

**Senate Standing Committee on Environment, Communications and the Arts**  
**Answers to Senate Estimates Questions on Notice**  
**Additional Estimates Hearings February 2009**  
**Broadband, Communications and the Digital Economy Portfolio**

**Question No: 6**

**Hansard Ref: ECA 108 & 109**

**Topic: Kimberley Broadband Solutions project – Oversight Responsibility & Commonwealth Involvement**

**Senator Ludlam asked:**

It is still a Commonwealth funding provision, so you have just handed the funds to the Western Australian Government and you provide no further oversight of whether it is spent in the manner intended?

Is there no further Commonwealth involvement at all? Should I just refer all of these questions to the Western Australian Government?

**Answer:**

Funding recipients were required to provide regular reporting on the achievement of project milestones over the period of the funding agreement. On completion of the project, a technical audit by an independent consultant confirmed that all sites were ready and commissioned for use.

The project is complete and all project milestones have been met. There is no further Commonwealth involvement.

All further questions should be referred to the Western Australian Government.

**Senate Standing Committee on Environment, Communications and the Arts**  
**Answers to Senate Estimates Questions on Notice**  
**Additional Estimates Hearings February 2009**  
**Broadband, Communications and the Digital Economy Portfolio**

**Question No: 7**

**Hansard Ref: ECA 109**

**Topic: Kimberley Broadband Solutions - Deed**

**Senator Ludlam asked:**

Does the department retain a copy of the project deed signed by the Western Australian Government for the Kimberley Broadband solutions project?

Is that something that you would be able to provide for the committee?

**Answer:**

Yes, the department does retain a copy of the project deed.

Yes, copies of the deed and deed variation are attached.



**Australian Government**  

---

**Department of Communications,  
Information Technology and the Arts**

**FUNDING AGREEMENT**

**BETWEEN**

**COMMONWEALTH OF AUSTRALIA**

as represented by the  
Department of Communications, Information Technology and the Arts

ABN 51 491 646 726

**AND**

**MINISTER FOR INDUSTRY AND ENTERPRISE**  
ABN 69 410 335 356

in relation to Funding for Kimberley Broadband Solutions Project  
as part of the  
Coordinated Communications Infrastructure Fund

## TABLE OF CONTENTS

1.	INTERPRETATION.....	4
2.	TERM OF THIS AGREEMENT .....	11
2A	RESERVED .....	11
3.	RESERVED.....	11
4.	PAYMENT .....	11
5.	MANAGEMENT OF FUNDING.....	12
5A	THIRD PARTY ACCESS .....	14
6.	OTHER CONTRIBUTIONS .....	14
7.	ASSETS .....	15
8.	RECORDS .....	16
9.	REPORTING .....	17
10	TAXES, DUTIES AND GOVERNMENT CHARGES.....	18
11.	COMMONWEALTH MATERIAL .....	20
12.	INTELLECTUAL PROPERTY.....	20
13.	CONFIDENTIAL INFORMATION.....	21
14.	RESERVED .....	23
15.	INDEMNITY .....	23
17.	CONFLICT OF INTEREST .....	24
18.	ACCESS TO PREMISES AND RECORDS .....	25
19.	DELAY .....	25
20.	TERMINATION WITH COSTS .....	26
21.	TERMINATION FOR DEFAULT .....	28
22.	ACTIVITY CONTRACTS .....	29
23.	ACKNOWLEDGMENT AND PUBLICITY.....	30
24.	SPECIFIED PERSONNEL.....	31
25.	COMPLIANCE WITH LAWS AND OUR POLICIES.....	31
26.	NEGATION OF LEGAL RELATIONSHIP OF EMPLOYMENT, PARTNERSHIP AND AGENCY .....	32

27. ENTIRE AGREEMENT, VARIATION AND SEVERANCE .....32

28. WAIVER.....32

29. ASSIGNMENT AND NOVATION .....33

30. RESERVED .....33

31. FUNDING PRECONDITION .....33

32. DISPUTE RESOLUTION .....33

33. APPLICABLE LAW AND JURISDICTION .....34

34. LIAISON AND MONITORING .....34

35. NOTICES.....35

36. COMPLIANCE WITH THE NATIONAL CODE OF PRACTICE FOR THE  
CONSTRUCTION INDUSTRY .....35

SCHEDULE .....38

ANNEXURE A .....45

ANNEXURE B .....50

ANNEXURE C .....50

ANNEXURE D .....56

## PARTIES

**COMMONWEALTH OF AUSTRALIA** ('Commonwealth'), represented by and acting through the **Department of Communications, Information Technology and the Arts**, ABN 51 491 646 726 ('Us' or 'We' or 'Our' as the case requires)

AND

**MINISTER FOR INDUSTRY AND ENTERPRISE**, represented by and acting through the Department of Industry and Resources (WA), a body corporate constituted under the *Industry and Technology Development Act 1998* (WA), ABN 69 410 335 356 ('You' or 'Your' as the case requires)

## PURPOSE

- A. We are committed to support the delivery of improved government services, through the co-funding of innovative applications and infrastructure projects under the Coordinated Communications Infrastructure Fund.
- B. You are committed to helping achieve the Program, through Your conduct of the Activity and the achievement of the Outputs.
- C. As a result of this commitment, We have agreed to support the Activity and the achieving of the Outputs by providing Funding to You, subject to the terms and conditions of this Agreement.
- D. We are required by law to ensure accountability for public money, and to be accountable for all Funds provided by Us.
- E. You agree to accept the Funding for the purposes, and subject to the terms and conditions, set out in this Agreement.

## 1. INTERPRETATION

1.1 In this Agreement, unless the contrary intention appears:

'**ABN**' has the same meaning as it has in section 41 of the *A New Tax System (Australian Business Number) Act 1999* (Cth);

'**Activity**' means the activity described in Schedule 1, including delivery of the Services (as specified in Schedule 1), and the provision of Third Party Access, which aims to fulfil one or more of the goals of the Program, and includes the provision of Activity Material;

'**Activity Contract**' means any subcontract or other contract or arrangement, entered into for the purposes of this Agreement or any other contract or arrangement regarding the Activity with a value of more than \$100,000, and includes all arrangements with Other Contributors.

**'Activity Material'** means all Material:

- (a) brought into existence for the purpose of performing the Activity;
- (b) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a); or
- (c) copied or derived from Material referred to in paragraphs (a) or (b);

**'Activity Period'** means the period specified in Schedule 1 during which the Activity must be completed;

**'Adjustment Note'** has the same meaning as it has in section 195-1 of the GST Act;

**'Advisers'** means Your or Our agents, contractors or advisers engaged in the performance or management of this Agreement;

**'Agreement'** means this document and includes any schedules and annexures;

**'Annexure'** means an annexure to the Schedule;

**'Approved Auditor'** means a person who is:

- a) registered as a company auditor under the *Corporations Act 2001*, or a member of the Institute of Chartered Accountants in Australia, or of CPA Australia or the National Institute of Accountants; and
- b) is appointed as Auditor General under section 71 of the *Financial Administration and Audit Act 1985* (W.A.); or
- c) is an officer of the Western Australian Government department known as the Office of the Auditor General;
- d) and includes Your State/Territory Auditor-General or their nominee;

**'Asset'** means any item of tangible property specified in Item <sup>4</sup> of the Schedule but does not include Activity Material.

**'Auditor General'** means the office established under the Auditor-General Act 1997 (Cth) and includes any other entity that may, from time to time, perform the functions of that office;

**'Australian Accounting Standards'** refers to the standards of that name maintained by the Australian Accounting Standards Board created by section

226 of the *Australian Securities and Investments Commission Act 2001* (Cth);

**'Australian Auditing Standards'** refers to the standards set by the Commonwealth Auditor-General under section 24 of the *Auditor-General Act 1997* (Cth) and generally accepted audit practices to the extent they are not inconsistent with such standards;

**'Australian Government Material'** means any Material provided by Us to You for the purposes of the Agreement or which is copied or derived from Material so provided, except for Activity Material;

**'Budget'** refers to a budget for expenditure of the Funding (and the Other Contributions) for the purposes of conducting the Activity or performing obligations under this Agreement, stipulated in Schedule 1;

**'Business Day'** means in relation to the doing of any action in a place, any day other than a Saturday, Sunday, or public holiday in that place;

**'Code Guidelines'** means the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, dated June 2006;

**'Code Monitoring Group'** has the meaning in the Code Guidelines;

**'Commonwealth'** means the Commonwealth of Australia;

**'Commonwealth Auditor-General'** means the office established under the *Auditor-General Act 1997* (Cth) and includes any other entity that may, from time to time, perform the functions of that office;

**'Commonwealth Material'** means any Material provided by Us to You for the purposes of this Agreement or which is copied or derived from Material so provided, except for Activity Material;

**'Completion Date'** means, unless a date is specified in Schedule 1, the day after You have done all that You are required to do under this Agreement to Our satisfaction;

**'Confidential Information'**, in relation to You or Us, means:

- (a) the information described in Schedule 1; and
- (b) information that is agreed between You and Us in writing after the Date of this Agreement as constituting confidential information for the purposes of this Agreement;

**'Conflict'** refers to a conflict of interest, or risk of a conflict of interest, or an apparent conflict of interest arising through You engaging in any activity or



obtaining any interest that is likely to conflict with or restrict You in performing the Activity fairly and independently;

**‘Constitution’** means (depending on the context):

- (a) a company’s constitution, which (where relevant) includes rules and any amendments that are part of the company’s constitution; or
- (b) in relation to any other kind of body:
  - (i) the body’s charter, rules or memorandum; or
  - (ii) any instrument or law constituting or defining the constitution of the body or governing the activities of the body or its members.

**‘Date of this Agreement’** means the date written on the execution page of this Agreement, and if no date or more than one date is written there, then the date on which this Agreement is signed by the last Party to do so;

**‘Depreciated’** means the amount representing the reduction in value of an Asset calculated in accordance with Australian Accounting Standards;

**‘Electronic Communication’** has the same meaning as in the *Electronic Transactions Act 1999 (Cth)*;

**‘Existing Material’** means all Material (including the Material specified in Schedule 1) in existence prior to the Date of the Agreement:

- (a) incorporated in;
- (b) supplied with, or as part of; or
- (c) required to be supplied with, or as part of;

the Activity Material;

**‘Financial Year’** means each period from 1 July to the following 30 June (or other period You use for regular formal financial reporting) occurring during the Term, or any part of such a period occurring at the beginning or end of the Term;

**‘Funding’** or **‘Funds’** means the amount or amounts (in cash or kind) payable under this Agreement by Us as specified in Schedule 1, including interest earned on that amount;

**‘GST’** has the meaning as given in section 195-1 of the GST Act;

**'GST Act'** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**'Guidelines'** refers to the *Clever Networks Program* guidelines as amended from time to time;

**'Information System'** has the same meaning as in the *Electronic Transactions Act 1999* (Cth);

**'Intellectual Property Rights'** includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

**'Interest'** means interest calculated at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the *Tax Administration Act 1953* (Cth), plus 1%, on a daily compounding basis;

**'Item'** means an item in Schedule 1;

**'Material'** includes documents, equipment, software (including source code and object code), goods, information and data stored by any means including all copies and extracts of the same;

**'Milestone'** means a stage of completion of the Activity set out in Schedule 1;

**'National Code'** means the National Code of Practice for the Construction Industry, dated 1997;

**'Office of the Australian Building and Construction Commissioner'** has the meaning in the *Building and Construction Industry Improvement Act 2005* (Cth);

**'Other Contributions'** means financial or in-kind resources (with in-kind resources valued at market rates) used by You for the Activity, other than the Funding;

**'Outputs'** means the outputs described in Schedule 1, which are the agreed results You must achieve;

**'Party'** means a party to this Agreement;

**'Privacy Commissioner'** means the Office of the Privacy Commissioner established under the *Privacy Act 1988* (Cth) and includes any other entity that may, from time to time, perform the functions of that Office;

**'Proforma National Code Subcontract Provisions'** means the proforma tender and subcontract provisions relating to the National Code and the Guidelines;

**'Program'** means the part of Our operations specified in Schedule 1 under which We are able to give the Funding to You;

**'Qualified Accountant'** means a person who is a member of the Institute of Chartered Accountants in Australia, or of CPA Australia or the National Institute of Accountants;

**'Records'** includes documents, information and data stored by any means and all copies and extracts of the same;

**'Related Body Corporate'** has the meaning given in section 9 of the *Corporations Act 2001* (Cth);

**'Report'** means Activity Material that is provided to Us for reporting purposes on matters including the use of the Funding, whether or not Milestones have been achieved, progress reports and evaluations of the Activity or obligations of this Agreement, as stipulated in Schedule 1;

**'Schedule'** refers to a schedule to this Agreement;

**'Specified Personnel'** means the personnel with specific skills, specified in Schedule 1 as personnel required to undertake the Activity or any part of the work constituting the Activity;

**'Taxable Supply'** has the same meaning as it has in the GST Act;

**'Term of this Agreement'** refers to the period described in subclause 2.1;

**'Third Party Access'** means the wholesale broadband internet access, as specified in Annexure A, to infrastructure and/or services associated with the Activity.

**'Third Party Interest'** means any legal or equitable right, interest, power or remedy in favour of any person other than You or Us in connection with the Agreement, including, without limitation, any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest;”.

**'Undepreciated'** in relation to the value of an Asset, means the value of the Asset which has not been Depreciated;

**'Us', 'We' and 'Our'** includes Our officers, delegates, employees and agents, and Our successors;

'You' and 'Your' includes, where the context admits, Your officers, employees, agents and subcontractors, and Your successors.

1.2 In this Agreement, unless the contrary intention appears:

- (a) words in the singular number include the plural and words in the plural number include the singular;
- (b) words importing a gender include any other gender;
- (c) words importing persons include a partnership and a body whether corporate or otherwise;
- (d) all references to clauses are to clauses in this Agreement;
- (e) all references to dollars are to Australian dollars and this Agreement uses Australian currency;
- (f) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth and, if it has been or is amended, is a reference to that statute or other legislation as amended;
- (g) an uncertainty or ambiguity in the meaning of a provision of this Agreement will not be interpreted against a Party just because that Party prepared the provision; and
- (h) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

1.3 The Schedules (and annexures and documents incorporated by reference, if any) form part of this Agreement. In the event of any conflict or inconsistency between any part of:

- (a) the terms and conditions contained in the clauses of this Agreement;
- (b) the Schedules;
- (c) the annexures, if any;
- (d) documents incorporated by reference, if any;

then the material mentioned in any one of paragraphs (a) to (d) of this subclause 1.3 has precedence over material mentioned in a subsequent paragraph, to the extent of any conflict or inconsistency.

## **2. TERM OF THIS AGREEMENT**

- 2.1 The Term of this Agreement commences on the Date of this Agreement and, unless terminated earlier, it expires on the Completion Date.
- 2.2 The Activity will only occur during the Activity Period.

## **2A RESERVED**

## **3. RESERVED**

## **4. PAYMENT**

- 4.1 Subject to sufficient funds being available for the Program, and compliance by You with this Agreement (including the invoicing requirements) We will provide You with the Funding at the times and in the manner specified in Schedule 1.
- 4.2 Without limiting Our rights, We may withhold or suspend any payment in whole or in part until You have performed Your obligations under this Agreement.
- 4.3 Before We can pay Funds to You, You must:
- (a) comply with any reporting or other requirements that apply to the payment of the Funds;
  - (b) where You make a Taxable Supply under this Agreement, provide Us with a tax invoice in accordance with subclause 10.5 and Schedule 1; and
  - (c) provide financial statements to demonstrate that the Funds already provided to You have been fully expended, or your Report demonstrates that the previous Funds payments will be fully expended in the near future.
- 4.4 Invoices forwarded by You must be correctly addressed and include the:
- (a) title of Activity;
  - (b) Your name and ABN;
  - (c) name of person identified at Item 14.1 of Schedule 1 or any other contact person We nominate to You;
  - (d) agreement number or date of execution;
  - (e) Funds to be invoiced; and

- (f) bank account details for payment of the invoice by electronic funds transfer.

4.5 The date for payment is 30 days after delivery of a correctly rendered invoice to Us.

## **5. MANAGEMENT OF FUNDING**

5.1 You must carry out the Activity within the Activity Period and in accordance with this Agreement (including the Guidelines), diligently, effectively and to a high professional standard including, without limitation, achieving the Outputs.

5.2 Reserved.

5.3 Where We are satisfied that an Activity is unable to be performed by You in accordance with this Agreement, the Funding relating to that Activity must be repaid to us upon demand except to the extent that the Funds have already been spent or legally committed for expenditure in accordance with this Agreement.

5.4 The Funding must be expended by You only for the Activity in accordance with this Agreement, including the Budget.

5.5 Reserved.

5.6 You must keep financial accounts and Records relating to the Activity so as to enable:

- (a) all income and expenditure related to the Activity to be identified in Your accounts and reported in accordance with this Agreement;
- (b) the preparation of financial statements in accordance with Australian Accounting Standards; including:
  - (i) an income and expenditure statement for the relevant reporting period; and
  - (ii) a schedule of the Assets acquired during the relevant reporting period; and
- (c) the audit of those accounts and Records in accordance with Australian Auditing Standards.

5.7 You must ensure that any contract, agreement or other arrangement entered into for the purposes of this Agreement and/or the Activity, including an Activity Contract, contains an equivalent clause regarding the keeping of financial Records.

- 5.8 Except with Our prior written approval, You 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:
- (a) the Funds;
  - (b) this Agreement or any of Our obligations under this Agreement; or
  - (c) any Assets or Intellectual Property Rights in Activity Material.
- 5.9 If at any time:
- (a) there remains an amount of Funding that has not been expended (or legally committed for expenditure) in accordance with this Agreement; or
  - (b) the Funds have not been acquitted to Our satisfaction;
- then, at our discretion, this amount must be refunded by You to Us within 20 Business Days of a written notice from Us or otherwise dealt with as directed in writing by Us or we may reduce further payments of Funding to You by up to this amount.
- 5.10 If We notify You that the amount is to be refunded to Us and the amount is not refunded to Us within 20 Business Days, Interest will accrue and be payable, unless We notify You otherwise, on the amount after the expiry of the 20 Business Days until the amount is paid in full.
- 5.11 If, at the completion of the Activity Period, You have unexpended Funds (which does not include those Funds approved by Us as being required for expenses incurred during the Activity Period and which fall for payment thereafter), You may seek Our agreement to retain the Funds and use them for purposes agreed by Us.
- 5.12 If We do not agree to You retaining the Funds under subclause 5.11, You must return the Funds to Us within 20 Business Days of receiving notice that You are to return the Funds and if the Funds are not returned to Us within 20 Business Days, Interest will accrue and be payable on the amount after the expiry of the 20 Business Days, until the amount is paid in full.
- 5.13 Any amount owed to Us under subclause 5.9 or 5.11, and any Interest owed under subclause 5.10 or 5.12 (as applicable), will be recoverable by Us as a debt due to Us by You without further proof of the debt by Us being necessary.
- 5.14 For the avoidance of doubt, where subclause 5.9 or 5.11 apply, We may, at Our sole discretion, reduce the amount payable by Us to You under any other

agreement by an amount equal to the amount of any unexpended, unacquitted or surplus moneys You hold under this Agreement.

- 5.15 You must only expend the Funds in accordance with the Budget set out in Schedule 1.
- 5.16 You may expend the Funds on any separate category of expenditure item within the Budget, but You are to obtain prior written approval from Us for any transfer of Funds between categories of expenditure items within the Budget which exceed 2.5 percent of the total Budget. The total amount of transfers in any financial year must not exceed 2.5 percent of the Budget.
- 5.17 We are not responsible for the provision of additional money to meet any expenditure in excess of the Funds.
- 5.18 The operation of this clause 5 survives the expiration or earlier termination of the Term of this Agreement.

#### **5A THIRD PARTY ACCESS**

- 5A.1 During the Term of this Agreement, You must provide the Third Party Access in accordance with the requirements set out in the Schedule..

#### **6. OTHER CONTRIBUTIONS**

- 6.1 It is a condition precedent to the payment of Funds under this Agreement that You must get people (other than Us), as identified in Item 2 of Schedule 1, to provide Us with satisfactory written evidence that they will provide the Other Contributions (as Identified in Schedule 1) to You, including the amounts to be provided, their due dates and the terms and conditions of the provision of the Other Contributions. The terms and conditions on which these Other Contributions are to be provided must be satisfactory to Us.
- 6.2 Within 10 Business Days of the Date of this Agreement, You must provide a copy of each written confirmation referred to in subclause 6.1 to Us that has not already been provided to Us as at the Date of this Agreement.
- 6.3 You must use all reasonable endeavours to provide or obtain such further Other Contributions as may be necessary to enable the completion of the Activity, including but not limited to the Other Contributions specified in Schedule 1.
- 6.4 If You are not able to obtain Other Contributions or obtain them in time to enable completion of the Activity in accordance with the Milestones, then We may:
  - (a) suspend payment of the Funds or an instalment of the Funds (as the case may be) until the Other Contributions are received; or



(b) terminate this Agreement in accordance with clause 21.

6.5 You must inform Us in writing within 10 Business Days of entering into any arrangements (whether contractual or statutory) under which You are entitled to receive any Other Contributions not identified in Schedule 1.

## 7. ASSETS

7.1 You must not use the Funding to acquire any Asset, apart from those detailed in Schedule 1, without getting Our prior written approval. Approval may be given subject to any conditions We may impose.

7.2 Subject to this clause 7 and the terms of any relevant contract, agreement or other arrangement relating to an Asset (including, without limitation, a lease), You own any Asset acquired by You with the Funding.

7.3 If We own the Asset, or the Asset is leased by You from a third party, then:

- (a) if We own the Asset, subclauses 7.6, 7.9 and 7.10 do not apply;
- (b) if the Asset is leased, You must ensure that the terms of the lease are consistent with this clause 7 except for subclauses 7.6, 7.7, 7.9 and 7.10.

7.4 During the Term of the Agreement You must use any Asset in accordance with this Agreement and for the purposes of the Activity.

7.5 You must:

- (a) not encumber or dispose of any Asset, or deal with or use any Asset other than in accordance with this clause 7, without Our prior written approval;
- (b) hold all Assets securely and safeguard them against theft, loss, damage, or unauthorised use;
- (c) maintain all Assets in good working order;
- (d) reserved;
- (e) if required by law, maintain registration and licensing of all Assets;
- (f) be fully responsible for, and bear all risks relating to, the use or disposal of all Assets;
- (g) if specified in Schedule 1, maintain an Assets register in the form and containing the details as described in the Schedule; and

- (h) as and when requested by Us, provide copies of the Assets register to Us.
- 7.6 If You sell or otherwise dispose of an Asset during the Term of the Agreement (which must be with our prior written consent and subject to any conditions we may impose) and at the time of the sale or disposal the Asset has not been fully Depreciated You must pay to Us or as We may direct in writing, within 20 Business Days of the date of the sale or disposal, an amount equal to the proportion of the Undepreciated value of the Asset, that is equivalent to the proportion of the purchase price of the Asset that was funded from the Funding.
- 7.7 If any of the Assets are lost, damaged or destroyed during the Term of the Agreement, You must reinstate the Assets including from the proceeds of the insurance and this clause 7 continues to apply to the reinstated Assets.
- 7.8 On completion of the Activity or earlier termination of the Term of this Agreement You must seek Our approval, which will not be unreasonably withheld or delayed, to deal with the Assets.
- 7.9 If, on completion of the Activity or earlier termination of the Term of this Agreement, an Asset has not been fully Depreciated You must pay to Us or as We may direct in writing, within 20 Business Days after completion of the Activity or earlier termination of the Term of this Agreement, an amount equal to the proportion of the Undepreciated value of the Asset, that is equivalent to the proportion of the purchase price of the Asset that was funded from the Funding.
- 7.10 If You fail to make payment as required by either subclauses 7.6 or 7.9:
- (a) You must pay Us the Interest on the relevant amount from the date it was due, for the period it remains unpaid; and
  - (b) the relevant amount, and Interest owed under this clause, will be recoverable by Us as a debt due to Us by You.
- 7.11 Our approvals under subclause 7.1 and paragraph 7.5(a) will not be unreasonably withheld. A decision as to whether an approval will be provided will be made within a reasonable time of the request.
- 7.12 The operation of this clause 7 survives the expiration or earlier termination of the Term of this Agreement.

## **8. RECORDS**

- 8.1 You must keep full and accurate accounts and Records of the conduct of the Activity including, without limitation, progress against the Milestones, the receipt and use of Funding and Other Contributions (if any), the acquisition

of Assets and the creation of Intellectual Property Rights in Activity Material.

- 8.2 Records and accounts maintained under subclause 8.1 must be retained by You for a period of no less than 5 years after the Term of this Agreement .
- 8.3 You must ensure that any contract, agreement or other arrangement entered into for the purposes of this Agreement and/or the Activity, including an Activity Contract, contains an equivalent clause regarding the keeping of financial Records and accounts.
- 8.4 The operation of this clause 8 survives the expiration or earlier termination of the Term of this Agreement.

## **9. REPORTING**

- 9.1 You must provide to Us progress Reports at the times and in the manner stated in Schedule 1 of Your progress in undertaking the Activity.
- 9.2 Within:
- (a) 20 Business Days after the expiry of the Activity Period or within 20 Business Days of any earlier termination of the Term of this Agreement; and
  - (b) 60 Business Days after the completion of each Financial Year in which a payment of Funding (or Other Contributions (if any)) is made;

You must provide Us with:

- (c) audited financial statements prepared in accordance with Australian Standards of income and expenditure in respect of the Funding, and Other Contributions (if any) (separately and in the context of Your overall position) which must include a definitive statement as to whether the financial accounts are complete and accurate and whether the financial information for the Activity represents the financial transactions in respect of the Activity fairly and accurately;
- (d) a statement of financial position (assets and liabilities by class);
- (e) a statement of the amount of funds You will need to meet current liabilities under legal commitments entered into by you pursuant to this Agreement;
- (f) a copy of a letter or report to you from the Approved Auditor, including:

- (i) specific comment on the adequacy of financial controls being maintained by You;
  - (ii) specific comment on Your financial position as it relates to any issues affecting Your ability to repay surplus Funds or complete the Activity with available Funds; and
  - (iii) where there are any qualifications or limitations on the audit, an outline of the reason(s) for the qualifications or limitations and the remedial action recommended.
- (g) an audited statement that:
- (A) the Funding (and Other Contributions (if any)) was expended for the purpose of the Activity and in accordance with this Agreement; and
  - (B) salaries and allowances paid to persons involved in the Activity are in accordance with any applicable award or agreement in force under any relevant law on industrial or workplace relations; or

9.3 The audits referred to in paragraph 9.2(c), must also contain the requirements, if any, described in Schedule 1.

9.4 The audits referred to in paragraphs 9.2(c) must be carried out by an Approved Auditor and must comply with the Australian Auditing Standards, and the financial statements referred to in paragraphs 9.2(c), (d) and (e) must be prepared by a Qualified Accountant.

9.5 You must ensure that any contract, agreement or other arrangement entered into for the purposes of this Agreement and/or the Activity contain requirements in relation to Reporting to You and providing You with sufficient information to enable You to comply with this clause 9.

9.6 The operation of this clause 9 survives the expiration or earlier termination of the Term of this Agreement.

## **10 TAXES, DUTIES AND GOVERNMENT CHARGES**

10.1 Subject to this clause, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Agreement must be borne by You.

10.2 The provisions of this clause in respect of GST apply if You are registered or are required to be registered for GST.

- 10.3 We are registered in accordance with the GST Act and will notify You of any change in Our GST registration status.
- 10.4 The Funds paid by Us under this Agreement include GST for supplies provided by You to Us in accordance with this Agreement and which are Taxable Supplies within the meaning of the GST Act.
- 10.5 You must give Us a tax invoice in accordance with the GST Act in relation to any Taxable Supply by You to Us in connection with this Agreement prior to payment of Funds by Us.
- 10.6 The Funding payable by Us to You under this Agreement must not include any amount which represents GST paid by You on Your own inputs and for which an input tax credit is available to You.
- 10.7 If a payment to satisfy a claim or a right to claim under or in connection with this Agreement (for example, a claim for damages for breach of the Agreement) gives rise to a liability to pay GST, the payer must also pay the amount of that GST (except any GST for which the payee is entitled to an input tax credit).
- 10.8 If a Party has a claim under or in connection with this Agreement for a cost on which that Party must pay GST, the claim is for the cost plus all GST on that cost (except any GST for which that Party is entitled to an input tax credit).
- 10.9 Any refund under subclause 5.6 must be inclusive of GST and must be accompanied by an Adjustment Note under the GST Act relating to Taxable Supplies for which you previously issued to Us a tax invoice.
- 10.10 You should be aware that, generally:
  - (a) Funding received by You is included in Your assessable income if it is received in relation to the carrying on of a business, unless You are specifically exempt from income tax;
  - (b) any capital gain on disposal of an Asset is included in Your assessable income, unless You are specifically exempt from income tax;
  - (c) You may be required, in respect to an employee, to pay fringe benefits tax and make superannuation contributions to a complying superannuation fund or pay the superannuation guarantee charge to the Australian Taxation Office.

## **11. COMMONWEALTH MATERIAL**

- 11.1 Ownership of all Commonwealth Material, including Intellectual Property Rights in that Material, remains vested at all times in Us but We grant You a licence to use, copy and reproduce that Material only for the purposes of this Agreement and in accordance with any conditions or restrictions specified in Schedule 1.
- 11.2 Upon the expiration of the Term of the Agreement, You may retain all Commonwealth Material remaining in Your possession, unless otherwise specified in Schedule 1.
- 11.3 You must keep safely and maintain Commonwealth Material You have been given for the purposes of this Agreement.
- 11.4 The operation of this clause 11 survives the expiration or earlier termination of the Term of this Agreement.

## **12. INTELLECTUAL PROPERTY**

- 12.1 Subject to this clause 12, as between Us and You (but without affecting the position between You and a third party) Intellectual Property Rights in Activity Material vest immediately in You.
- 12.2 You grant to Us a permanent, irrevocable, free, world wide, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit the Intellectual Property Rights in the Activity Material for any Commonwealth purpose.
- 12.3 This clause 12 does not affect the ownership of any Intellectual Property Rights in any Existing Material. You, however, grant to Us or must arrange for the grant to Us of a permanent, irrevocable, free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit the Intellectual Property Rights in Existing Material incorporated into the Activity Material for any Commonwealth purpose.
- 12.4 You:
- (a) must, if requested by Us to do so, bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 12;
  - (b) warrant that You are entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Activity Material and the Existing Material in accordance with this clause 12; and
  - (c) except as expressly provided for in this Agreement, must not deal with the Intellectual Property Rights in the Activity Material during the Term of this Agreement.

- 12.5 You warrant or undertake that:
- (a) the author of any Activity Material, other than Existing Material, has given or will give a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for Our benefit; and
  - (b) the author of any Existing Material has given or will give a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for Our benefit in relation to such material used, reproduced, adapted and exploited in conjunction with the other Activity Material.
- 12.6 For the purposes of this clause 12 'Specified Acts' means the following classes or types of acts or omissions by or on behalf of Us:
- (a) those which would, but for this clause, infringe the author's right of attribution of authorship or the author's right of integrity of authorship;
- but does not include:
- (b) those which would infringe the author's right not to have authorship falsely attributed.
- 12.7 The operation of this clause 12 survives the expiration or earlier termination of the Term of this Agreement.

### **13. CONFIDENTIAL INFORMATION**

- 13.1 Subject to clause 13.5, You or We must not, without the prior written consent of the other, use or disclose any Confidential Information of the other.
- 13.2 In giving written consent to use or disclose Our Confidential Information, We may impose such conditions as We think fit, and You agree to comply with these conditions.
- 13.3 We may at any time require You to arrange for:
- (a) Your Advisers; or
  - (b) any person with a Third Party Interest;
- to give a written undertaking in the form of a deed relating to the use and non-disclosure of Our Confidential Information.
- 13.4 If You receive a request under clause 13.3, You must promptly arrange for all such undertakings to be given.

13.5 The obligations on You and Us under this clause 13 will not be taken to have been breached to the extent that Confidential Information:

- (a) is disclosed by You or Us to our Advisers or employees solely in order to comply with obligations, or to exercise rights, under this Agreement;
- (b) is disclosed to Your or Our internal management personnel, solely to enable effective management or auditing of Agreement-related activities;
- (c) is disclosed by You or Us to Your or Our Minister;
- (d) is disclosed by You or Us, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia or the Parliament of Your State/Territory;
- (e) is authorised or required by law to be disclosed;
- (f) is disclosed by Us and is information in a material form in respect of which an interest, whether by licence or otherwise, in the Intellectual Property Rights in relation to that material form, has vested in, or is assigned to, Us under this Agreement or otherwise, and that disclosure is permitted by that licence or otherwise; or
- (g) is in the public domain otherwise than due to a breach of this clause 13.

13.6 Where You or We disclose Confidential Information to another person:

- (a) pursuant to clauses 13.5 (a) or (b) – 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; or
- (b) pursuant to clauses 13.5 (c) and (d) – the disclosing party must notify the receiving party that the information is Confidential Information.

13.7 You and We may at any time after the Date of this Agreement agree in writing that certain additional information is to constitute Confidential Information for the purposes of this Agreement.

13.8 Where You and We 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 (and Schedule 1 is deemed to be varied accordingly), on the date by which both You and We have signed this documentation.

- 13.9 The obligations under this clause 13 continue, notwithstanding the expiry or termination of the Term of this Agreement:
- (a) in relation to an item of information described in Schedule 1 – for the period set out in the Schedule in respect of that item; and
  - (b) in relation to any information which You and We 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 You and Us in writing in respect of that information.
- 13.10 Nothing in this clause 13 derogates from any obligation which You may have either under the *Privacy Act 1988* (Cth), or under this Agreement, in relation to the protection of Personal Information.

#### 14. RESERVED

#### 15. INDEMNITY

- 15.1 You indemnify (and keep indemnified) Us, Our officers, employees, and agents against any:
- (a) loss or liability incurred by Us;
  - (b) loss of or damage to Our property; or
  - (c) loss or expense incurred by Us in dealing with any claim against Us, including legal costs and expenses on a solicitor/own client basis and a cost of time spent, resources used, or disbursements paid by Us;

arising from:

- (d) any act or omission by You, or any of Your employees, agents, volunteers, or subcontractors in connection with this Agreement, where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, or expense;
- (e) any breach by You of Your obligations or warranties under this Agreement;
- (f) the use of the Assets; or
- (g) the use by Us of the Activity Material or Existing Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights in Activity Material or Existing Material.

- 15.2 Your liability to indemnify Us under this clause 15 will be reduced proportionally to the extent that any fault on Our part contributed to the relevant loss, damage, expense, or liability.
- 15.3 Our right to be indemnified under this clause 15 is in addition to, and not exclusive of, any other right, power, or remedy provided by law, but We are not entitled to be compensated in excess of the amount of the relevant liability, damage, loss, or expense.
- 15.4 In this clause 15, “fault” means any negligent or unlawful act or omission or wilful misconduct.
- 15.5 The operation of this clause 15 survives the expiration or earlier termination of the Term of this Agreement.

## **16. INSURANCE**

- 16.1 You warrant that, for as long as any obligations remain in connection with this Agreement, You carry and will continue to carry Your own insurance risks in relation to the insurances specified in Schedule 1.
- 16.2 The operation of this clause 16 survives the expiration or earlier termination of the Term of this Agreement.

## **17. CONFLICT OF INTEREST**

- 17.1 You warrant that, to the best of your knowledge after making diligent inquiry, at the Date of this Agreement no Conflict exists or is likely to arise in the performance of Your obligations under this Agreement.
- 17.2 Without limiting the operation of this clause 17, You must, during the Term of this Agreement, ensure that no Conflict arises.
- 17.3 If during the Term of this Agreement, a Conflict arises, You must:
- (a) immediately notify Us in writing of that Conflict and of the steps You propose to take to resolve or otherwise deal with the Conflict;
  - (b) make full disclosure to Us of all relevant information relating to the Conflict; and
  - (c) take such steps as We may, if we choose to, reasonably require to resolve or otherwise deal with that Conflict.
- 17.4 If You fail to notify Us under this clause 17, or are unable or unwilling to resolve or deal with the Conflict as required, We may terminate the Term of this Agreement in accordance with clause 21 [Termination for Default].

## **18. ACCESS TO PREMISES AND RECORDS**

- 18.1 You must give Us, the Commonwealth Auditor-General, the Privacy Commissioner and persons authorised by Us (referred to in this clause 18 collectively as 'those permitted') access to premises at which accounts, Records and Material associated with this Agreement are stored or work under the Activity is undertaken at all reasonable times and allow those permitted to inspect and copy accounts, Records and Material, in Your possession or control, for purposes associated with this Agreement or any review of performance under this Agreement. You must also give those permitted access to any Assets, wherever they may be located, and reasonable access to Your employees, for the same purpose.
- 18.2 You must provide all reasonable assistance requested by those permitted when they exercise the rights under subclause 18.1, including:
- (a) making available all information, documentation and data, in any medium, required by Us at Your registered office or (with Our consent) Your principal place of business or other place, and
  - (b) making available Your personnel who must provide access to Your computer accounts, Records and copies of documentation, including computer discs or other forms of electronic data..
- 18.3 The rights referred to in subclause 18.1 are subject to:
- (a) the provision of reasonable prior notice by those permitted (except where they believe that there is an actual or apprehended breach of the law); and
  - (b) Your reasonable security procedures.
- 18.4 The requirement for access as specified in subclause 18.1 does not in any way reduce Your responsibility to perform Your obligations in accordance with this Agreement.
- 18.5 You must ensure that any contract, agreement or other arrangement entered into for the purposes of this Agreement and/or the Activity contains an equivalent clause allowing those permitted to have access as specified in this clause 18.
- 18.6 This clause 18 applies for the Term of this Agreement and for a period of 5 years from the date of expiration or earlier termination of the Term of this Agreement.

## **19. DELAY**

- 19.1 You must take all reasonable steps to minimise delay in completion of the Activity in accordance this Agreement, including the Milestones.

- 19.2 If You become aware that You will be delayed in progressing or completing the Activity in accordance with the Milestones or this Agreement, You must immediately notify Us in writing of the cause and nature of the delay. You are to detail in the notice the steps You will take to contain the delay.
- 19.3 On receipt of a notice of delay, We may at Our option:
- (a) notify You in writing of a period of extension to complete the Activity and vary this Agreement accordingly;
  - (b) notify You in writing of reduction in the scope of the Activity and any adjustment to the Funds for You to complete the reduced Activity and vary this Agreement accordingly; or
  - (c) terminate this Agreement under clause 21 [Termination for Default] or take such other steps as are available under this Agreement.
- 19.4 Unless We take action under subclause 19.3, You are required to comply with the time frame for progressing and completing the Activity as set out in this Agreement.
- 19.5 If You do not notify Us of any delay in progressing or completing the Activity in accordance with subclause 19.2 We may, at our sole discretion, terminate this Agreement or reduce the scope of the Activity or amount of Funding to take account of the proportion of the Activity that You can complete prior to the expiry of the Activity Period.

## **20. TERMINATION WITH COSTS**

- 20.1 We may, at any time by written notice to You, terminate the Term of this Agreement in whole or reduce the scope of this Agreement without prejudice to the rights, liabilities, or obligations of either Party accruing prior to the date of termination. If this Agreement is terminated or reduced in scope We will only be liable for:
- (a) subject to subclause 20.3, payments under the payment provisions of this Agreement; and
  - (b) subject to subclauses 20.4, 20.5 and 20.6, any reasonable costs incurred by You and directly attributable to the termination of the Term of this Agreement or reduction in scope of the Agreement.
- 20.2 Upon receipt of a notice of termination or reduction in scope You must:
- (a) cease or reduce the performance of Your obligations under this Agreement in accordance with the notice;

- (b) immediately do everything possible to mitigate all losses, costs, and expenses, arising from the termination or reduction in scope contained in the notice; and
- (c) immediately return to Us any Funds in accordance with paragraph 20.3(b); or deal with any such Funds as We may direct in writing.

20.3 Where We terminate the Term of this Agreement under subclause 20.1 We:

- (a) will not be obliged to pay to You any outstanding amount of the Funds except to the extent that those monies have been legally committed for expenditure by You in accordance with this Agreement and payable by You as a current liability (written evidence of which will be required) by the date notice of termination given under subclause 20.1 is deemed to be received in accordance with subclause 35.2 [Notices]; and
- (b) will be entitled to recover from You any part of the Funds which:
  - (i) has not been legally committed for expenditure by You in accordance with this Agreement and payable by You as a current liability (written evidence of which will be required) by the date the notice of termination given under subclause 20.1 is deemed to be received in accordance with subclause 35.2 [Notices]; or
  - (ii) has not, in Our opinion, been expended by You in accordance with the terms and conditions of this Agreement;

and all such Funds will, without prejudice to any other rights available to Us under the Agreement or at law or in equity, be regarded as a debt due to Us capable of being recovered as such in any court of competent jurisdiction.

20.4 If there is a reduction in scope of the obligations under this Agreement, Our liability to pay any part of the Funding will, in the absence of agreement to the contrary, abate proportionately to the reduction in the obligations under this Agreement.

20.5 Our liability to pay any compensation under or in relation to this clause 20 is subject to:

- (a) Your strict compliance with this clause 20; and
- (b) Your substantiation of any amount claimed under paragraph 20.1(b).

20.6 We will not be liable to pay compensation for loss of prospective profits for a termination or reduction in scope under this clause 20 or loss of any benefits

that would have been conferred on You had the termination or reduction not occurred.

## **21. TERMINATION FOR DEFAULT**

21.1 If:

- (a) You fail to fulfil, or are in breach of any of Your obligations under this Agreement, and do not rectify the omission or breach within 10 Business Days of receiving a notice in writing from Us to do so;
- (b) You are unable to pay all your debts as and when they become due and payable or You fail to comply with a statutory demand within the meaning of sections 459E and 459F of the *Corporations Act 2001* (Cth);
- (c) proceedings are initiated with a view to obtaining an order for Your winding up or any shareholder, member or director convenes a meeting for the purpose of considering or passing of any resolution for Your winding up;
- (d) You come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth) or equivalent provisions in Incorporated Associations legislation of the States and Territories or Parts IV and V of the *Aboriginal Councils and Associations Act 1976* (Cth), or an order has been made for the purpose of placing You under external administration;
- (e) reserved;
- (f) in relation to this Agreement, You breach any law of the Commonwealth, or of a State or Territory;
- (g) You cease to carry on business;
- (h) We are satisfied that any statement made in Your application for Funding is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the Funding; or
- (i) notice is served on You or proceedings are taken to cancel Your incorporation or registration or to dissolve You as a legal entity;

then, in the case of any one or more of these events, You must notify Us as soon as possible and We may immediately terminate the Term of this Agreement by giving written notice to You of the termination.

21.2 Where We terminate the Term of this Agreement under subclause 21.1 We:

- (a) will not be obliged to pay to You any outstanding amount of the Funds except to the extent that those monies have been legally committed for expenditure by You in accordance with this Agreement and payable by You as a current liability (written evidence of which will be required) by the date notice of termination given under subclause 21.1 is deemed to be received in accordance with subclause 35.2 [Notices]; and
- (b) will be entitled to recover from You any part of the Funds which:
  - (i) has not been legally committed for expenditure by You in accordance with this Agreement and payable by You as a current liability (written evidence of which will be required) by the date the notice of termination given under subclause 21.1 is deemed to be received in accordance with subclause 35.2 [Notices]; or
  - (ii) has not, in Our opinion, been expended by You in accordance with the terms and conditions of this Agreement.

- 21.3 If you do not repay Us the amount referred to in paragraph 21.2(b) within 10 Business Days of receipt of the notice of termination (or if a different period is stated in Schedule 1, that period) You must also pay Us Interest on the outstanding amount which You acknowledge represents a reasonable pre-estimate of the loss incurred by Us as a result of the loss of investment opportunity for, or the reasonable cost of borrowing other money in place of, the amount which should have been repaid. The amount set out in the notice, and Interest owed under this clause will, without prejudice to any other rights available to Us under the Agreement or at law or in equity, be recoverable by Us as a debt due to Us by You.
- 21.4 Subclause 21.2 does not limit or exclude any of Our other rights, including the right to recover any other amounts from You on termination of the Term of this Agreement.

## **22. ACTIVITY CONTRACTS**

- 22.1 You must not enter into an Activity Contract, without Our prior written approval. The Activity Contracts We have approved at the Date of this Agreement are identified in Schedule 1.
- 22.2 You are fully responsible for the performance of Your obligations under this Agreement, even though You may have subcontracted any of them under an approved Activity Contract.
- 22.3 Despite any approval given by Us under subclause 22.1, You are responsible for ensuring the suitability of any party to an Activity Contract for the work

proposed to be carried out and for ensuring that such work meets the requirements of this Agreement.

- 22.4 We may revoke Our approval of a party to an Activity Contract on any reasonable ground.
- 22.5 Upon receipt of a written notice from Us revoking Our approval of a contractor, You must, as soon as practicable (or as We may direct in the notice), cease using that party to perform any of Your obligations under this Agreement or in respect of the Activity unless We direct that the relevant party be replaced immediately, in which case You must comply with the direction.
- 22.6 If We withdraw our approval of a party to an Activity Contract, You remain liable under this Agreement for the past acts or omissions of those contracting parties as if they were current subcontractors or otherwise parties to an Activity Contract.
- 22.7 You must, in any Activity Contract, reserve a right of termination to take account of Our right of termination under clauses 19 [Delay], 20 [Termination with Costs] or 21 [Termination for Default] and our right of revocation of approval under subclause 22.5, and You must, where appropriate, make use of that right in the event of a termination or revocation by Us.
- 22.8 You must not enter into an Activity Contract with a contractor named by the Director of the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the *Equal Opportunity for Women in the Workplace Act 1999* (Cth).
- 22.9 Activity Contracts may not be amended, assigned or novated without Our prior written consent.

### **23. ACKNOWLEDGMENT AND PUBLICITY**

- 23.1 You must, in all publications, promotional and advertising materials, public announcements and activities by You or on Your behalf in relation to the Activity, or any products, processes or inventions developed as a result of it, acknowledge the financial and other support You have received from Us, in the manner, if not set out in Schedule 2, then to be approved by Us prior to its use.
- 23.2 We reserve the right to publicise and report on the awarding of Funding to You. We may do this by including in media releases, general announcements about the Funding and in annual reports Your name, the amount of the Funds given to you and the title and a brief description of the Activity.



- 23.3 Where Funding has been utilised to produce any publication (including without limitation, promotional material), a copy of the publications must be provided to Us.
- 23.4 You must facilitate the participation of the Minister for Communications, Information Technology and the Arts or the aforementioned Minister's nominated representative at any function associated with the Activity. You should do this by sending an invitation to the Minister for Communications, Information Technology and the Arts, Parliament House, Canberra ACT 2600, inviting the Minister to attend the function and, where speeches will be made, to speak at the function. You must also invite other persons notified by the Minister, including but not limited to Members of the Parliament of Australia and Australian Government officials.
- 23.5 This clause 23 applies for the Term of this Agreement and for a period of 5 years from the date of expiration or earlier termination of the Term of this Agreement.

**24. SPECIFIED PERSONNEL**

- 24.1 You must ensure that the Specified Personnel, if any, listed in Schedule 1 undertake activities in respect of the Activity in accordance with the terms of this Agreement.
- 24.2 Where Specified Personnel are unable to undertake activities in respect of the Activity, You must notify Us immediately. You must, if so requested by Us, provide replacement personnel acceptable to Us without additional payment and at the earliest opportunity.
- 24.3 We may give notice on reasonable grounds related to performance of the Activity requiring You to remove personnel (including Specified Personnel) from work in respect of the Activity. You must, at Your own cost, promptly arrange for the removal of such personnel from work in respect of the Activity and their replacement with personnel acceptable to Us.
- 24.4 If You are unable to provide acceptable replacement personnel within 60 days, We may terminate this Agreement in accordance with the provisions of clause 21 [Termination for Default].

**25. COMPLIANCE WITH LAWS AND OUR POLICIES**

- 25.1 You must, in carrying out Your obligations under this Agreement, comply with the provisions of all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or Local Authority, including those listed in Schedule 1. You should note that under the *Criminal Code Act 1995* (Cth) section 137.1 giving false or misleading information is a serious offence.

- 25.2 You must, in carrying out Your obligations under this Agreement, comply with any of Our policies as notified by Us to You in writing, including those listed in Schedule 1.
- 25.3 You must, when using Our premises or facilities, comply with all reasonable directions and procedures relating to occupational health, safety and security in effect at those premises or in regard to those facilities, as notified by Us or as might reasonably be inferred from the use to which the premises or facilities are being put.

## **26. NEGATION OF LEGAL RELATIONSHIP OF EMPLOYMENT, PARTNERSHIP AND AGENCY**

- 26.1 You, Your employees, partners and agents will not, by virtue of this Agreement, be or for any purpose be deemed to be Our legal employees, partners or agents.
- 26.2 You must not, and must ensure that Your employees, partners and agents do not, represent Yourself or themselves as being Our employees, partners or agents.

## **27. ENTIRE AGREEMENT, VARIATION AND SEVERANCE**

- 27.1 This Agreement records the entire agreement between You and Us in relation to its subject matter.
- 27.2 Except for action We are expressly authorised to take elsewhere in this Agreement, no variation of this Agreement is binding unless it is agreed in writing and signed by You and Us.
- 27.3 If a court or tribunal says any provision of this Agreement has no effect or interprets a provision to reduce an obligation or right, this does not invalidate any other provision.

## **28. WAIVER**

- 28.1 If either You or We do not exercise (or delay in exercising) any of Your or Our rights, that failure or delay does not operate as a waiver of those rights.
- 28.2 A single or partial exercise by You or Us of any of Your or Our rights does not prevent the further exercise of any right.
- 28.3 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 the written waiver.

28.4 In this clause 28, 'rights' means rights or remedies provided by this Agreement or at law.

**29. ASSIGNMENT AND NOVATION**

29.1 You must not assign Your rights under this Agreement without prior written approval from Us.

29.2 You agree not to enter into negotiations with any other person for the purposes of entering into an arrangement that will require novation of this Agreement without first consulting Us.

**30. RESERVED**

**31. FUNDING PRECONDITION**

31.1 You agree that it is a precondition of entitlement to the Funding that You must:

- (a) have an Australian Business Number ('ABN');
- (b) immediately notify Us if You cease to be registered with an ABN;
- (c) correctly quote the ABN on all documentation to Us;
- (d) supply proof of GST status, if requested by Us; and
- (e) immediately notify Us of changes to Your GST status.

**32. DISPUTE RESOLUTION**

32.1 Subject to subclause 32.3, the Parties agree not to commence any legal proceedings in respect of any dispute arising under this Agreement, which cannot be resolved by informal discussion, until the procedure provided by this clause has been utilised.

32.2 Both the Parties agree that any dispute arising during the course of this Agreement is dealt with as follows:

- (a) the Party claiming that there is a dispute will send the other a written notice setting out the nature of the dispute;
- (b) the parties will try to resolve the dispute through direct negotiation by persons to whom they have given authority to resolve the dispute;
- (c) the parties have 10 Business Days from the receipt of the notice to reach a resolution or to agree that the dispute is to be submitted to mediation or some alternative dispute resolution procedure; and

- (d) if:
  - (i) there is no resolution of the dispute;
  - (ii) there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
  - (iii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 Business Days of the submission, or such extended time as the parties may agree in writing before the expiration of the 15 Business Days;

then, either You or We may commence legal proceedings.

32.3 This clause 32 does not apply to the following circumstances:

- (a) either You or We commence legal proceedings for urgent interlocutory relief;
- (b) action by Us under or purportedly under clause 4 [Payment], 18 [Access to Premises and Records], 20 [Termination with Costs] or 21 [Termination for Default];
- (c) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the law by You.

32.4 Despite the existence of a dispute, the Parties must (unless requested in writing by the other Party not to do so) continue to perform obligations under this Agreement.

32.5 The operation of this clause 32 survives the expiration or earlier termination of the Term of this Agreement.

### **33. APPLICABLE LAW AND JURISDICTION**

33.1 The laws of the Australian Capital Territory apply to this Agreement.

33.2 The Parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect to any dispute under this Agreement.

### **34. LIAISON AND MONITORING**

34.1 You must:

- (a) liaise with and provide information to Us as reasonably required by Us; and

- (b) comply with all Our reasonable requests, directions, or monitoring requirements.

34.2 You may nominate, from time to time, a person who has authority to receive and sign notices and written communications for You under this Agreement and accept any request or direction in relation to the Activity.

**35. NOTICES**

35.1 A Party giving notice or notifying under this Agreement must do so in writing or by Electronic Communication:

- (a) directed to the recipient's address, as varied by any notice; and
- (b) hand delivered or sent by pre-paid post or Electronic Communication to that address.

The parties' address details are as specified in Schedule 1.

35.2 A notice given in accordance with subclause 35.1 is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by pre-paid post, 5 Business Days after the date of posting unless it has been received earlier;
- (c) if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth) if a notice was being given under a law of the Commonwealth, which is currently when the Electronic Communication enters the addressee's Information System.

**36. COMPLIANCE WITH THE NATIONAL CODE OF PRACTICE FOR THE CONSTRUCTION INDUSTRY**

36.1 In the performance of the Activity, you must comply with the requirements of the National Code and the Code Guidelines.

36.2 You must comply, in the performance of the Activity, with the requirements of the *Building and Construction Industry Improvement Act 2005* (Cth), including, but not limited to, not entering into any contract or subcontract unless the contracting party is accredited under the Australian Government Occupational Health and Safety Accreditation Scheme.

36.3 Compliance with the National Code and the Code Guidelines, or the Cth Act does not relieve You from responsibility to perform Your obligations under this Agreement, or otherwise arising out of or in connection with the Activity, or from liability for any defect.

36.4 You must maintain adequate records of the compliance with the National Code, the Code Guidelines and the Cth Act by Yourself, and all subcontractors and Related Bodies Corporate.

36.5 You must permit Us or any person authorised by Us, including the Office of the Australian Building and Construction Commissioner, to have access to any construction sites or places (including privately funded construction sites or places) to which the National Code, the Code Guidelines or the Cth Act apply, to:

- (a) inspect any work, material, machinery, appliance, article or facility;
- (b) inspect and copy any record relevant to the Activity or the subject of this Agreement;
- (c) interview any person; and
- (d) request You to produce any specified document within a specified period (being not less than 14 days from the date of the request) in person, by fax or by post,

as is necessary to allow validation of Your progress in complying with the Code, the Code Guidelines, Industry Guidelines and the Cth Act

36.6 You must ensure that Your Related Bodies Corporate and subcontractors permit Us or any person authorised by Us, including the Office of the Australian Building and Construction Commissioner, to have access to any construction sites or places (including privately funded construction sites or places) to which the National Code, the Code Guidelines, or the Cth Act apply, to:

- (a) inspect any work, material, machinery, appliance, article or facility;
- (b) inspect and copy any record relevant to the Activity or the subject of this Agreement;
- (c) interview any person; and
- (d) request You to produce any specified document within a specified period (being not less than 14 days from the date of the request) in person, by fax or by post,

as is necessary to allow validation of Your progress in complying with the National Code, the Code Guidelines and the Cth Act

36.7 If You do not comply with the requirements of the National Code, the Code Guidelines, or the Cth Act in the performance of Your obligations under this Agreement such that sanction is applied by the Code Monitoring Group, We, without prejudice to any rights that would otherwise accrue, are entitled to

record that non-compliance and take it into account in the evaluation of any future tenders that may be lodged by You or a related Body Corporate in respect of work for any part of the Commonwealth or its agencies.

- 36.8 Notwithstanding any other provision of this Agreement, You must not appoint a contractor, subcontractor, consultant or supplier in relation to the Activity where the appointment would breach a sanction imposed by the Code Monitoring Group.
- 36.9 You must ensure that all subcontracts impose obligations on the subcontractors equivalent to the obligations under this clause 36, in the form set out in the Proforma National Code Subcontract Provisions.
- 36.10 You acknowledge that:
- (a) You will not (nor will You seek to) enter or take any steps towards entering any "Project Agreements" as contemplated under clause 8.4 of the Code Guidelines in respect of, nor will any such "Project Agreements" apply in relation to, the whole or any part of the Activity;
  - (b) We will not be requested or required to approve any "Project Agreement" as contemplated under clause 8.4 of the Code Guidelines
  - (c) any collective industrial agreements other than certified agreements will not apply to Your activities or the whole or any part of the Activity; and
  - (d) You will not seek to have any subcontractor comply with, or apply the terms of, any collective industrial agreement entered into by You.

THIS AGREEMENT is made on the 5th day of October 2007  
EXECUTED BY THE PARTIES AS A DEED

SIGNED, SEALED AND DELIVERED  
for and on behalf of the  
COMMONWEALTH OF AUSTRALIA  
represented by and acting through the  
Department of Communications,  
Information Technology and the Arts  
ABN 51 491 646 726 by  
Colin Lyons  
First Assistant Secretary  
Broadband Division

..... COLIN LYONS .....

..... C. Lyons .....

sign here

in the presence of:

Lindsay Barton  
.....  
print name and occupation of witness

..... L. Barton .....

witness sign here

The Common Seal of MINISTER FOR  
INDUSTRY AND ENTERPRISE  
ABN 69 410 335 356 is affixed in  
accordance with section 30 of the  
*Industry and Technology Development  
Act 1998 (WA)*

affix common seal

:  
in the presence of

.....  
sign here

Print name and occupation of witness

.....  
signature of witness



16.

THIS AGREEMENT is made on the 5th day of October 2007  
EXECUTED BY THE PARTIES AS A DEED

SIGNED, SEALED AND DELIVERED  
for and on behalf of the  
COMMONWEALTH OF AUSTRALIA  
represented by and acting through the  
Department of Communications,  
Information Technology and the Arts  
ABN 51 491 646 726 by  
Colin Lyons  
First, Assistant Secretary  
Broadband Division

COLIN LYONS

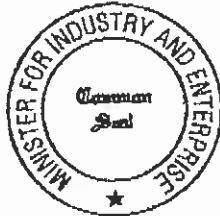
C. F. Lyons  
sign here

in the presence of:

Lindsay Barton  
print name and occupation of witness

[Signature]  
witness sign here

The Common Seal of MINISTER FOR  
INDUSTRY AND ENTERPRISE  
ABN 69 410 335 356 is affixed in  
accordance with section 30 of the  
*Industry and Technology Development  
Act 1998 (WA)*



:  
in the presence of

Print name and occupation of witness

affix common seal  
[Signature]  
sign here

[Signature]  
signature of witness



**THIS AGREEMENT** is made on the ..... day of ..... 200  
EXECUTED BY THE PARTIES AS A DEED

SIGNED, SEALED AND DELIVERED  
for and on behalf of the  
COMMONWEALTH OF AUSTRALIA  
represented by and acting through the  
Department of Communications,  
Information Technology and the Arts  
ABN 51 491 646 726 by  
Colin Lyons  
First, Assistant Secretary  
Broadband Division

.....  
sign here

in the presence of:

.....  
witness sign here

print name and occupation of witness

The Common Seal of MINISTER FOR  
INDUSTRY AND ENTERPRISE  
ABN 69 410 335 356 is affixed in  
accordance with section 30 of the  
*Industry and Technology Development  
Act 1998 (WA)*

affix common seal

:  
in the presence of



.....  
signature

Print name and occupation of witness

.....  
signature of witness

John PRIOR  
STATE PUBLIC SERVANT



## SCHEDULE

### 1. PROGRAM AND ACTIVITY (Recital A, subclauses 1.1 and 5.1)

- 1.1 The Activity Period commences on the Date of this Agreement and ends on **30 June 2008**.
- 1.2 The Completion Date is 30 September 2008.
- 1.3 The Objectives of the Activity and how they are to be achieved are specified in Annexure A.
- 1.4 In pursuit of the Objectives You must:
  - (a) conduct the Activities and achieve the Milestones and indicators of completion specified and described in Annexure B; and
  - (b) provide evidence that You have entered into legally enforceable arrangements with suitable subcontractors as contemplated by this Deed, to provide the services You require and funded by Us with particular emphasis on ensuring that the subcontractors are required to provide You such information as required to ensure fulfilment of Your accountability requirements to Us.

### 2. FUNDING AND PAYMENT (subclauses 1.1, 4.1, 5, 6.1, 6.2)

2.1 The total funding for the Activity is **\$1,430,000** which represents **\$1,300,000** the amount of Funding to be provided by Us for the Activity, and **\$130,000** being the total GST payable in accordance with clause 4. The Funding will be paid as follows:

- a) \$200,000 (excluding GST) not exceeding 30 days of execution of this Agreement;
- b) \$750,000 (excluding GST) not exceeding 30 days of [acceptance of the first activity Report/the completion of Milestone 1 and the provision of documentary evidence of satisfactory compliance with this Milestone];
- c) \$350,000 (excluding GST) not exceeding 30 days of [acceptance of the second activity Report/the completion of Milestone 2 and the provision of documentary evidence of satisfactory compliance with this Milestone 2];

subject to Your compliance with the Reporting requirements to the date payment is due.

2.2 Other Contributions (subclauses 6.1 and 6.2) are specified in the Budget (subclause 5.12) in Annexure C.

2.3 **Invoicing:** Before We can pay Funds to You, You must:

- (a) comply with any Reporting or other requirements that apply to the payment of the Funds;
- (b) where You make a Taxable Supply under this Deed, provide Us with a Tax Invoice in accordance with subclause 10.5; and
- (c) provide financial statements to demonstrate that the Funds already provided to You have been fully spent, or Your Report demonstrates that the previous Funds payments will be fully spent in the near future.

### **3. REPORTS (subclauses 1.1 and clause 9)**

3.1 You must provide the Reports required by this Item 3 by the times specified. The Reports must be provided to Us and should include all items specified in Annexure D.

3.2 The first Report is due by **30 December 2007** and should detail Your performance of the Activity from project start.

3.3 Subsequent Reports are due by **28 February 2007, 31 March 2008, 31 May 2008**, and should detail Your performance of the Activity conducted over the reporting periods.

The final Report is due at the end of the Activity Period (specified in Item 1), completion of the Activities or termination of the Term of this Deed, whichever is the earlier. The requirements for the final Report are described in Annexure D.

3.5 Period for audit after the expiry of the Activity Period or earlier termination (subclause 9.2): **60 Business Days**

**THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY**

#### 4. ASSETS (subclause 1.1 and clause 7)

##### Assets register

Asset number	Description of Asset	Purchase price or total lease cost	Location of Asset	Owner of Asset
	iDirect Hub Equipment	\$345,125	NewSat Teleport Bayswater WA	NewSat
	16 Satellite Gateway Kits (1.8mt)	\$129,600	Refer Annexure A for site locations	NewSat
	16 Access Points with Antenna & Router	\$150,000	Refer Annexure A for site locations	NewSat
	16 x Bandwidth Management Device	\$156,000	Refer Annexure A for site locations	NewSat
	16 x 1.8m Dish Installation	\$90,000	Refer Annexure A for Anchor Tenant locations	NewSat
	3 x 1.2mt antenna kits with modem	\$13,001	Refer Annexure A for DEC locations	Depart of Environment and Conservation
	3 Tracstar 960 MVS and associated equipment	\$110,301	Refer Annexure A for DEC locations	Depart of Environment and Conservation
	Customer Hardware	\$1,100,172	Refer Annexure a for site locations	NewSat
<b>Total</b>		<b>\$2,004,199</b>		

#### 5. INTELLECTUAL PROPERTY (subclause 1.1, clause 12)

None Stated.

**6. CONFIDENTIAL INFORMATION (subclause 1.1, clause 13)**

**A. OUR CONFIDENTIAL INFORMATION**

**1. Deed Provisions/Schedule/Annexures**

Item	Period of Confidentiality
None Stated	NOT APPLICABLE

**2. Deed-related material**

Item	Period of Confidentiality
None Stated	NOT APPLICABLE

**B. YOUR CONFIDENTIAL INFORMATION**

**1. Deed Provisions/Schedule/Annexures**

Item	Period of Confidentiality
None Stated	NOT APPLICABLE

**2. Deed-related material**

Item	Period of Confidentiality
None Stated	NOT APPLICABLE

**7. INSURANCE (subclause 16.1)**

Specify type and quantum of insurance:

1. workers compensation insurance as required by law where You carry out activities under this Deed;
2. public liability insurance to the value of at least \$10 million per claim, or occurrence giving rise to a claim, in respect to activities undertaken under this Deed, where occurrence means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be;
3. insurance over any Asset acquired pursuant to clause 7 of this Deed for its full replacement value]



**8. CONFLICT OF INTEREST (subclause 17.2)**

None stated.

**9. SUBCONTRACTORS (subclause 22.1)**

Name: Michael Kenneally  
 Vice President Sales  
 NewSat Limited  
 IBM Tower  
 Level 27, 60 City Road  
 Southbank Vic 3006  
 Telephone: 03 9674 4644  
 Facsimile: 03 9674 4655  
 Mobile: 0412 833 613

**10. ACKNOWLEDGMENT AND PUBLICITY (subclause 23.1)**

You must acknowledge Our Funding in the following way:

“The Kimberley Broadband Solutions project is supported by the Coordinated Communications Infrastructure Fund administered by the Australian Government Department of Communication, Information Technology and the Arts.”

**11. SPECIFIED PERSONNEL (subclauses 1.1 and 24.1)****(a) Your Project Manager is:**

Mr Anson Cheng  
 6/1 Adelaide Terrace  
 East Perth WA 6004  
 T: (08) 9222 0535  
 F: (08) 9222 6157  
 Email: [anson.cheng@doir.wa.gov.au](mailto:anson.cheng@doir.wa.gov.au)

**(b) Our Contact Officer is:**

Ms Kerry Fraser  
 Assistant Manager, Clever Networks  
 Broadband Division  
 Department of Communications, Information Technology and the Arts  
 GPO Box 2154  
 CANBERRA ACT 2601  
 T: (02) 6271 1312  
 F: (02) 6271.1098  
 Email: [kerry.fraser@dcita.gov.au](mailto:kerry.fraser@dcita.gov.au)

**12. COMPLIANCE WITH LAWS AND POLICIES (subclauses 25.1 and 25.2)**

12.1 You must comply with the following laws in carrying out the Activity:

- (a) *Equal Opportunity for Women in the Workplace Act 1999*;

- (b) *Racial Discrimination Act 1984*;
- (c) *Sex Discrimination Act 1984*;
- (d) *Disability Discrimination Act 1992*;
- (e) *Crimes Act 1914*;
- (f) *Criminal Code Act 1995*;
- (g) *Telecommunications Act 1997*.

12.2 Reserved.

### **13. NOTICES (subclause 35.1)**

**(a) Our details are:**

Mr Lindsay Barton  
Assistant Secretary, Broadband Division  
Department of Communications, Information Technology and the Arts  
GPO Box 2154  
CANBERRA ACT 2601  
T: (02) 6271 1408  
F: (02) 6271 1098  
Email: [lindsay.barton@dcita.gov.au](mailto:lindsay.barton@dcita.gov.au)

**(b) Your details are:**

Mr John Prior  
Project Director  
Department of Industry and Resources  
6/1 Adelaide Terrace  
East Perth, WA 6004  
T: (08) 9222 0534  
F: (08) 9222 6157  
Email: [john.prior@doir.wa.gov.au](mailto:john.prior@doir.wa.gov.au)

## ANNEXURE A

## Activity Specification

## 1.1 Activity Scope

The Western Australian Minister for Industry and Enterprise will provide a financial assistance grant of \$1,000,000 in cash for the Kimberley Broadband Solutions project ('the Project').

Funding for the project consists of a \$1,300,000 (excluding GST) grant from the Australian Government under the Coordinated Communications Infrastructure Fund (CCIF), a \$1,000,000 Western Australian Government contribution and an additional financial contribution from NewSat Limited, the Kimberley Development Commission and the Western Australian Departments of Treasury and Finance and Local Government and Regional Development.

The Project will provide broadband service coverage to government agencies, residents and private businesses who currently do not have access to services or who have only limited data delivery via dial-up services. The Project will deploy broadband solutions to the Kimberley region of far north Western Australia including regions around the towns of Broome, Derby, Fitzroy Crossing, Halls Creek, Kununurra and Wyndham.

The primary outcome expected from the project will be:

- (a) enhanced telecommunications infrastructure and services which will deliver corporate data, internet, video conferencing and voice telephony services to communities in the Kimberley region to obtain increased access to distance education opportunities, online banking and e-business facilities, and health professionals will also have improved access to medical records and specialist services; and
- (b) enable Commonwealth, State and local Government agencies to improve the delivery of their services to local residences.

Sixteen anchor tenant sites have been identified which will have access to a shared broadband pool and a hot-spot service. The Kimberley regions to receive the services are:

- (a) Broome;
- (b) Bidyadanga;
- (c) Derby;
- (d) Yiyili;
- (e) Fitzroy Crossing;
- (f) Oombulgurri;
- (g) Halls Creek;
- (h) Djarindjin and Lombadina, Kununurra;
- (i) Warmun (Turkey Creek) Wyndham;
- (j) Wirrimanu (Balgo);

- (k) Yungngora (Noonkanbah);
- (l) Looma and Camballin;
- (m) Ardyaloon (One Arm Point); and
- (n) Kalumburu.

The project will also deliver fixed and portable broadband network infrastructure to the Department of Environment and Conservation (DEC) sites in the following areas:

- (a) Purnululu National Park (Bungle Bungle Range). The park is 250km south of Kununurra or 109km north of Halls Creek;
- (b) Windjana Gorge National Park. The part is 150km from Fitzroy Crossing and 145km from Derby’;
- (c) King Leopold Range Conservation Park. The part is off Gibb River Road, east of Derby and covers an area of 392,100 hectares; and
- (d) other DEC operational areas in WA.

Refer to the map on the following page.

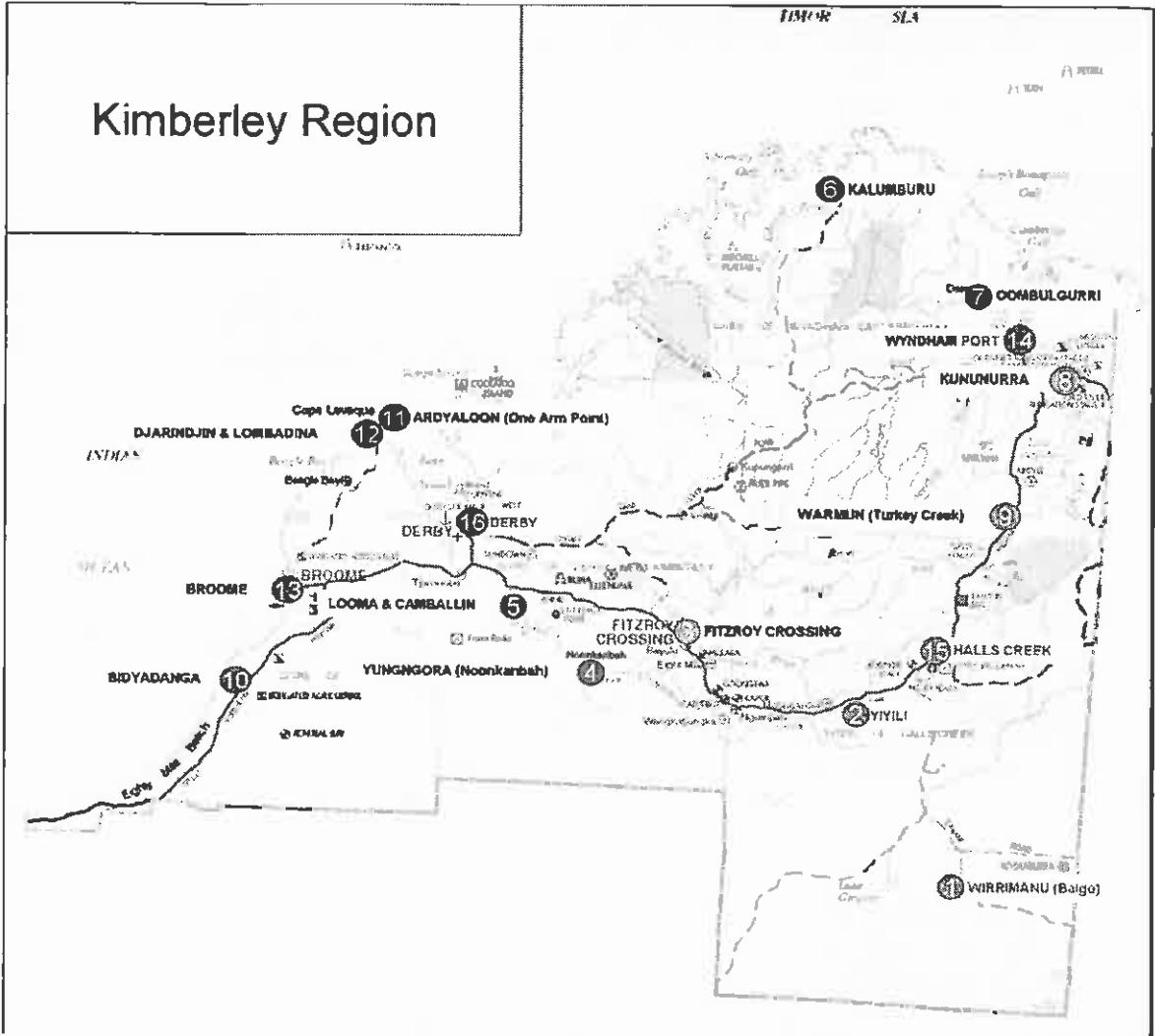
The Project will be carried out by NewSat Limited in compliance with technical specifications stated below and also in accordance with the Financial Assistance Agreement (FAA) between You and NewSat.

#### **1.4 Technical Specifications**

The service provider, NewSat Limited, will provide the shared broadband pool and a hot-spot service at the 16 sites that will deliver broadband to the above stated communities.

NewSat will be obliged to ensure that the equipment is fit-for-purpose and the facilities will enable data traffic to be carried across the applicable telecommunications network:

- (a) interactive text and data exchange, such as email, internet and high speed/volume business applications;
- (b) high speed/volume data transfers, such as file transfers, software deployment, streaming voice and video, archive and backup; and
- (c) interactive real time communications, such as video conferencing and video communications.



**ANNEXURE B**  
**Activities, Milestones and Performance Indicators**

<b>Milestone Description</b>	<b>Indicators of completion</b>	<b>Milestone Date</b>
<b>Activity 1 Project Establishment</b>		
<ul style="list-style-type: none"> <li>• Execution of CCIF Funding Agreement;</li> <li>• Financial Assistance Agreement (FAA) between Department of Industry and Enterprise (DOIR) and NewSat executed;</li> <li>• NewSat to prepare draft design documentation;</li> <li>• NewSat to pre-order equipment;</li> <li>• Execution of MOU between WA Department of Environment and Conservation for the provision of broadband services;</li> <li>• NewSat engages sales and marketing contractor;</li> </ul>	<ul style="list-style-type: none"> <li>• Signing of CCIF Funding Agreement by You and Us;</li> <li>• Copy of FAA sighted by Us;</li> <li>• Provide Us with evidence of service provider's contribution to the project;</li>   <li>• Copy of MOU between You and DEC sighted by Us;</li>   <li>• NewSat confirms with You that the contractor has been recruited and You advise Us;</li> </ul>	30 November 2007
<b>Milestone Report 1 – due 31 December 2007</b>		
<b>Activity 2 Project Establishment Stage Two</b>		
<ul style="list-style-type: none"> <li>• Preliminary design documentation approved;</li> <li>• NewSat to dimension satellite bandwidth capacity;</li> <li>• First Milestone Report prepared by You;</li> </ul>	<ul style="list-style-type: none"> <li>• Evidence of approval provided by You to Us;</li> <li>• You advise to Us the bandwidth capacity has been confirmed;</li> <li>• First Milestone Report submitted by You and approved by Us.</li> </ul>	30 December 2007
<b>Milestone Report 2 – due 28 February 2008</b>		
<b>Activity 3 Project Implementation</b>		
<ul style="list-style-type: none"> <li>• Proof of concept testing completed;</li> </ul>	<ul style="list-style-type: none"> <li>• Provision of "Ready for Integration" Certificate to certify the network infrastructure is fit for use;</li> </ul>	28 February 2008
<ul style="list-style-type: none"> <li>• DEC mobile units delivered.</li> </ul>	<ul style="list-style-type: none"> <li>• Contractor place order for equipment;</li> <li>• Delivery of equipment; and</li> <li>• Audit of equipment delivered</li> </ul>	28 February 2008

<b>Milestone Report 3 - due 31 March 2008</b>		
<b>Activity 4 Project Implementation</b>		
<ul style="list-style-type: none"> <li>• Design, construction and installation of equipment for all sites; and</li> <li>• Commission testing of all sites;</li> <li>• Service provision ready to customer for all other sites.</li> <li>• Service connection and delivery ready for all other sites.</li> </ul>	<ul style="list-style-type: none"> <li>• Contractor issues equipment "Ready for Integration" certificate for all other sites. Copy of certificate sighted by DCITA ;</li> <li>• Contractor issues network "Ready for Use" certificate for all other sites. Copy of certificate sighted by DCITA;</li> </ul> <p>You provide Us with a statement* showing the network is "Ready for Use" at all sites</p>	30 April 2008
<b>Milestone Report 4 - due 31 May 2008</b>		
Prepare final report	<ul style="list-style-type: none"> <li>• Receipt of the Final Report by DCITA</li> <li>• We notify You that You have fully complied with the Activity</li> </ul>	
<b>Final Report – due 30 June 2008</b>		
<b>Activity Final Payment – due 31 May 2008</b>		
<b>Audit Report - due 30 September 2008</b>		

Final Report

\* Statement\* means a sworn Statutory Declaration provided by a suitably qualified and experienced person who is independent from DOIR and NewSat Limited (for example a person who is not an employee, partner, or agent of these parties) in which they must provide detailed evidence to show that:

- i. the asset or service has written acceptance criteria which demonstrates that it functions correctly;
- ii. the asset or service has been demonstrated to perform the functions specified in these acceptance criteria;
- iii. the person making the Statement is suitably qualified and experienced to provide the Statement; and,
- iv. the person making the Statement is independent from the parties set out above.

**ANNEXURE C**

**Activities, Milestones and Performance Indicators**

<b>OTHER CONTRIBUTIONS</b>			
	<b>2007-2008</b>	<b>2008-2009</b>	<b>Totals (\$)</b>
<b>CASH</b>	(\$)	(\$)	
DOIR	1,000,000.00		
NewSat		1,803,917.00	<i>1,803,917</i>
Sub-Total - Cash	1,000,000.00		<del>1,000,000.00</del> <i>2,803,917</i>
<b>IN KIND</b>			
DOIR (Administrative support and management)	45,000.00	45,000.00	90,000.00
Kimberley Development Commission	15,000.00	15,000.00	30,000.00
Dept Environment and Conservation	100,000.00	100,000.00	200,000.00
NewSat	255,279.00	652,354.00	907,633.00
Sub-Total - In Kind	415,279.00	812,354.00	1,227,633.00
Sub Total Cash	1,000,000.00	1,803,917.00	2,803,917.00
Sub-Total In Kind	415,279.00	812,354.00	1,227,633.00
<b>TOTAL</b>	<b>1,415,279.00</b>	<b>2,616,271.00</b>	<b>4,031,550.00</b>



<b>TOTAL ACTIVITY INCOME</b>				
	<b>2007-2008</b>	<b>2008-2009</b>		<b>Totals (\$)</b>
<b>INCOME SOURCES</b>				
<b>CASH</b>				
CCIF Funding	\$ 1,300,000.00			\$ 1,300,000.00
DOIR	\$ 1,000,000.00			\$ 1,000,000.00
NewSat		\$ 1,803,917.00		\$ 1,803,917.00
<b>Sub-Total</b>	\$ <b>2,300,000.00</b>	\$ <b>1,803,917.00</b>		\$ <b>4,103,917.00</b>
<b>IN KIND</b>				
DOIR - Salary	\$ 45,000.00	\$ 45,000.00		\$ 90,000.00
Kimberley Development Commission - Salary	\$ 15,000.00	\$ 15,000.00		\$ 30,000.00
NewSat - Salary - Operations Cost		\$ 64,000.00		\$ 64,000.00
NewSat - Salary Management Staff	\$ 206,679.00	\$ 491,154.00		\$ 697,833.00
NewSat - Non Salary	\$ 48,600.00	\$ 97,200.00		\$ 145,800.00
Department of Environment and Conservation	\$ 100,000.00	\$ 100,000.00		\$ 200,000.00
<b>Sub-Total</b>	\$ <b>415,279.00</b>	\$ <b>812,354.00</b>		\$ <b>1,227,633.00</b>
Sub Total Cash	\$ 2,300,000.00	\$ 1,803,917.00	\$ 4,103,917.00	
Sub-Total In Kind	\$ 415,279.00	\$ 812,354.00	\$ 1,227,633.00	
			\$ 5,331,550.00	
<b>TOTAL</b>	\$ <b>2,715,279.00</b>	\$ <b>2,616,271.00</b>		\$ <b>5,331,550.00</b>

**TOTAL ACTIVITY EXPENDITURE**

	2007-2008	2008-2009	Totals (\$)
<b>CASH</b>			
<b>Infrastructure</b>			
iDirect Hub Equipment	\$ 345,125.00		
16 Satellite Gateway Kits (1.8mt)	\$ 129,600.00		
16 Access Points with Antenna & Router	\$ 150,000.00		
3 x 1.2mt antenna kits with modem	\$ 13,001.00		
3 Tracstar 960 MVS and associated equipment	\$ 110,301.00		
16 x Bandwidth Management Device	\$ 156,000.00		
16 x 1.8 mt dish installation	\$ 90,000.00		
Customer Hardware	\$ 501,833.00	\$ 598,339.00	
Customer Installation	\$ 398,970.00	\$ 475,695.00	
Space Segment	\$ 98,658.00	\$ 685,644.00	
Terrestrial Internet	\$ 5,084.00	\$ 44,239.00	
<b>Sub-Total</b>	\$ 1,998,572.00	\$ 1,803,917.00	\$ 3,802,489.00
Project Management and Administration (IC76)	\$ 119,923.00		
Contract Management (IC77)	\$ 35,000.00		
Consultant: Legal, Technical and Probity (IC78)	\$ 56,065.00		
Project Disbursement (IC79)	\$ 90,430.00		
<b>Sub Total</b>	\$ 301,418.00		\$ 301,418.00
<b>Infrastructure</b>	\$ 1,998,582.00	\$ 1,803,917.00	
<b>Project/Contract Management</b>	\$ 301,418.00		
<b>TOTAL CASH</b>	\$ 2,300,000.00	\$ 1,803,917.00	\$ 4,103,917.00

\$1,100,172

<b>IN KIND EXPENDITURE</b>			
DOIR (Additional administrative support and management)	\$ 45,000.00	\$ 45,000.00	
Kimberley Development Commission	\$ 15,000.00	\$ 15,000.00	
Dept Environment and Conservation	\$ 100,000.00	\$ 100,000.00	
NewSat	\$ 255,279.00	\$ 652,354.00	
<b>Sub-Total</b>	<b>\$ 415,279.00</b>	<b>\$ 812,354.00</b>	<b>\$ 1,227,633.00</b>
<i>CASH EXPEND.</i>			<b>\$ 4,103,917.00</b>
<b>TOTAL</b>			<b>\$ 5,331,550.00</b>

**CCIF FUNDS EXPENDITURE**

	<b>2007-2008</b>	<b>2008-2009</b>	<b>Totals (\$)</b>
<b>CASH</b>			
Infrastructure			
iDirect Hub Equipment	\$ 345,125.00		
16 Satellite Gateway Kits (1.8mt)	\$ 129,600.00		
16 Access Points with Antenna & Router	\$ 150,000.00		
3 x 1.2mt antenna kits with modem	\$ 13,011.00		
3 Tracstar 960 MVS and associated equipment	\$ 110,301.00		
16 x Bandwidth Management Device	\$ 156,000.00		
16 x 1.8 mt dish installation	\$ 90,000.00		
<b>Sub-Total</b>	\$ 994,037.00		\$ 994,037.00
Customer Hardware (full cost \$501,833 - CCIF contribution \$305,963)	\$ 305,963.00		\$ 305,963.00
<b>TOTAL</b>			\$ 1,300,000.00

<b>EXPENDITURE SUMMARY FOR 2007 - 2009</b>	<b>(\$)</b>	<b>(\$)</b>
Infrastructure	<b>2,300,000.00</b>	
	<b>1,803,917.00</b>	
		<b>4,103,917.00</b>
In Kind	<b>1,227,633.00</b>	
	<b>5,331,550.00</b>	

## ANNEXURE D

### Reporting

#### Reports (other than the final Report)

Each Report is to be provided by You to Us at the end of each and every reporting period described in Item 3 of the Schedule and no later than the due date specified in Item 3.

The Reports must:

- provide the information and follow the format as set out in Appendix 1 to this Annexure D;
- include, as appropriate, evidence that infrastructure has been installed and is operational and that services are being delivered;
- include a certification that that the financial and other information is correct and reflects the true position of the Activity at the time of signature and that all Funds received were spent for the purpose of the Activity and in accordance with the Deed; and
- the certification referred to above must be provided by Chief Executive Officer, Chief Financial Officer or a person authorised by You to execute documents and legally bind You by their execution. Satisfactory evidence of the authorisation is to be provided to Us before certification.

#### Final Report

The final Report is to be provided by You to Us within 20 Business Days after the expiry of the Activity Period, completion of the Activity or termination of the Term of this Deed, whichever is the earlier.

The final Report should be a stand-alone document that can be used for public information dissemination purposes on the operation, mechanisms and processes employed by You to achieve the Objectives.

The final Report must cover the entire Activity Period and:

- describe the benefits and outcomes of the Activity as a whole, specifically in relation to the Objectives set out in Annexure A;
- present the full financial accounts of the Activity (Funding and Other Contributions);
- describe what infrastructure was built and evaluate how it is performing;
- describe the numbers and locations of health, education and government organisations accessing the infrastructure:

- describe the services provided over the network by these users;
- describe the numbers and locations of other users of the infrastructure;
- describe how the network is being used by these parties;
- describe the impact of the Activity on relevant regional areas of Australia and the Australian telecommunications industry in general.

The financial accounts should be accompanied by certification that all Funds received were spent for the purpose of the Activity and in accordance with the Deed. The certification must be provided by Your Chief Executive Officer, Chief Financial Officer or a person authorised by You to execute documents and legally bind You by their execution. Satisfactory evidence of the authorisation is to be provided to Us before certification.

## **ANNEXURE D, APPENDIX 1**

### **ACTIVITY PROGRESS REPORT**

**[ACTIVITY TITLE]**

**Period of Report: ...../...../..... to ...../...../.....**

**Note:** The Report should be comprehensive, but generally not exceed 20 pages.

#### **Summary Activity information**

Provide the following summary information:

- name of recipient;
- names of other contributors (if applicable);
- full Activity title;
- amount of CCIF Funding;
- total Activity value;
- start date of Report; and
- completion date of Report.

#### **Overview**

Provide an overview of the progress of the whole Activity at the date of the Report. Where applicable this overview should include, but not be limited to, a brief description of:

1. general progress of the Activity (infrastructure and other elements);
2. whether or not the Activity is proceeding on time and within Budget, with any significant variance from the Activity implementation plan explained in the following sections.

#### **Report Against Milestones**

In accordance with the Activities, Milestones, and performance indicators as set out in Annexure B:

- report on activities and Milestones that were due to be achieved during the period of the Report;
- report on activities and Milestones actually achieved during the period of the Report;
- provide the date that Milestones were achieved or are now expected to be achieved;
- report on each Milestone achieved or partially achieved against its relevant performance indicators;
- highlight any delay in the meeting of relevant Milestones and outline the:
  - reason for the delay;



- o proposed action to address the delay;
- o expected effect (if any) the delay will have on subsequent Milestones; and
- o expected effect (if any) the delay will have on the completion of the Activity and the Budget;
- provide an explanation if any Milestones do not meet the performance indicators for reasons other than delayed completion; and
- where appropriate, indicate any problems encountered, including technical and administrative.

**Financial Information**

For the period covered by the Report, provide:

(a) financial information (prepared by a Qualified Accountant) including, together with supporting documentation:

- (i) an income and expenditure statement for the Reporting period as per the categories set out in Tables 1 and 2 of this Annexure;
- (ii) a schedule of the Assets acquired during the Reporting period compared with the Budget;
- (iii) a list, and amounts, of debtors and creditors (if the financial statements are prepared on a cash basis) or the amount of accruals and pre-payments (if the financial statements are prepared on an accrual basis);
- (iv) an assessment of likely impact of the income and expenditure figures on the Budget set out in Annexure C;
- (v) an acquittal of Funds and Activity Generated Income;
- (vi) information on the nature, source and timing of all cash contributions provided to the Activity from non-CCIF sources and an account of how that money was spent on the Activity;
- (vii) information on the nature, source and timing of all in-kind contributions to the Activity; and
- (viii) details of all revenue raised by the conduct of the Activity and how such revenue was spent.

(b) a statement of the balance of Your account referred to in paragraph 5.5(a);

(c) a statement of how much You need to meet current liabilities under legal commitments entered into by You pursuant to this Deed; and

(d) a statement on the use of Activity Generated Income as requested by Us.

**Table 1 Income and Expenditure (excluding GST)**

	Current Reporting Period			Cumulative Total to Date (\$)	Cumulative Variance to Date (\$)	Projected Next Period (\$)
	Planned (\$)	Actual (\$)	Variance (\$)			
<b>INCOME</b> (Excluding in kind contributions)						
CCIF Funding						
Recipient						
Other Contributions [sources]						
<b>Sub Total</b>						
Interest Earned						
<b>Total Income</b>						
<b>EXPENDITURE</b>						
<b>Infrastructure</b> [sub items]						
<b>Other Development</b> [sub items]						
<b>Management and Administration</b> [sub items]						
<b>Total Expenditure</b>						
<b>Balance</b>						

**Table 2 In Kind Contributions**

	Current Reporting Period						Cumulative Total to Date (\$)	Projected Next Period (\$)
	Planned (\$)	Salaries (\$)	Operating (\$)	Capital (\$)	Total Actual (\$)	Variance (\$)		
<b>Recipient</b>								
<b>Sub-Total</b>								
<b>Other Contributors</b>								
[list]								
<b>Sub-Total</b>								
<b>Total</b>								



Australian Government

Department of Broadband, Communications  
and the Digital Economy

**DEED OF VARIATION**

VARIATION OF THE DEED IN RELATION TO FUNDING FOR THE KIMBERLEY  
BROADBAND SOLUTIONS PROJECT AS PART OF THE COORDINATED  
COMMUNICATIONS INFRASTRUCTURE FUND

Commonwealth of Australia as represented by the Department of Broadband,  
Communications and the Digital Economy  
ABN 51 491 646 726

The State of Western Australia as represented by the Minister for Industry and  
Enterprise  
ABN 69 410 335 356

RECEIVED

23 MAY 2008

**CONTENTS**

<b>1.</b>	<b>Variation of Funding Deed</b>	<b>2</b>
1.1.	Assets	2
1.2.	Annexure A	2
1.3.	Annexure C	2
<b>2.</b>	<b>Continued operation of Funding Deed</b>	<b>2</b>
2.1.	Other provisions continue unchanged	2

**DEED OF VARIATION**

VARIATION OF THE DEED IN RELATION TO FUNDING FOR THE KIMBERLEY BROADBAND SOLUTIONS PROJECT AS PART OF THE COORDINATED COMMUNICATIONS INFRASTRUCTURE FUND

**Date**

This Deed is dated 28 May 2008.

**Parties**

This Deed is made between and binds the following parties:

- 1. **Commonwealth of Australia** (the Commonwealth) represented by the **Department of Broadband, Communications and the Digital Economy** ABN 51 491 646 726 ('Us', or 'We' or 'Our' as the case requires)
- 2. **Minister for Industry and Enterprise**, represented by and acting through the Department of Industry and Resources (WA), a body corporate constituted under the *Industry and Technology Development Act 1998* (WA), ABN 69 410 335 356 ('You' or 'Your' as the case requires)

**Context**

This Variation of the Funding Deed is made in the following context:

- A. You have requested a variation to Item 4 of the Schedule to the Funding Deed.
- B. You have requested a variation to replace Annexure A of the Schedule to the Funding Deed.
- C. You have requested a variation to replace Annexure C of the Schedule to the Funding Deed

## **Operative provisions**

In consideration of the mutual promises contained in this document, the parties to this Deed agree as follows:

### **1. Variation of Funding Deed**

---

#### **1.1. Assets**

1.1.1. The Parties agree that Item 4 of the Schedule to the Funding Deed is, on and from the date of this Deed, varied by substituting the new Item 4 as attached at Attachment 1 to this Deed.

#### **1.2. Annexure A**

1.2.1. The Parties agree that Annexure A of the Schedule to the Funding Deed is, on and from the date of this Deed, varied by substituting Annexure A with the new Annexure A as attached at Attachment 2 to this Deed.

#### **1.3. Annexure C**

1.3.1. The Parties agree that Annexure C of the Schedule to the Funding Deed is, on and from the date of this Deed, varied by substituting Annexure C with the new Annexure C as attached at Attachment 3 to this Deed.

### **2. Continued operation of Funding Deed**

---

#### **2.1. Other provisions continue unchanged**

2.1.1. The Parties confirm the continued operation of all other provisions of the Funding Deed in all respects.

**Executed by the Parties as a Deed**

SIGNED, SEALED AND DELIVERED  
for and on behalf of the  
COMMONWEALTH OF AUSTRALIA  
represented by the Department of  
Broadband, Communications and the  
Digital Economy,  
ABN 51 491 646 726 by  
Lindsay Barton  
Assistant Secretary  
Broadband Development Branch



Signature 23/05/08

In the presence of:

KERRY FRASER

Print name of witness



Signature of witness

The COMMON SEAL of the MINISTER  
FOR INDUSTRY AND ENTERPRISE  
ABN 69 410 335 356 is affixed in  
accordance with section 30 of the  
*Industry and Technology Act 1998 (WA)*




Signature

In the presence of:

Carol Skipworth

Print name of witness



Witness sign here



ATTACHMENT 1

## Item 4. Assets (subclause 1.1 and clause 7)

## Assets Register

Description of Asset	Purchase price (\$)	Location of Asset	Owner of Asset
iDirect Hub Equipment	345,125	NewSat Limited Teleport Bayswater WA	NewSat Limited
16 Satellite Gateway Kits (1.8mt)	129,600	Refer Annexure A for site locations	NewSat Limited
16 Access Points with Antenna & Router	150,000	Refer Annexure A for site locations	NewSat Limited
16 x Bandwidth Management Device	156,000	Refer Annexure A for site locations	NewSat Limited
16 x 1.8m Dish Installation	90,000	Refer Annexure A for Anchor Tenant locations	NewSat Limited
3 x 1.2mt antenna kits with modem	13,011	Refer Annexure A for DEC locations	Dept of Environment and Conservation
3 Tracstar 960 MVS and associated equipment	110,301	Refer Annexure A for DEC locations	Dept of Environment and Conservation
Customer hardware	501,833	Refer Annexure A for site locations	NewSat Limited
<b>Total</b>	<b>\$1,495,870</b>		

ATTACHMENT 2

ANNEXURE A

Activity Specification

1.1 Activity Scope

The Western Australian Minister for Industry and Enterprise will provide a financial assistance grant of \$ 824,577.74 in cash for the Kimberley Broadband Solutions project ('the Project').

Funding for the Project consists of a \$1,300,000 (excluding GST) grant from the Australian Government under the Coordinated Communications Infrastructure Fund (CCIF); a \$1,045,000 Western Australian Government contribution (cash and in-kind) and additional cash and in-kind contributions of \$370,279 from NewSat Limited, the Kimberley Development Commission and the Department of Environment and Conservation.

Project stakeholders include the Western Australian Department of Treasury and Finance; Department of Local Government and Regional Development; State Library of Western Australia; Western Australia Police; and Department of Housing and Works.

The Project will provide broadband service coverage to government agencies, residents and private businesses who currently do not have access to services or who have only limited data delivery via dial-up services. The Project will deploy broadband solutions to the Kimberley region of far north Western Australia including regions around the towns of Broome, Derby, Fitzroy Crossing, Halls Creek, Kununurra and Wyndham.

The primary outcome expected from the Project will be:

- enhanced telecommunications infrastructure and services which will deliver corporate data, internet, video conferencing and voice telephony services to communities in the Kimberley region to obtain increased access to distance education opportunities, online banking and e-business facilities, and health professionals will also have improved access to medical records and specialist services.

A total of sixteen sites have been identified together with the six main sites. The main sites will have access to a shared broadband pool and a hot-spot service. An additional ten sites may have access to the same type of service.

The six main sites are:

- (a) Broome;
- (b) Derby;
- (c) Fitzroy Crossing;
- (d) Halls Creek;
- (e) Kununurra;
- (f) Wyndham;

The ten additional sites are:

- (g) Yiyili;
- (h) Bidyadanga ;
- (i) Oombulgurri;
- (j) Djarindjin and Lombadina;
- (k) Warmun (Turkey Creek);
- (l) Wirrimanu (Balgo);
- (m) Yunggora (Noonkanbah);
- (n) Looma and Camballin;
- (o) Ardyaloon (One Arm Point); and
- (p) Kalumburu.

The project will also deliver fixed and portable broadband network infrastructure to the Department of Environment and Conservation (DEC) sites in the following areas:

- (a) Purnululu National Park (Bungle Bungle Range). The park is 250km south of Kununurra or 109km north of Halls Creek;
- (b) Windjana Gorge National Park. The park is 150km from Fitzroy Crossing and 145km from Derby’;
- (c) King Leopold Range Conservation Park. The park is off Gibb River Road, east of Derby and covers an area of 392,100 hectares; and
- (d) other DEC operational areas in WA.

Refer to the map on the following page.

The project will be carried out by NewSat Limited in compliance with technical specifications stated below and also in accordance with the Financial Assistance Agreement (FAA) between You and NewSat Limited.

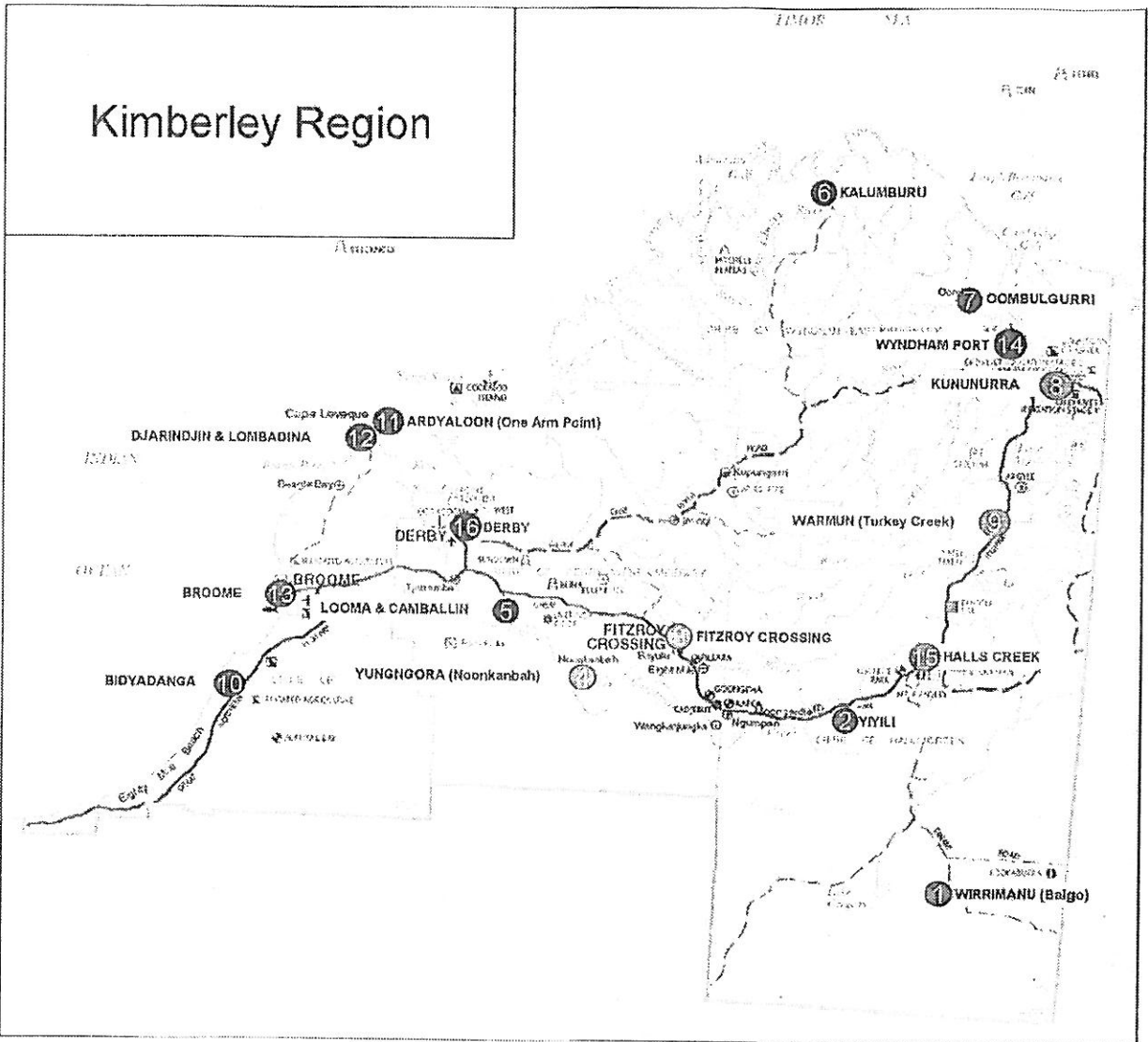
## 1.2 Technical Specifications

The service provider, NewSat Limited, will provide the shared broadband pool and a hot-spot service at the 16 sites that will deliver broadband to the above-stated communities.

NewSat Limited will be obliged to ensure that the equipment is fit-for-purpose and the facilities will enable data traffic to be carried across the applicable telecommunications network:

- (a) interactive text and data exchange, such as email, internet and high speed/volume business applications;

- (b) high speed/volume data transfers, such as file transfers, software deployment, streaming voice and video, archive and backup; and
- (c) interactive real time communications, such as video conferencing and video communications.



**ATTACHMENT 3****ANNEXURE C****Budget**

<b>OTHER CONTRIBUTIONS</b>	<b>2007-2008 (\$)</b>
<b>CASH</b>	
DOIR – Infrastructure and installations	698,582.00
DOIR – Management and administration	125,995.74
<b>Cash</b>	<b>824,577.74</b>
<b>IN KIND</b>	
DOIR	220,422.26
Kimberley Development Commission	15,000.00
Department of Environment and Conservation	100,000.00
NewSat Limited	255,279.00
<b>In-Kind</b>	<b>590,701.26</b>
Sub-total Cash	824,577.74
Sub total In Kind	590,701.26
<b>TOTAL</b>	<b>1,415,279.00</b>

<b>TOTAL ACTIVITY INCOME</b>	<b>2007-2008 (\$)</b>
<b>CASH</b>	
CCIF	1,300,000.00
DOIR	824,577.74
<b>IN KIND</b>	<b>590,701.26</b>
<b>TOTAL</b>	<b>2,715,279.00</b>

<b>TOTAL ACTIVITY EXPENDITURE</b>	<b>2007-2008</b>
	<b>(\$)</b>
<b>CASH</b>	
<b>Infrastructure</b>	
iDirect hub equipment	345,125.00
16 satellite gateway kits (1.8mt)	129,600.00
16 access points with antenna & router	150,000.00
3 x 1.2mt antenna kits with modem	13,011.00
3 Tracstar 960 MVS and associated equipment	110,301.00
16 x bandwidth management device	156,000.00
16 x 1.8 mt dish installation	90,000.00
Installation costs (\$305,963 CCIF/\$93,007 DOIR)	398,970.00
Customer hardware DOIR	501,833.00
Space segment DOIR	98,658.00
Terrestrial Internet DOIR	5,084.00
<b>Sub total</b>	<b>1,998,582.00</b>
DOIR – Project management and administration (IC76)	56,714.59
DOIR – Consultant: legal, technical and probity (IC78)	26,514.54
DOIR – Project disbursement (IC79)	42,766.61
<b>Sub total</b>	<b>125,995.74</b>
<b>Total Cash</b>	<b>2,124,577.74</b>
<b>IN-KIND</b>	
DOIR - additional administrative support and management	220,422.26
Kimberley Development Commission – project support	15,000.00
Department of Environment and Conservation – commitment to using NewSat Limited services	100,000.00
NewSat Limited - salary and operations costs	255,279.00
<b>Total In-kind</b>	<b>590,701.26</b>
<b>TOTAL</b>	<b>2,715,279.00</b>

<b>CCIF FUNDS EXPENDITURE</b>	<b>2007-2008</b>
<b>Cash - Infrastructure</b>	
iDirect hub equipment	345,125.00
16 satellite gateway kits (1.8mt)	129,600.00
16 access points with antenna & router	150,000.00
3 x 1.2mt antenna kits with modem	13,011.00
3 Tracstar 960 MVS and associated equipment	110,301.00
16 x bandwidth management device	156,000.00
16 x 1.8 mt dish installation	90,000.00
Installation costs (\$305,963 CCIF/\$93,007 DOIR)	305,963.00
<b>TOTAL</b>	<b>1,300,000.00</b>



**Senate Standing Committee on Environment, Communications and the Arts**  
**Answers to Senate Estimates Questions on Notice**  
**Additional Estimates Hearings February 2009**  
**Broadband, Communications and the Digital Economy Portfolio**

**Question No: 8**

**Hansard Ref: ECA 109**

**Topic: Kimberley Broadband Solutions project – National Office of the Information  
Economy Discussion Paper Recommendation re the Coordinated Communications  
Infrastructure Fund (CCIF)**

**Senator Ludlam asked:**

Can you provide for the committee an official response from the Commonwealth Government as to whether that recommendation is formally -

**Question Clarified 27 March 2009:**

Has the Commonwealth government responded to the recommendation made by the National Office for Information Economy about regular and ongoing monitoring of each CCIF funded project to ensure compliance with milestones outlined in the project funding deed?

**Answer:**

The National Office of the Information Economy Discussion Paper proposed regular and ongoing monitoring of individual projects to ensure compliance with the milestones outlined in the project funding deeds. The guidelines for the Coordinated Communications Infrastructure Fund included these provisions.

**Senate Standing Committee on Environment, Communications and the Arts**

**Answers to Senate Estimates Questions on Notice**

**Additional Estimates Hearings February 2009**

**Broadband, Communications and the Digital Economy Portfolio**

**Question No: 15**

**Hansard Ref: Written**

**Topic: Optus 3G – Metro equivalent decision**

**Senator Nash asked:**

Please provide details on the decision to approve Optus 3G network as a 'metro-equivalent' service.

**Answer:**

The program guidelines for the Australian Broadband Guarantee define a Metro-comparable Broadband Service, for the purposes of the program, as a broadband service with the following features:

- a) access to the Internet at a peak Data Speed of at least 512 upload and 128 Kbps download speeds and 3GB per month usage allowance (with no restrictions within these limits on downloads or uploads or usage time)
- b) a price to the Customer over three years of no more than \$2500 (GST inclusive) including equipment, installation, connection, account establishment, travel costs and ongoing provision of the service
- c) the Provider or Commercial ISP offering the broadband service can install the service within a reasonable period of time.

After independent testing, the Department has determined that the Optus 3G wireless broadband service, as publicly advertised, meets this definition of a Metro-comparable Broadband Service.

This does not mean that the Optus 3G wireless broadband service is a registered service under the Australian Broadband Guarantee program. It simply means that consumers seeking a broadband service through the Department's Broadband Service Locator and whose premises fall within known coverage of Optus' 3G wireless broadband service, are referred in the first instance to Optus (as well as any other commercial providers listed) to ascertain whether a commercial service can be provided to the premises. If such a commercial service can not be provided, the consumer may be eligible for an Australian Broadband Guarantee service.

**Senate Standing Committee on Environment, Communications and the Arts**  
**Answers to Senate Estimates Questions on Notice**  
**Additional Estimates Hearings February 2009**  
**Broadband, Communications and the Digital Economy Portfolio**

**Question No: 16**

**Hansard Ref: Written**

**Topic: Optus 3G – Independent Auditing**

**Senator Nash asked:**

Please provide all information relating the independent auditing of the Optus 3G network.

**Answer:**

See the answer to Question 15 from these hearings.

**Senate Standing Committee on Environment, Communications and the Arts**  
**Answers to Senate Estimates Questions on Notice**  
**Additional Estimates Hearings February 2009**  
**Broadband, Communications and the Digital Economy Portfolio**

**Question No: 17**

**Hansard Ref: Written**

**Topic: Optus 3G and Comparable Plans**

**Senator Nash asked:**

What details are there of comparable 'plans' for consumers i.e. in comparison with current Optus 3G plans?

**Answer:**

There is a diverse range of commercial broadband offerings available, catering for entry-level users through to high-end business users. The Department regularly reviews the range of commercial services available in metropolitan areas to ensure that the definition of a Metro-comparable Service under the Australian Broadband Guarantee guidelines reflect the metropolitan service offerings that are widely taken up. Most recently the definition was updated in August 2008.

Details of the commercial service offerings of several hundred Internet service providers are available from their websites and advertising material as well as through publicly available consumer websites such as Whirlpool's Broadband Choice.

**Senate Standing Committee on Environment, Communications and the Arts**  
**Answers to Senate Estimates Questions on Notice**  
**Additional Estimates Hearings February 2009**  
**Broadband, Communications and the Digital Economy Portfolio**

**Question No: 46**

**Hansard Ref: Written**

**Topic: OPEL – Outstanding Matters**

**Senator Birmingham asked:**

Are there any outstanding matters or liabilities between the government and the parties to the OPEL contract? If so, please detail. Have any of the parties indicated an intention to pursue legal options against the Government or expressly reserved their right to do so?

**Answer:**

The OPEL Networks funding agreement was terminated as a result of OPEL Networks' failure to satisfy the conditions precedent of the agreement. No money has been paid to OPEL Networks, either before or since the termination of the funding agreement.

The Agreement was deemed to have been terminated without liability. OPEL's position is that it reserves its rights in relation to the termination. However, at the time of executing the funding agreement, the Commonwealth offered to contribute up to \$2.5 million towards costs incurred by OPEL Networks in producing its Implementation Plan.

Subsequently, the Department has offered to reimburse OPEL Networks the sum of \$2,285,594.30 (GST inclusive), subject to OPEL Networks executing a Reimbursement Agreement reflecting the fact that the proposed reimbursement payment would be in full satisfaction of the Commonwealth's obligations under the funding agreement. OPEL has advised that it is not willing to execute the agreement.

In its recent supplementary submission to the Senate Select Committee on the National Broadband Network, Optus (a joint shareholder in OPEL) indicated that its previously stated position to reserve all of its rights (in relation to the termination of the OPEL funding agreement) remained unchanged.

On 13 March 2009, OPEL Networks Pty Limited was wound up by order of the Supreme Court of New South Wales. Steven John Sherman and Bruce James Carter of Ferrier Hodgson were appointed liquidators.

On 24 March 2009, the Department wrote to the liquidators renewing its offer to reimburse the company on the terms outlined above. The Department is awaiting the liquidators' response.

**Senate Standing Committee on Environment, Communications and the Arts**  
**Answers to Senate Estimates Questions on Notice**  
**Additional Estimates Hearings February 2009**  
**Broadband, Communications and the Digital Economy Portfolio**

**Question No: 47**

**Hansard Ref: Written**

**Topic: OPEL – Costs of Contract Cancellation**

**Senator Birmingham asked:**

What are the total costs incurred by the Commonwealth in relation to the cancellation of the OPEL contract? Please detail.

**Answer:**

The Government notified OPEL on 1 April 2008 that it did not accept OPEL's implementation plan, and OPEL's contract was terminated from that date.

The following legal costs have been incurred in relation to matters arising from the termination:

1. \$ 15,884.00 (inc GST) for legal services provided by the Australian Government Solicitor;  
and
2. \$ 6,873.53 (inc GST) for legal services provided by Clayton Utz.

These costs represent the general legal advice the Department has received in relation to the OPEL matter since the date the contract was terminated, and attendance by lawyers at a debriefing meeting on 17 April 2008.

No other costs were incurred by the Commonwealth in relation to the cancellation of the OPEL contract.

**Senate Standing Committee on Environment, Communications and the Arts**  
**Answers to Senate Estimates Questions on Notice**  
**Additional Estimates Hearings February 2009**  
**Broadband, Communications and the Digital Economy Portfolio**

**Question No: 75**

**Hansard Ref: Written**

**Topic: Optus 3G Impact on Australian Broadband Guarantee**

**Senator Minchin asked:**

What impact will the recent approval of the Optus 3G service as 'metro-equivalent' [sic] have on the ABG and the ability for consumers to receive a subsidised service?

**Answer:**

Given the planned roll-out of metro-comparable commercial 3G wireless broadband services, it is likely that, all other things being equal, there will be cost efficiencies and program savings over the future life of the Australian Broadband Guarantee program. This is because people in premises covered by those services are able to receive a metro-comparable broadband service, and therefore are not eligible for a subsidised Australian Broadband Guarantee service.

**Senate Standing Committee on Environment, Communications and the Arts**  
**Answers to Senate Estimates Questions on Notice**  
**Additional Estimates Hearings February 2009**  
**Broadband, Communications and the Digital Economy Portfolio**

**Question No: 76**

**Hansard Ref: Written**

**Topic: Australian Broadband Guarantee Budget Allocation and Consideration of 3G Services**

**Senator Minchin asked:**

\$270 million was allocated in Budget 2008-09 for the ABG over the next four years, was the potential for 3G services to be assessed as 'metro-equivalent' factored in to this Budget allocation?

**Answer:**

At the time Budget allocations were made, wireless broadband services over the Optus 3G network were not considered to be metro-comparable under the Australian Broadband Guarantee program, and were not factored into the Budget allocations.



**Senate Standing Committee on Environment, Communications and the Arts**  
**Answers to Senate Estimates Questions on Notice**  
**Additional Estimates Hearings February 2009**  
**Broadband, Communications and the Digital Economy Portfolio**

**Question No: 77**

**Hansard Ref: Written**

**Topic: Satellite Providers Role in the Australian Broadband Guarantee**

**Senator Minchin asked:**

What role will satellite providers play in the ABG, because no doubt the 3G decision will impact on their viability?

**Answer:**

The designation of wireless broadband services over the Optus 3G network as metro-comparable will, all other things being equal, reduce the total number of program subsidies payable under the scheme.

However, providers of satellite based ABG services will continue to play an important role in providing program services to residences and small businesses in more remote areas, beyond the coverage of commercial metro-comparable services.