performing its obligations under this Agreement;
 - (iv) the Recipient is unable to obtain Contributions, or obtain them in time to enable completion of the Project by the End Date;
 - (v) the Commonwealth is satisfied that any statement made in the Recipient's application for funding (if any) is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the provision of the Funds; or
 - (vi) an event specified in clause 28.2(c) happens.
- (b) Without limitation, for the purposes of clause 28.2(a)(i), each of the following constitutes a breach of a material provision:
- (i) breach of warranty under clause 4.3 (Warranties);
 - (ii) breach of clause 10.1, 10.2 or 10.3 (Funds);
 - (iii) a failure to comply with clause 14 (Subcontractors and Personnel);
 - (iv) a failure to comply with clause 17 (Intellectual Property Rights);
 - (v) a failure to comply with clause 20 (Insurance);
 - (vi) a failure to comply with clause 22 (Confidentiality and privacy);
 - (vii) a failure to comply with clause 23 (Protection of personal information);
 - (viii) a failure to notify the Commonwealth of a conflict of interest under clause 24 (Conflict of interest); and
 - (ix) if item 2A of Schedule 1 indicates that the Recipient is a trustee - a breach of any deed of covenant and indemnity between the Commonwealth, the Recipient and one or more beneficiaries of the Trust, executed on or about the date of this Agreement.
- (c) The Recipient must notify the Commonwealth immediately if:
- (i) there is any change in the direct or indirect beneficial ownership or control of the Recipient;
 - (ii) the Recipient disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
 - (iii) the Recipient ceases to carry on business;
 - (iv) the Recipient ceases to be able to pay its debts as they become due;
 - (v) proceedings are initiated with a view to obtaining an order for the winding up of the Recipient, or any person convenes a meeting for the purpose of considering or passing any resolution for the winding up of the Recipient;
 - (vi) the Recipient applies to come under, the Recipient receives a notice requiring it to show cause why it should not come under, an order has been made for the purpose of placing the Recipient under, or the Recipient otherwise comes under one of the forms of external administration referred to in Chapter 5 of the Corporations Act or Chapter 11 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) or equivalent provisions in State or Territory legislation in relation to incorporated associations;

- (vii) the Recipient being a natural person is declared bankrupt or assigns his or her estate for the benefit of creditors;
- (viii) where the Recipient is a partnership, any step is taken to dissolve that partnership; or
- (ix) anything analogous to an event referred to in clause 28.2(c)(v), (vi), (vii) or (viii) occurs in relation to the Recipient.

28.3 After termination

On termination of this Agreement the Recipient must deal with Commonwealth Material and the Commonwealth's Confidential Information in accordance with this Agreement and otherwise as reasonably directed by the Commonwealth.

28.4 Commonwealth rights

- (a) Without limiting any of the Commonwealth's other rights or remedies, on termination of this Agreement, the Commonwealth:
 - (i) is not obliged to pay to the Recipient any outstanding amount of the Funds, except to the extent that those monies have been legally committed for expenditure by the Recipient in accordance with this Agreement and payable by the Recipient as a current liability (written evidence of which will be required) by the date the Recipient receives the notice of termination; and
 - (ii) is entitled to recover from the Recipient:
 - (A) any Funds which have not been spent, or legally committed for expenditure by the Recipient in accordance with this Agreement and payable by the Recipient as a current liability (written evidence of which will be required), by the date the Recipient receives the notice of termination; and
 - (B) the amount of any Funds which, in the Commonwealth's opinion, have been spent other than in accordance with this Agreement.
- (b) The Commonwealth may give the Recipient a notice requiring the Recipient to repay to the Commonwealth (or deal with as specified by the Commonwealth) an amount which the Commonwealth is entitled to recover under clause 28.4(a)(ii).
- (c) If the Commonwealth gives a notice under clause 28.4(b), the Recipient must repay the amount specified in the notice in full (or deal with it as specified by the Commonwealth) within 30 days of the date of the notice.

28.5 Termination does not affect accrued rights

Termination of this Agreement does not affect any accrued rights or remedies of a party.

29. Survival

The following clauses survive the expiry or termination of this Agreement:

- (a) Clause 4.2 (Acknowledgment of support);
- (b) Clause 9 (GST);
- (c) Clause 11 (Repayment);
- (d) Clause 12.2 (Reporting);
- (e) Clause 12.3 (Evaluation);

- (f) Clause 12.6 (Annual Report);
- (g) Clause 12.8 (Final Report);
- (h) Clause 17 (Intellectual Property Rights);
- (i) Clause 18 (Moral Rights);
- (j) Clause 19 (Indemnity);
- (k) Clause 20 (Insurance);
- (l) Clause 22 (Confidentiality and privacy);
- (m) Clause 23 (Protection of personal information);
- (n) Clause 25 (Books and records);
- (o) Clause 26 (Audit and access);
- (p) Clause 28.4 (Commonwealth rights); and
- (q) Clause 31.2 (Amounts due to Commonwealth),

together with any provision of this Agreement which expressly or by implication from its nature is intended to survive the expiry or termination of this Agreement.

30. Notices and other communications

30.1 Service of Notices

A Notice must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or facsimile or email transmission to the recipient's address for Notices specified in item 20 of Schedule 1, as varied by any Notice given by the recipient to the sender.

30.2 Effective on receipt

A Notice given in accordance with clause 30.1 takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by email, on the day on which the transmission was sent in its entirety;
- (d) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight business hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

31. Miscellaneous

31.1 No security

The Recipient must not use any of the following as any form of security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest, or for the preparation of, or in the course of any litigation:

- (a) the Funds;
- (b) this Agreement or any of the Commonwealth's obligations under this Agreement; or
- (c) any Assets or Intellectual Property Rights in Agreement Material.

31.2 Amounts due to Commonwealth

- (a) Without limiting any other of the Commonwealth's rights or remedies, any amount owned or payable to the Commonwealth (including by way of refund), or which the Commonwealth is entitled to recover from the Recipient, under this Agreement will be recoverable by the Commonwealth as a debt due and payable to the Commonwealth by the Recipient.
- (b) The Commonwealth may set-off any money due for payment by the Commonwealth to the Recipient under this Agreement against any money due for payment by the Recipient to the Commonwealth under this Agreement.

31.3 Ownership of Agreement

All copyright and other Intellectual Property Rights contained in this Agreement remain the property of the Commonwealth.

31.4 Variation

No agreement or understanding varying or extending this Agreement is legally binding upon either party unless the agreement or understanding is in writing and signed by both parties.

31.5 Approvals and consents

Except where this Agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Agreement.

31.6 Assignment and novation

A party may only assign its rights or novate its rights and obligations under this Agreement with the prior written consent of the other party.

31.7 Costs

Each party must pay its own costs of negotiating, preparing and executing this Agreement.

31.8 Counterparts

This Agreement may be executed in counterparts. All executed counterparts constitute one document.

31.9 No merger

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

31.10 Entire agreement

This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

[Note: If the Recipient is a Trust - include a reference to the other relevant documentation referred to in item 2A of Schedule 1.]

31.11 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Agreement and any transaction contemplated by it.

31.12 Severability

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.

31.13 Waiver

Waiver of any provision of or right under this Agreement:

- (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 any written waiver.

31.14 Relationship

- (a) The parties must not represent themselves, and must ensure that their officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.
- (b) This Agreement does not create a relationship of employment, agency or partnership between the parties.

31.15 Governing law and jurisdiction

This Agreement is governed by the law of the Australian Capital Territory and each party irrevocably and unconditionally submits to the non exclusive jurisdiction of the courts of the Australian Capital Territory.

31.16 False or misleading information

The Recipient acknowledges that it is a serious offence under the *Criminal Code Act 1996* to provide false or misleading information to the Commonwealth.

Schedule 1 – Agreement Details

Item number	Description	Clause Reference	Details
1.	Commonwealth	1.1	<p>Commonwealth of Australia as represented by the Department of Innovation, Industry, Science and Research</p> <p>Industry House 10 Binara Street Canberra City ACT, 2601 ABN 74 599 608 295</p>
2.	Recipient	1.1	<p>[insert name of Recipient]</p> <p>[insert street address]</p> <p>[insert ABN]</p>
2A	Trust Details		<p>[If the Recipient is a trustee, complete this section, otherwise, insert “Not applicable”]</p> <p>Trust name: [insert]</p> <p>Trust Deed: [insert name, date and parties of Trust Deed]</p> <p>[Note - If the Recipient is a trustee: the trustees and trust beneficiaries will be required to enter into a separate Deed of Covenant and Indemnity with the Commonwealth and give to the Commonwealth a number of additional warranties (e.g. that the Trust Deed will not be amended) to ensure that the trust beneficiaries consent to the Funding Agreement. The Recipient will also need to provide the Commonwealth with a copy of the Trust Deed and information on the Trust assets before the Funding Agreement is executed, so that the Commonwealth can confirm the trustees power to enter into the Funding Agreement, and the financial standing of the Trust.]</p>

Item number	Description	Clause Reference	Details
3.	Commonwealth Representative	1.1 and 12.1	Manager Space Policy Unit
4.	Recipient Representative	1.1 and 12.1	[insert position and/or name of Recipient's representative]
5.	Program	1.1	Australian Space Research Program
6.	Commencement Date	1.1 and 3	Date that this Agreement is signed by the last executing Party or [insert date]. [Note: If the Commonwealth approves a project commencement date that is <u>before</u> the date of signing, that can be reflected here (see clause 4(a) of the Guidelines).]
7.	End Date	1.1 and 3	Insert end date [not more than three years after the Commencement date]
8.	Guidelines and principles	4.1	Australian Space Research Program Guidelines
9.	Policy and requirements	4.1	No specific policies apply
10.	Acknowledgment of support	4.2	'Supported under the Australian Government's Australian Space Research Program.'
11.	Subcontractors	14.1	[insert names and ABNs of any subcontractors. Otherwise insert 'not applicable']
12.	Specified Personnel	1.1 and 14	See Schedule 6
13.	Asset register	15.2(c)	The Recipient must maintain an assets register in relation to Assets valued at over \$50,000 (excluding GST), which sets out: <ul style="list-style-type: none"> • Asset description • purchase price or total lease cost • date of purchase or lease • type and term of lease

Item number	Description	Clause Reference	Details
			<ul style="list-style-type: none"> • location of Asset • date of disposal approval • disposal date • disposal method
14.	Commonwealth Material	1.1 and 16	Departmental logo. Conditions of use: Commonwealth approval
15.	Not used		
16.	Intellectual Property Rights – licences	17.2	1. Period of licence to Commonwealth is: Perpetual [insert if different to a perpetual licence the duration of the Commonwealth's licence to use the Agreement Material provided by the Recipient.] 2. [if the terms of the licence are to differ from that provided in clause 17.2 state the position here]
17.	Moral Rights – Specified Acts	18	[if the Commonwealth wants to perform additional acts with the Agreement Material other than those listed in clause 18, these should be set out here. Otherwise insert 'not applicable'.]
18.	Insurance	20	not applicable
19.	Confidential Information	1.1 and 22	[insert each party's Confidential Information (decided by reference to Financial Management Guidance No. 3: Guidance on Confidentiality in Procurement issued by the Department of Finance and Administration in July 2007), including any Agreement provisions or Schedules that are to be kept confidential. The period of confidentiality should be specified for each item. If the parties agree that different items of information are to be confidential for different

Item number	Description	Clause Reference	Details
			<p>periods of time, the different periods should be recorded next to each item. An assessment will need to be made by the parties on a case-by-case basis about what is to be included in this item. [as agreed by the parties acting reasonably from time to time under clause 22.6]</p>
20.	Address for Notices	30	<p>Commonwealth: [insert name and position of person to receive Notices] [insert postal address] [insert physical address] [insert facsimile number]</p> <p>Recipient: [insert name and position of person to receive Notices] [insert postal address] [insert physical address] [insert facsimile number]</p>

SAMPLE

Schedule 2 – Project

1. Outcomes (clauses 1.1 and 4.1)

[Set out objectives or outcomes, ie what the Recipient is to achieve in undertaking the Project.]

[Application form - Question D3]

2. Description (clause 1.1)

[Describe the Project, ie what the Recipient will spend the Funds doing. It is important to include sufficient detail to allow the Department to judge whether what the Recipient is doing/spending the Funds on falls within the approved scope.]

[Application form - Question D4]

3. Milestones (clauses 1.1 and 4.1(d))

[Insert milestones for the Project. These can then be linked to payment instalments in Schedule 4 or reporting requirements in Clause 12.]

[Application form - Question E2-B]

[Note: it is the standard position that quarterly reports are due within 30 days of the end of the quarter. Payment will be made following receipt of a report. Therefore, invoice dates should be the same as the dates for the quarterly reports. There may be some ad hoc payments link to other events eg purchase of an asset.]

No.	Milestone/deliverables	Milestone start date	Milestone completion date
1			
2			
3			
4			
5			
6			
7			
8			
9			
10	Completion of the Project		

Schedule 3 – Consortium Member List

1. Consortium Members (clause 1.1 and 6)

[Insert the details of the Consortium Members for the purposes of this Agreement, and who are required to perform the role as set out under the table below].

Name	Organisation Type	ABN	Role

SAMPLE

Schedule 4 – Funds

1. Total Funds (clause 1.1)

The total amount of the Funds is [insert amount] (excluding GST).

2. Payment (clauses 1.1 and 8)

The Commonwealth will commence payment of the Funds to the Recipient only on or after the Commencement Date.

Subject to the terms of this Agreement, the Commonwealth will pay the Funds in accordance with this Agreement to the Recipient as set out in the table below on receipt of each respective report (if applicable) and invoice and achievement of the corresponding Milestone (if applicable), each to the satisfaction of the Commonwealth.

Payment number	Report due date	Report and (related milestone)	Funding amount	GST	Total GST inclusive amount
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					

3. Consortium Contributions (clauses 1.1 and 7.1)

See Schedule 5, Tables 2, 3, 4 and 5.

4. Bank account (clause 10.3)

No additional requirements.

5. Invoicing requirements (clause 8.6)

The invoice must meet the requirements of a tax invoice as set out in the GST Law and in a form approved by the Commonwealth which sets out:

- (a) the agreement number and project title;
- (b) the amount of Funds to be paid by the Commonwealth together with any substantiating material required;
- (c) the name of the Commonwealth Representative; and
- (d) such other information as the Commonwealth requires.

Invoices should be submitted to:

The Manager
Australian Space Research Program
Department of Innovation, Industry, Science and Research
PO Box 9839

CANBERRA CITY ACT 2601

6. Payment period (clause 8.7)

Not applicable

Schedule 5 – Budget

[Budget tables – Table 1]

Table 1 – Expenditure

Category of Expenditure	2010/11 (\$)	2011/12 (\$)	2012/13 (\$)	Total (\$)
Salaries				
Salary on-costs				
Overheads (calculated as up to 35% of salaries and on-costs)				
Contractor expenditure				
International travel				
Plant and equipment*				
Acquisition of new & leading edge technologies*				
Development of prototypes				
IP protection				
Consortium expenditure				
Professional development costs				
International scholarships (Stream A only)				
Other costs				
Total				

* If required by clause 15, Assets purchased by the Recipient with this funding must be included on the Asset Register.

Schedule 6 - Specified Personnel

[Application form - Key people]

Name	Employing Organisation	Role

SAMPLE

Signing page

EXECUTED as an agreement.

Signed for and on behalf of the
**Commonwealth of Australia as
represented by the Department of
Innovation, Industry, Science and
Research** by its duly authorised delegate in
the presence of

Signature of witness

Name of witness (print)

← _____ ←
Signature of delegate

Name of delegate (print)

Position of delegate (print)

[Select one of the following execution clauses. Where the Recipient is a company, select the first execution block below, otherwise, select the second option.]

Executed by [insert name of company] in
accordance with Section 127 of the
Corporations Act 2001 in the presence of

Signature of director

Name of director (print)

← _____ ←
Signature of director/company secretary/sole director
and sole company secretary
(Please delete as applicable)

Name of director/company secretary/sole director and
sole company secretary (print)

Signed by [insert contracting party name]
in the presence of

Signature of witness

Name of witness (print)

← _____ ←
Signature of Recipient