



Financial Year

OPERATIONAL FUNDING CONTRACT

between the

COMMONWEALTH OF AUSTRALIA
as represented by the

**Australian Government Department of Transport
and Regional Services**

and the

Legal Name of the ACC

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Parties

THIS CONTRACT is made on the _____ day of _____, in the year _____.

BETWEEN

the COMMONWEALTH OF AUSTRALIA ('the **Commonwealth**'), as represented by and acting through the Australian Government Department of Transport and Regional Services ABN 86 267 354 017 ('the **Department**');

AND

the *Legal Name of the ACC*, ABN *ABN of the ACC*, trading as "*Trading Name of the ACC*", an association incorporated in the State of *State/Territory in which ACC is incorporated* under the *Legislation under which ACC is incorporated* and having its registered address at *Registered address of ACC* ('the **ACC**').

Recitals

WHEREAS:

- A. Area Consultative Committees (ACCs) are not-for-profit organisations comprised of business and community representatives, strategically positioned to build community capacity and find local solutions to local problems. ACCs work in partnership with the Commonwealth for growth at the local community level through building business, creating jobs and fostering sustainable social and economic development.
- B. ACCs support, promote and disseminate information on Australian Government policy initiatives for the benefit of their communities. ACCs also provide feedback to the Government to enable effective review and informed refinement of policies and programmes.
- C. A core function of ACCs is to be the primary point of promotion, project and application development for *Regional Partnerships* (RP), and the key provider of independent advice to the Commonwealth on applications under *Regional Partnerships* from their region.
- D. The Commonwealth wishes to provide Operational Funding to the ACC for the purposes, and subject to the terms and conditions, set out in this Contract.
- E. The Commonwealth is required, in the interests of good governance and by operation of law, to ensure the accountability of funding provided and accordingly, the ACC is required to be accountable for all Operational Funding it receives under this Contract.

Operative Clauses

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. *Interpretation*

- 1.1. In this Contract, unless the contrary intention appears:

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

ACC shall, where the context so admits, include the ACC Chair, ACC Members, ACC Personnel and the ACC's successors and assigns;

ACC Activities means the priorities and activities as stipulated in the ACC Business Plan and the ACC Strategic Regional Plan;

ACC Budget means the budget for expenditure of Operational Funding for the purposes of conducting ACC Activities or performing obligations under this Contract as stipulated in the ACC Business Plan, annexed to this Contract;

ACC Business Plan means the business plan as approved by the Contract Delegate which forms part of this Contract (Annexure 1);

ACC Charter means the Australian Government publication "*National Network of Area Consultative Committees Charter*" as amended from time to time;

ACC Committee means the governing body of the ACC as established under the ACC's Rules of Incorporation;

ACC Handbook means the Australian Government publication "*National Network of Area Consultative Committees Handbook*" as amended from time to time;

ACC Personnel means the employees, agents and subcontractors of the ACC engaged to undertake ACC Activities or any part thereof;

ACC Strategic Regional Plan means the strategic regional plan for the period 1 July 2004 to 30 June 2007 as approved by the Contract Delegate which forms part of this Contract (Annexure 2);

Access Officer means the Auditor-General, the Privacy Commissioner, the Programme Delegate, the Contract Delegate, the Liaison Officer or any other person nominated in writing by the Secretary of the Department;

Activity Material means all Material:

- (a) brought into existence for the purpose of performing ACC Activities;
- (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);

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

Annexure refers to an annexure to this Contract;

Asset means personal, real or incorporeal property of the ACC brought into existence either wholly or partly with the use of Operational Funding but does not include Intellectual Property or 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 means 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 means the standards set by the 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;

Commonwealth Material means any Material provided by the Commonwealth to the ACC for the purposes of this Contract or which is copied or derived from Material so provided, except for Activity Material;

Completion Date means, unless a date is specified in the Schedule, the day after the ACC has done all that the ACC is required to do under this Contract to the satisfaction of the Commonwealth;

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is designated by the Commonwealth as confidential; or
- (c) the ACC knows or ought to know is confidential;

but does not include information which:

- (d) is or becomes public knowledge other than by breach of this Contract;
- (e) is in the possession of the ACC without restriction in relation to disclosure before the date of receipt from the Commonwealth; or
- (f) has been independently developed or acquired by the ACC;

where the burden of establishing any of the exceptions referred to in paragraphs (d), (e) and (f) shall be on the ACC;

Conflict refers to a conflict of interest, or risk of a conflict of interest, or an apparent conflict of interest arising through the ACC engaging in any activity or obtaining any interest that is likely to conflict with or restrict the ACC in undertaking an ACC Activity for the Commonwealth fairly and independently;

Contract means this document and includes any Schedules and Annexures;

Contract Delegate means the person for the time being holding, occupying or performing the duties of the office of the Department specified in Item C1 of the Schedule [Contract Delegate] or any other person specified by the Secretary in writing and notified to the ACC;

Contract Material means, subject to Clause 13 [Contract Material] all Material:

- (a) brought into existence for the purpose of performing ACC Activities;
- (b) brought into existence using Operational Funding;
- (c) incorporated in, supplied or required to be supplied along with the Material referred to in paragraphs (a) or (b); or
- (d) copied or derived from Materials referred to in paragraphs (a) or (b);

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

Department means the Australian Government Department of Transport and Regional Services or such other Australian Government agency as may from time to time administer this Contract on behalf of the Commonwealth;

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 in existence prior to the Date of the Contract:

- (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 Institution means a recognised financial institution such as a bank, building society or credit union operating in Australia

Funding Period means the period from 1 July in the year in which this Contract was signed to 30 June in the year following during which the ACC Activities shall be undertaken (although other obligations stipulated in this Contract subsist beyond the Funding Period);

GST has the same meaning as in the GST Law;

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

GST Law has the same meaning as in the GST Act;

Intellectual Property includes all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, Confidential Information (including trade secrets and know how) and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

Interest as used in Clauses 5 and 6 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;

Key Performance Indicators means the Key Performance Indicators for the period 1 July 2004 to 30 June 2005 as determined by the Department and which forms part of this Contract (Annexure 3);

Liaison Officer means, subject to Clause 36, any person for the time being holding, occupying or performing the duties of the office of the Department specified in the Schedule or any other person specified by the Contract Delegate and notified to the ACC;

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;

Ministerial Statement of Priorities means the priorities identified by the Australian Government Minister for Transport and Regional Services in the "*Ministerial Statement of Priorities*" as set out in the ACC Charter;

National ACC Logo means the Commonwealth's branded logo for the National Network of Area Consultative Committees as amended from time to time;

Nominated Account means a banking account opened with a Financial Institution which has been nominated by the ACC as the account into which Operational Funding shall be paid by the Commonwealth (see Clause 5);

Operational Funding means the amount or amounts payable under this Contract as specified in Item A of the Schedule, including interest earned on that amount (see Clause 5);

Other Funding means financial or in-kind resources (with in-kind resources valued at market rates) other than Operational Funding;

Party means a party to this Contract;

Personal Information means information or an opinion (including information or an opinion forming part of a data base), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

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;

Programme Delegate means the person for the time being holding, occupying or performing the duties of the office of the Department specified in Item C2 of the Schedule [Programme Delegate] or any other person specified by the Secretary in writing and notified to the ACC;

Quality Assurance Assessment means the review of ACC financial and administrative processes and procedures by means of the checklist provided by the Department in May 2004 and amended from time to time;

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

Related entities includes persons of the same immediate family, partners or their immediate family or anyone with whom the person could be considered to have a close personal association;

Report means Activity Material that is provided to the Commonwealth for reporting purposes on matters including the use of Operational Funding, outcomes and evaluation of ACC activities or obligations of this Contract, as stipulated in the Schedule;

Schedule refers to the schedule to this Contract;

Secretary means the person for the time being holding, occupying or performing the duties of the office of Secretary to the Department and includes any other person designated in writing by that person to perform any function or to exercise any of the powers of the Secretary under this Contract; and

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

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

1.2. In this Contract, unless the contrary intention appears:

- (a) words in the singular number include the plural and words in the plural number include the singular; and
- (b) words importing a gender include any other gender; and
- (c) words importing persons include a partnership and a body whether corporate or otherwise; and
- (d) clause headings, words capitalised or in bold format and notes in square brackets (“[]”) are inserted for convenience only, and have no effect in limiting or extending the language of provisions, except for the purpose of rectifying any erroneous cross-reference; and
- (e) all references to clauses or subclauses are to clauses or subclauses in this Contract; and
- (f) all references to dollars are to Australian dollars and this Contract uses Australian currency; and
- (g) 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; 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; and

- (i) the word “including” means “including, but not limited to”.
- 1.3. The Schedule, Annexures and documents incorporated by reference, if any, form part of this Contract. In the event of any conflict or inconsistency between any part of:
- (a) the terms and conditions contained in the clauses of this Contract;
 - (b) the Schedule;
 - (c) the Annexures;
 - (d) documents incorporated by reference, if any;
- then the material mentioned in any one of paragraph (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 the Contract*

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

3. *Payment*

- 3.1. Subject to parliamentary appropriation, and compliance by the ACC with this Contract (including the invoicing requirements, if any, specified in the Schedule), the Commonwealth shall pay Operational Funding to the ACC at the times and in the manner specified in the Schedule.
- 3.2. Any unacquitted Operational Funding under any previous Operational Funding Contract shall be offset against the total amount of Operational Funding payable under this Contract. The amount of unacquitted Operational Funding shall be offset against payment of the second instalment of Operational Funding.
- 3.3. Without limiting its rights, the Commonwealth may withhold, defer or suspend any payment in whole or in part until the ACC has performed its obligations under this Contract or under any previous Operational Funding Contract between the Commonwealth and the ACC.
- 3.4. Any payments under this Contract may be deferred or suspended by the Commonwealth if the ACC has outstanding or unacquitted monies under any arrangement between the Commonwealth as represented by the Department and the ACC. Notwithstanding such suspension or deferral of any payments, the ACC shall continue to perform any obligations under this Contract, unless otherwise agreed with the Commonwealth in writing.
- 3.5. The Commonwealth shall make all payments under this Contract to the ACC by way of electronic funds transfer into an account in the name of the ACC, and which is solely controlled by the ACC, with an authorised deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia (the Nominated Account).
- 3.6. The Commonwealth is not liable to provide any Operational Funding to the ACC under this Contract until after the ACC has provided the following details of the Nominated Account in writing to the Commonwealth:
- (a) the Name and Branch of the Financial Institution;
 - (b) the BSB number of the Financial Institution;
 - (c) the account number; and
 - (d) the account title.

3.7. The ACC shall immediately advise the Commonwealth in writing if any of the details of the Nominated Account change.

4. Taxes, Duties and Government Charges

4.1. Subject to this clause, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Contract must be borne by the ACC.

4.2. The provisions of this Clause in respect of GST apply if the ACC is registered or is required to be registered for GST.

4.3. The Commonwealth is registered in accordance with the GST Act and will notify the ACC of any change in the Commonwealth's GST registration status.

4.4. Operational Funding paid by the Commonwealth under this Contract includes GST for any Taxable Supply made by the ACC under this Contract.

4.5. The ACC shall issue the Commonwealth a tax invoice in accordance with the GST Act in relation to any Taxable Supply by the ACC to the Commonwealth in connection with this Contract prior to payment of Operational Funding by the Commonwealth.

4.6. If the ACC does not quote its ABN on a tax invoice issued under the preceding subclause, the Commonwealth shall withhold a percentage of the amount claimed by the ACC in respect of that tax invoice. The percentage withheld shall be at the rate established by the GST Act.

4.7. If an activity undertaken by the ACC under this Contract is deemed by the GST Act to be a Taxable Supply, the Commonwealth may, by notice in writing to the ACC, require the ACC to pay the Commonwealth, within thirty (30) Business Days of receiving such notice, an amount equal to the amount of GST which is notionally payable by the Commonwealth on the value of that Taxable Supply.

4.8. Operational Funding payable by the Commonwealth to the ACC under this Contract must not include any amount which represents GST paid by the ACC on the ACC's own inputs and for which an input tax credit is available to the ACC.

4.9. If a payment to satisfy a claim or a right to claim under or in connection with this Contract (for example, a claim for damages for breach of the Contract) 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).

4.10. If a Party has a claim under or in connection with this Contract 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).

4.11. Any refund under subclause 4.10 must be inclusive of GST and must be accompanied by an Adjustment Note under the GST Act relating to Taxable Supplies for which the ACC previously issued to the Commonwealth a tax invoice.

4.12. The ACC is aware that, generally:

- (a) Operational Funding received by the ACC is included in the ACC's assessable income if it is received in relation to the carrying on of a business, unless the ACC is specifically exempt from income tax;
- (b) any capital gain on disposal of an Asset is included in the ACC's assessable income, unless the ACC is specifically exempt from income tax;
- (c) the ACC may be required, in respect to ACC Personnel, 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.

5. *Management of Funding*

- 5.1. The ACC shall carry out ACC Activities within the Funding Period and in accordance with this Contract diligently, effectively and to a high professional standard.
- 5.2. Operational Funding shall be expended only for the purposes of supporting ACC Activities and performing obligations under this Contract in accordance with the ACC Budget.
- 5.3. The ACC shall seek approval from the Commonwealth for any significant variation to the ACC Budget. A significant variation is an increase or reduction of a single budget item by \$1,000 or more, or by 5% of that budget item, whichever is the greater. The total amount of transfers in any financial year must not exceed 5% of the ACC Budget
- 5.4. Notwithstanding the previous paragraph, the Commonwealth may, at any time, decrease the limits of the significant variation and/or total amount of transfers referred to in Clause 5.3 by notice to the ACC.
- 5.5. In considering a request to vary the approved ACC Budget, the Commonwealth may request a consolidated income and expenditure statement detailing the ACC's financial position. In approving a budget variation, the Commonwealth may impose terms and conditions, including a variation to the ACC Activities.
- 5.6. The ACC shall ensure that Operational Funding is held in the Nominated Account.
- 5.7. The Nominated Account must be:
 - (a) established solely for the purposes of accounting for, and administering, any Operational Funding provided by the Commonwealth to the ACC under this Contract; and
 - (b) may incorporate sub-accounts for related accounts under this contract (such as the Employee Entitlement Account and/or Asset Replacement Account where these exist) where these sub-accounts are specifically separated from the main Operational Funding account; and
 - (c) separate from all other accounts held by the ACC.
- 5.8. The ACC shall establish an Employee Entitlements account with a Financial Institution and separate from the Nominated Account in accordance with Clause 5.7.(b) for the purposes of holding funds to meet accrued employee liabilities including Long Service Leave.
- 5.9. The ACC shall ensure that two signatories are required to operate the account and that these signatories are approved by the ACC Chair and the committee.
- 5.10. The ACC shall cause to be kept proper Records of its transactions and affairs in relation to use of Operational Funding in accordance with Australian Accounting Standards so that at all times Operational Funding is identifiable and ascertainable. These records must enable:
 - (a) all income and expenditure related to ACC Activities to be identified in the ACC's banking accounts;
 - (b) the preparation of financial statements in accordance with Australian Accounting Standards; and
 - (c) the audit of those accounting records in accordance with Australian Auditing Standards.
- 5.11. The ACC shall do all things necessary to ensure that all payments out of its monies are correctly made and properly authorised and adequate control is maintained over the incurring of liabilities.

- 5.12 Except with the Commonwealth's prior written approval, the ACC shall 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) Operational Funding / Asset Replacement Account / Employee Entitlement Account (where they exist);
 - (b) this Contract or any of the Commonwealth's obligations under this Contract; or
 - (c) any Assets or Intellectual Property Rights in Activity Material.
- 5.13 Any interest earned from a Financial Institution by the ACC on Operational Funding (or its related sub-accounts / separate accounts) shall be used and dealt with by the ACC as if the interest earned were part of Operational Funding.
- 5.14 The ACC may, in expending Operational Funding for the purposes of supporting the ACC, establish an account with a Financial Institution which is separate to the Nominated Account for the purposes of accrued employee entitlements, including long service leave and annual leave not taken in the year it accrues due.
- 5.15 All transfers of Operational Funding into and withdrawals from the account established under the proceeding subclauses shall be made under the authority of the ACC Committee and endorsed by the ACC Chair in accordance with its Constitution.
- 5.16 The Commonwealth is not responsible for the provision of additional money to meet any expenditure in excess of Operational Funding.
- 5.17 The operation of this Clause survives the expiration or earlier termination of the Contract.

6. *Unacquitted Operational Funding*

- 6.1. If, at any time during the Term of the Contract, there remains an amount of Operational Funding that has not been expended in accordance with this Contract or not acquitted to the satisfaction of the Commonwealth, then this amount must be refunded by the ACC to the Commonwealth within thirty (30) Business Days of a written notice from the Commonwealth or, if a different period is stated in the Schedule, that period, or dealt with as directed in writing by the Commonwealth.
- 6.2. If the Commonwealth does not direct otherwise in writing and the amount is not refunded to the Commonwealth within thirty (30) Business Days, Interest will accrue and be payable on the amount after the expiry of the thirty (30) Business Days until the amount is paid in full.
- 6.3. Any amount owed to the Commonwealth under this Clause, and any Interest owed under this Clause, will be recoverable by the Commonwealth as a debt due to the Commonwealth by the ACC without further proof of the debt by the Commonwealth being necessary.
- 6.4. If, at the end of the Funding Period, there remains an amount of Operational Funding that has not been expended in accordance with this Contract or not acquitted to the Commonwealth's satisfaction, then this amount shall be refunded by the ACC to the Commonwealth within thirty (30) Business Days of a written notice from the Commonwealth or dealt with by the ACC as directed in writing by the Commonwealth.
- 6.5. If the amount is not refunded within thirty (30) Business Days or dealt with as otherwise agreed in writing with the Commonwealth, Interest shall accrue and be payable on the amount on a daily compounding basis after the expiry of the thirty (30) Business Days, or the period otherwise agreed.
- 6.6. The obligations under this Clause do not extend to Operational Funding required for expenses incurred during the currency of this Contract and which fall due for payment thereafter (accrued expenditure). For this purpose, accrued expenditure shall include

provision for liabilities in relation to audit and acquittal requirements. If the exact amounts are not known, the amount of accrued expenditure shall be estimated by the ACC as accurately as possible.

7. *Other Funding and Activities*

- 7.1. The ACC shall seek approval from the Commonwealth before undertaking activities other than ACC Activities or entering into contracts with third parties. In granting approval, the Commonwealth may impose terms and conditions, including that the ACC repay to the Commonwealth any Operational Funding utilised on these activities or in fulfilling other contracts.

8. *Assets*

- 8.1. The ACC shall not use Operational Funding to acquire any Asset valued at over \$1,000 without the prior written approval of the Commonwealth. In giving written approval, the Commonwealth may impose such terms and conditions as it deems fit.
- 8.2. Operational Funding shall not be used to purchase or hire purchase motor vehicles either directly, or via the use of salary sacrificing arrangements by the ACC or ACC Personnel. Motor vehicles shall only be acquired under an operating lease.
- 8.3. Any Asset purchased by the ACC wholly or partly with the use of Operational Funding shall be vested in the ACC.
- 8.4. The ACC shall use any Asset in accordance with this Contract and for the purposes of ACC Activities.
- 8.5. Assets valued at over \$1,000 purchased wholly or partly with Operational Funding shall only be disposed of with the prior written approval of the Commonwealth.
- 8.6. In disposing of an Asset, the ACC shall conduct the disposal through a tender process or by acquiring quotes for the sale to achieve a fair market price. Under no circumstances can assets be directly sold to an individual, in particular, the ACC Chairs, members or employees, or to their family members or friends.
- 8.7. Where an Asset purchased wholly or partly with Operational Funding is disposed of during the Term of the Contract, and at the time of the sale or disposal the Asset has not been fully Depreciated, the ACC shall deposit, within twenty (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 into the Nominated Account and bring this amount to account in its financial statements as Operational Funding.
- 8.8. The ACC shall establish an account with a Financial Institution which is separate to the Nominated Account in accordance with Clause 5.7.(b) for the purposes of accruing the financial value of depreciation of the ACC's assets.
- 8.9. The ACC shall:
- (a) not encumber or dispose of any Asset, or deal with or use any Asset other than in accordance with this Clause, without the prior written approval of the Commonwealth;
 - (b) hold all Assets securely and safeguard them against theft, loss, damage, or unauthorised use;
 - (c) maintain all Assets in good working order;
 - (d) if required by law, maintain registration and licensing of all Assets;
 - (e) be fully responsible for, and bear all risks relating to, the use or disposal of all Assets;

- (f) maintain a Register of Assets in the form and containing the details as stipulated in the Schedule;
 - (g) as and when requested by the Commonwealth, provide copies of the Register of Assets to the Commonwealth; and
 - (h) undertake a stocktake of Assets on an annual basis in the form stipulated in the Schedule.
- 8.10. On signing this Contract, the ACC shall provide the Commonwealth with a copy of any Register of Assets kept by the ACC under any previous Operational Funding Contract(s) between the ACC and the Commonwealth.
- 8.11. If any Asset is lost, damaged or destroyed, the ACC shall reinstate the Asset including from the proceeds of the insurance and this clause 8.12 continues to apply to the reinstated Assets. Any surplus from the proceeds of the insurance must be notified to the Commonwealth and used and accounted for as Operational Funding under this Contract.
- 8.12. On the Completion Date or earlier termination of the Term of the Contract, the Commonwealth may require the ACC to deal with the Asset as the Commonwealth may, at its sole discretion, direct in writing.
- 8.13. If, on the Completion Date or earlier termination of the Term of the Contract, an Asset has not been fully Depreciated, the ACC shall pay to the Commonwealth, within twenty (20) Business Days, 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 Operational Funding.
- 8.14. If the ACC fails to make payment as required by either subclauses 8.12 or 8.14:
- (a) the ACC shall pay the Commonwealth 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 the Commonwealth as a debt due to the Commonwealth by the ACC.
- 8.15. The approval of the Commonwealth under subclause 8.1 and paragraph 8.10(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.
- 8.16. The operation of this clause 8 survives the expiration or earlier termination of the Term of the Contract.

9. Records

- 9.1. The ACC shall cause to be kept full and accurate Records of the conduct of ACC Activities including, without limitation, progress against the ACC Business Plan and budget, the receipt and use of Operational Funding and Other Funding (if any), the acquisition of Assets and the creation of Intellectual Property Rights in Activity Material.
- 9.2. The ACC shall implement a records management system that:
- (a) clearly marks and securely stores Commercial-in-Confidence *Regional Partnerships* applications and other confidential material and files;
 - (b) manages the distribution and retrieval of RP applications to ACC Board members (particularly where these are Commercial-in-Confidence);
 - (c) maintains accurate, up-to-date files of all operational documents;
 - (d) maintains secure, separate files for ACC personnel (that contain employment contracts, performance reports and other appropriate material); and

- (e) appropriately disposes of records when the records have ceased to be of current value.
- 9.3. The ACC shall maintain records of vehicle usage consistent with the requirements of the Australian Taxation Office (ATO).
- 9.4. The ACC shall ensure all electronic records are secure and appropriate back up and archival processes are established and maintained for such records.
- 9.5. Records maintained under the preceding subclause shall be retained by the ACC for a period of no less than seven (7) years after the end of the Funding Period.
- 9.6. The operation of this Clause survives the expiration or earlier termination of this Contract.

10. Reporting

- 10.1. The ACC must provide to the Commonwealth progress reports and performance information, at the times and in the manner stated in the Schedule, of the progress of the ACC in undertaking ACC Activities.
- 10.2. Within the period stated in the Schedule after the expiry of the Funding Period or any earlier termination of the Term of the Contract, the ACC must provide the Commonwealth with:
 - (a) an audited detailed statement of receipts and expenditure in respect of Operational Funding, and Other Funding (if any), which must include a definitive statement as to whether the financial accounts are complete and accurate, and a statement of the balance of the Nominated Account;
 - (b) an audited statement that Operational Funding, and Other Funding (if any), was expended for the purpose of ACC Activities and in accordance with this Contract; and
 - (c) a certificate that:
 - (i) all Operational Funding, and Other Funding (if any), received was expended for the purpose of ACC Activities and in accordance with this Contract; and
 - (ii) salaries and allowances paid to persons involved in ACC Activities are in accordance with any applicable award or agreement in force under any relevant law on industrial or workplace relations.
- 10.3. The audits and the certificate referred to in the preceding Clause must also contain the requirements, if any, specified in the Schedule.
- 10.4. Any audit of ACC operations and finances shall be performed:
 - (a) in accordance with Australian Auditing Standards;
 - (b) by a person who is registered as a company auditor or such like under a law in force in the State or Territory in which the ACC is incorporated or principally operates, or, a member of the Institute of Chartered Accountants or of the Australian Society of Certified Practising Accountants; and
 - (c) by a person who is not an ACC Member, or an ACC Personnel or professionally associated with the ACC or a Related Entity of an ACC Member or an ACC Personnel.
- 10.5. Any audited reports or financial statements provided by the ACC to the Commonwealth shall be accompanied by:
 - (a) a Statement of Certification from the auditor addressed to the Commonwealth and a description of the auditing standards applied for the audit;
 - (b) a letter outlining the auditing standards applied in undertaking the audit;
 - (c) a definitive statement certifying that the financial accounts are true and correct; and

(d) signed by the ACC Chair.

- 10.6. The Commonwealth may from time to time request that the ACC provide additional reports of performance against the outcomes specified in the ACC Business Plan. A request for additional reports shall be made in writing by the Commonwealth, specifying the format and due date for the report. Additional reports provided shall be endorsed by the ACC Committee and certified as correct by the ACC Chair.
- 10.7. The Commonwealth may at any time request a consolidated, audited income and expenditure statement and balance sheet from the ACC which details the ACC's financial position.
- 10.8. The operation of this Clause survives the expiration or earlier termination of the Term of the Contract.

11. ACC Corporate Governance

- 11.1. The ACC shall adopt sound internal procedures and policies to ensure that it consistently meets its obligations under this Contract.
- 11.2. The ACC shall ensure it maintains a documented risk management plan that complies with the *Australian Risk Management Standard (AS/NZ 4360:1999)* (the ACC Risk Management Plan).

12. Commonwealth Material

- 12.1. Ownership of all Commonwealth Material, including Intellectual Property Rights in that Material remains vested at all times in the Commonwealth.
- 12.2. The Commonwealth grants the ACC licence to use, copy and reproduce Commonwealth Material only for the purposes of this Contract and in accordance with any conditions or restrictions specified in the Schedule or notified to the ACC in writing by the Commonwealth.
- 12.3. The ACC shall keep safely and maintain all Commonwealth Material the ACC has been given for the purposes of this Contract.
- 12.4. Upon the expiration or earlier termination of this Contract, the ACC shall return to the Commonwealth all Commonwealth Material remaining in its possession.

13. Contract Material

- 13.1. Ownership of all Contract Material vests, upon creation, in the Commonwealth.
- 13.2. The Commonwealth hereby grants to the ACC a perpetual royalty free non-exclusive licence (including a right of sub-licence) to use and exploit throughout the world any intellectual property and any material generated by the ACC in the course of ACC Activities funded under this Contract.
- 13.3. The Commonwealth reserves the right to attach conditions to, or restrictions upon the ACC's use of Contract Material. The Commonwealth shall notify the ACC of any such conditions or restrictions upon the use of Contract Material.

14. Intellectual Property Rights

- 14.1. Intellectual Property in all Contract Material vests immediately in the Commonwealth.
- 14.2. The ACC shall at all times indemnify and hold harmless the Commonwealth, its officers, employees and agents (in this Clause referred to as 'those indemnified') from and against any loss (including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by any of those indemnified arising from any claim, suit, demand,

action or proceeding by any person in respect of any infringement of Intellectual Property rights by the ACC or ACC Personnel in the course of, or incidental to, performing the ACC's Activities; or the use by the Commonwealth of the Contract Material.

- 14.3. The indemnity referred to in Clause 14.2 shall survive the expiration or termination of this Contract.

15. Disclosure of Information

- 15.1. The ACC acknowledges that the Commonwealth may be required to provide information in relation to Operational Funding or this, as required by the operation of any law, judicial or parliamentary body or governmental agency and accordingly it can give no undertakings to treat any of the ACC's information or this Contract as confidential information.
- 15.2. The ACC shall not, without the prior written approval of the Commonwealth, disclose to any person other than the Commonwealth, any Confidential Information contained in Commonwealth Material or Contract Material. In giving written approval the Commonwealth may impose such terms and conditions as it deems fit.
- 15.3. The ACC shall give the Commonwealth written notice within three days if the ACC receives a request for access to or copies of information or documents forming part of the Confidential Information, Contract Material or Commonwealth Material.
- 15.4. The Commonwealth may at any time require the ACC to give and to arrange for its Members and ACC Personnel engaged in the performance of the ACC's Activities to give written undertakings, in a form required by the Commonwealth, relating to the non-disclosure of such Confidential Information. The ACC shall promptly arrange for all such undertakings to be given.
- 15.5. The obligation on the ACC under this Clause shall not be taken to have been breached where the information referred to is legally required to be disclosed.
- 15.6. This Clause survives the expiration or termination of this Contract.

16. Protection of Personal Information

- 16.1. The ACC agrees to:
- (a) use Personal Information held or controlled by it for the purposes of this Contract only for the purposes for which it is collected and for fulfilling its obligations under this Contract;
 - (b) take all reasonable measures to ensure that Personal Information in the ACC's possession or control in connection with this Contract is protected against loss and unauthorised access, use, modification, or disclosure;
 - (c) comply, and ensure that any subcontractors also comply, with the Information Privacy Principles (IPPs) contained in section 14 of the *Privacy Act 1988* and National Privacy Principles (NPPs) 7, 8, and 10 to the extent that the content of those principles apply to the types of activities the ACC and any subcontractors, are undertaking under this Contract, as if the ACC, and any subcontractors, were (in respect to the IPPs) an "agency", or (in respect to NPPs 7, 8 and 10) an "organisation" as defined in the *Privacy Act*;
 - (d) notify the Commonwealth in writing of any breach of the IPPs by the ACC or any of its subcontractors;
 - (e) cooperate with any reasonable demands or inquiries made by the Commonwealth on the basis of the exercise of the functions of the Privacy Commissioner under the *Privacy Act* including a request from the Commonwealth to comply with a guideline concerning the handling of Personal Information;

- (f) ensure that any person who has an access level which would enable them to obtain access to any Personal Information is made aware of, and undertakes in writing, to observe the IPPs and other obligations referred to in this Clause;
- (g) comply, as far as practicable, with any policy guidelines laid down by the Commonwealth or issued by the Privacy Commissioner from time to time relating to the handling of Personal Information;
- (h) comply with any direction by the Commonwealth to observe any recommendation of the Privacy Commissioner relating to any of the ACC's acts or practices that the Privacy Commissioner considers to be in breach of the obligations in this Clause;
- (i) not transfer Personal Information held in connection with this Contract outside Australia, or allow parties outside Australia to have access to it, without the Commonwealth's prior written approval;
- (j) ensure that any record (as defined in the *Privacy Act*) containing Personal Information held in connection with this Contract is, at the expiration or earlier termination of this Contract, retained by the ACC and dealt with in accordance with the *Privacy Act*; and
- (k) indemnify the Commonwealth for:
 - (i) any loss, liability, or expense suffered or incurred by the Commonwealth arising out of or in connection with a breach of the ACC's obligations under this Clause; or
 - (ii) any misuse of Personal Information by the ACC; or
 - (iii) any disclosure by the ACC in breach of an obligation of confidence whether arising under the *Privacy Act* or otherwise.

16.2. The ACC shall not use or disclose Personal Information collected under this Contract for direct marketing.

16.3. If a person asks either the ACC or the Commonwealth to be informed of the content of provisions of this Contract that are inconsistent with an approved privacy code binding on the ACC or with a NPP, the Party requested shall inform the person in writing of that content.

16.4. An act done or practice engaged in by the ACC or a subcontractor for the purposes of meeting (directly or indirectly) an obligation under this Contract:

- (a) is authorised by this Clause even if the act or practice is inconsistent with a NPP or an approved privacy code that applies to the ACC or the subcontractor; and
- (b) is subject to the other obligations in this Clause.

16.5. The operation of this Clause survives the expiration or earlier termination of this Contract.

16.6. For the avoidance of doubt, any reference to an ACC's subcontractor in this Clause is not intended to alter the meaning of "ACC" or "ACC Personnel" as defined in Clause 1.

17. Indemnity

17.1. The ACC shall indemnify (and keep indemnified) the Commonwealth, its officers, employees and agents against any:

- (a) loss or liability incurred by the Commonwealth;
- (b) loss of or damage to Commonwealth property; or
- (c) loss or expense incurred by the Commonwealth in dealing with any claim against the Commonwealth, including legal costs and expenses on a solicitor/own client basis and a cost of time spent, resources used, or disbursements paid by the Commonwealth;

arising from:

- (d) any act or omission by the ACC, an ACC Member or any ACC Personnel, or any ACC agents, volunteers or subcontractors in connection with this Contract, 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 the ACC of its obligations or warranties under this Contract;
 - (f) the use of Assets; or
 - (g) the use by the Commonwealth 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.
- 17.2. The ACC's liability to indemnify the Commonwealth under Clause 17.1 shall be reduced proportionally to the extent that any act or omission on the part of the Commonwealth or its employees or agents contributed to the relevant loss, damage, expense or liability.
- 17.3. The Commonwealth's right to indemnified under this Clause is in addition to, and not exclusive of, any other right, power, or remedy provided by law, but the Commonwealth is not entitled to be compensated in excess of the amount of the relevant liability, damage, loss or expense.
- 17.4. In this Clause "fault" means any negligent or unlawful actor or omission or wilful misconduct.
- 17.5. The operation of this Clause shall survive the expiration or earlier termination of this Contract.

18. Insurance

- 18.1. The Commonwealth shall maintain insurance for the ACC to cover the following:
- (a) Not for Profit Organisation Liability Insurance (includes cover for 'wrongful act', 'employment practices' and 'personal injury or publishers liability' to a limit of \$10,000,000 for each claim);
 - (b) Personal Accident Insurance (covers ACC Committee members whilst undertaking ACC activities including travel to and from meetings); and
 - (c) Personal Injury / Property Damage / Advertising Liability Insurance (coverage of up to \$10,000,000 for each claim).
- 18.2. To obtain the benefit of the above insurance cover the ACC shall provide the Commonwealth with a record of its Members and Personnel, including dates that ACC Members and ACC Personnel join and leave the ACC. The ACC shall immediately advise the Commonwealth of any changes to ACC Members and ACC Personnel when they occur.
- 18.3. The ACC shall, for as long as any obligations remain in connection with this Contract, maintain insurance as specified in the Schedule.
- 18.4. Wherever requested, the ACC shall provide the Commonwealth, within ten (10) Business Days, with a copy of any insurance policy affected in accordance with its obligations to insure and a certificate of currency of such insurance.
- 18.5. The operation of this Clause survives the expiration or earlier termination of this Contract.

19. Conflict of Interest

- 19.1. The ACC warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Contract no Conflict exists or is likely to arise in the performance of its obligations under this Contract by itself or by any ACC Member or ACC Personnel.
- 19.2. Without limiting the operation of this Clause, the ACC must, during the Term of the Contract, ensure that no Conflict arises through the ACC's involvement with the parties or programmes, if any, specified in the Schedule.
- 19.3. If during the term of the Contract an actual or perceived conflict of interest arises, or appears to either of the Parties likely to arise, the ACC shall:
 - (a) immediately notify the Commonwealth in writing and of the steps the ACC proposes to take to resolve or otherwise deal with the Conflict;
 - (b) make full disclosure to the Commonwealth of all relevant information relating to the conflict;
 - (c) take such steps as the Commonwealth may, if it chooses, reasonably require to resolve or otherwise deal with the conflict; and
 - (d) maintain detailed, readily accessible documentation of the report of the conflict as well as all action taken to resolve or otherwise to deal with the conflict.
- 19.4. The premises and Assets of the ACC shall not be used for political purposes or activities. This includes the physical or electronic display of political materials.
- 19.5. The ACC shall establish internal procedures to assess and address actual and perceived conflicts of interest.
- 19.6. Conflict of interest shall be a standing item for all formal ACC Committee and sub-committee meetings.
- 19.7. Where a conflict of interest arises or is perceived to arise, the Secretary may investigate the circumstances of the conflict and determine and action to be undertaken to address the conflict as he or she deems appropriate.
- 19.8. If the ACC fails to notify the Commonwealth under this Clause, or is unable or unwilling to resolve or deal with the conflict as required, the Commonwealth may terminate the Contract in accordance with Clause 23 [Termination for Default] or Clause 25.10 and 25.11 in the case of ACC Personnel.

20. Access to Premises and Records

- 20.1. Without derogating from any other right under this Contract, the ACC shall at all reasonable times give Access Officers access to premises:
 - (a) occupied by the ACC;
 - (b) at which Contract Material or Assets are located;
 - (c) at which accounts, records or documents relating to this Contract are located; or
 - (d) at which work under this Contract is or has been undertaken;and shall permit the Access Officers to:
 - (d) inspect any Commonwealth Material, Contract Material or Asset; and
 - (e) inspect and copy accounts, Records or documents, however stored, in the custody or under the control of the ACC which relate to this Contract, whether directly or indirectly.

- 20.2. The rights referred to in Clause 20.1 are subject to the provision of reasonable prior notice by the person seeking to exercise those rights, except where the person reasonably believes that there is an actual or apprehended breach of the law.
- 20.3. In the event that the premises referred to in Clause 20.1 above are not controlled by the ACC, the ACC shall, forthwith upon receipt of a request for access, take all reasonable steps to:
- (a) arrange for access to those premises to be given to the Access Officer who gave notice under Clause 20.2; or
 - (b) remove the Contract Material, Assets, accounts, records or documents from those premises and move them to other premises controlled by the ACC and advise the Access Officer who gave notice under Clause 20.2 accordingly and who shall forthwith be entitled to exercise the rights set out in Clause 20.1 without the giving of any further notice to the ACC.
- 20.4. The requirement for access as specified in Clause 20.1 does not reduce the ACC's responsibility to perform its obligations in accordance with this Contract.
- 20.5. An Access Officer may, at reasonable times and on giving reasonable notice to the ACC, require the ACC to provide Records and information relating to this Contract, for the purpose of monitoring and evaluating the Contract or the programme under which the ACC has been funded.
- 20.6. The Auditor-General may, at reasonable times and on giving reasonable notice to the ACC, require the ACC to provide Records and information relating to this Contract, for the purpose of performing the Auditor-General's statutory functions.
- 20.7. In any subcontract entered into for the purposes of this Contract the ACC shall ensure that the Access Officers are given the same rights in respect of the subcontract as are given by the ACC to the Commonwealth under this Clause and, if necessary, shall enforce those rights as contained in the subcontract against the subcontractor for the benefit of the Commonwealth.
- 20.8. This Clause applies for the duration of the Funding Period and for a period of seven (7) years from the date of expiration or earlier termination of the Funding Period.

21. Delay

- 21.1. The ACC must take all reasonable steps to minimise delay in completion of ACC Activities.
- 21.2. If the ACC becomes aware that the ACC will be delayed in progressing or completing the ACC Activities in accordance with this Contract, the ACC must immediately notify the Commonwealth in writing of the cause and nature of the delay. The ACC shall detail in the notice the steps the ACC shall take to contain the delay.
- 21.3. On receipt of a notice of delay, the Commonwealth may at its discretion:
- (a) notify the ACC in writing of a period of extension to complete the ACC Activities and vary this Contract accordingly;
 - (b) notify the ACC in writing of reduction in the scope of the ACC Activities and any adjustment to Operational Funding for the ACC to complete the reduced ACC Activities and vary this Contract accordingly; or
 - (c) terminate this Contract under Clause 23 [Termination for Default] or take such other steps as are available under this Contract.

21.4. Unless the Commonwealth takes action under subclause 21.3, the ACC is required to comply with the time frame for progressing and completing the ACC Activities as set out in this Contract.

22. Termination with Costs

22.1. The Commonwealth may, at any time by written notice, terminate or reduce the scope of this Contract without prejudice to the rights, liabilities or obligations of either Party accruing prior to the date of termination. If this Contract is so terminated or reduced in scope, the Commonwealth shall be liable only for:

- (a) payments under the payment provisions of this Contract that were due before the effective date of termination; and
- (b) subject to Clauses 22.3(a) and 22.3(b), any reasonable costs incurred by the ACC and directly attributable to the termination or partial termination of this Contract.

22.2. Upon receipt of a notice of termination or reduction in scope the ACC shall:

- (a) stop or reduce activities under this Contract as specified in the notice;
- (b) take all available steps to minimise loss, costs and expenses arising from the termination or reduction in scope contained in the notice and to protect Commonwealth Material and Contract Material;
- (c) continue work on any part of its activities not affected by the notice; and
- (d) immediately return to the Commonwealth any Operational Funding in accordance with paragraph (a) or deal with any such Operational Funding as the Commonwealth may direct in writing.

22.3. Where the Commonwealth terminates this Contract under Clause 22.1, the Commonwealth:

- (a) shall not be obliged to pay the ACC any outstanding amount of Operational Funding except to the extent that those monies have been legally committed for expenditure by the ACC in accordance with this Contract and payable by the ACC as a current liability (written evidence of which shall be required) by the date that the notice of termination given under Clause 22.1 is deemed to be received in accordance with Clause 37 [Notices]; and
- (b) shall be entitled to recover from the ACC any part of Operational Funding which:
 - (i) has not been legally committed for expenditure by the ACC in accordance with this Contract and payable by the ACC as a current liability (written evidence of which shall be required) by the date that the notice of termination given under Clause 22.1 is deemed to be received in accordance with Clause 37 [Notices]; or
 - (ii) has not, in the Commonwealth's opinion, been expended by the ACC in accordance with the terms and conditions of this Contract;

and all such Operational Funding shall be regarded as a debt due to the Commonwealth capable of being recovered as such in any court of competent jurisdiction.

22.4. The Commonwealth's ability to pay any compensation under or in relation to this Clause is subject to:

- (a) strict compliance by the ACC with this Clause; and
- (b) substantiation by the ACC of any amount claimed under paragraph 22.1(b).

22.5. In the event of reduction in scope of the obligations under this Contract, the Commonwealth's liability to pay any part of Operational Funding under the Schedule shall,

in the absence of agreement to the contrary, abate proportionately to the reduction in the obligations under this Contract.

- 22.6. The Commonwealth shall not be liable to pay compensation in an amount which would, in addition to any amounts paid or due, or becoming due, to the ACC under this Contract, together exceed the fees set out in the Schedule.
- 22.7. The Commonwealth shall not be liable to pay compensation for loss of prospective profits for a termination or reduction in scope of the Contract or loss of any benefits that would have been conferred on the ACC had the termination or reduction not occurred.

23. *Termination for Default*

23.1. If:

- (a) the ACC fails to fulfil, or is in breach of any of its obligations under this Contract, and does not rectify the omission or breach after receiving ten (10) Business Days notice in writing from the Commonwealth to do so;
- (b) the ACC fails to comply with its obligations in Clause 32.2;
- (c) the ACC fails to comply with its obligations in Clauses 19.8;
- (d) the ACC is unable to pay all its debts as and when they become due and payable;
- (e) proceedings are initiated with a view to obtaining an order for the ACC's winding up, or the ACC, an ACC Member or any ACC Personnel convenes a meeting for the purpose of considering or passing of any resolution for the ACC's winding up;
- (f) the ACC comes under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001*, or an order has been made for the purpose of placing the ACC under external administration;
- (g) The official responsible for the administration of the law under which the ACC was incorporated (or their delegate) serves notice on the ACC of their intention to cancel the incorporation of the ACC;
- (h) in relation to this Contract the ACC breaches any law of the Commonwealth, or of a State or Territory;
- (i) the ACC ceases to carry on business; or
- (j) the Commonwealth is satisfied that any statement made in the ACC's application for Operational Funding is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve Operational Funding,

then, in the case of any one or more of these events, the Commonwealth may immediately terminate this Contract by giving written notice to the ACC of the termination.

23.2. Where the Commonwealth terminates this Contract under Clause 23, the Commonwealth:

- (a) shall not be obliged to pay the ACC any outstanding amount of Operational Funding except to the extent that those monies have been legally committed for expenditure by the ACC in accordance with this Contract and payable by the ACC as a current liability (written evidence of which shall be required) by the date that the notice of termination given under Clause 23 is deemed to be received in accordance with Clause 37 [Notices]; and
- (b) shall be entitled to recover from the ACC any part of Operational Funding which:
 - (i) has not been legally committed for expenditure by the ACC in accordance with this Contract and payable by the ACC as a current liability (written evidence of which shall be required) by the date that the notice of termination given under Clause 23 is deemed to be received in accordance with Clause 37 [Notices]; or

(ii) has not, in the Commonwealth's opinion, been expended by the ACC in accordance with the terms and conditions of this Contract;

and all such Operational Funding shall be regarded as a debt due to the Commonwealth capable of being recovered as such in any court of competent jurisdiction.

- 23.3. If the ACC does not repay the Commonwealth the amount referred to in paragraph 23.2(b) within ten (10) Business Days of receipt of the notice of termination the ACC shall also pay the Commonwealth Interest on the outstanding amount which the ACC acknowledges represents a reasonable pre-estimate of the loss incurred by the Commonwealth 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 shall be recoverable by the Commonwealth as a debt due to the Commonwealth by the ACC.
- 23.4. Clauses 23.2 and 23.3 do not limit or exclude any of the Commonwealth's other rights, including the right to recover any other amounts from the ACC on termination of the Contract.

24. *Acknowledgment and Publicity*

- 24.1. The ACC shall, in all publications, promotional and advertising materials, public announcements and ACC Activities, or any products, processes or inventions developed as a result of ACC Activities, acknowledge the financial and other support the ACC has received from the Commonwealth, in the manner specified in the Schedule.
- 24.2. Unless otherwise agreed with the Commonwealth, the ACC shall seek Commonwealth approval of all publications, promotional and advertising materials, public announcements and publicity, announcements and media releases by the ACC before release to the media or public.
- 24.3. The ACC shall seek Commonwealth approval in relation to and prior to any launches or openings by the ACC.
- 24.4. The ACC shall notify the Commonwealth, at the earliest possible date, of all requests for Ministerial or Australian Government representation at launches and functions held by the ACC.
- 24.5. The ACC shall maintain a public web site for the ACC which includes:
- (a) information about the role and activities of the ACC;
 - (b) contact details for the ACC;
 - (c) a link to the Australian Government web site on the National Network of Area Consultative Committees at www.acc.gov.au; and
 - (d) a copy of the ACC Strategic Regional Plan.
- 24.6. The Commonwealth reserves the right to publicise and report on the awarding of Operational Funding to the ACC.
- 24.7. This Clause applies for the Funding Period and for a period of seven (7) years from the date of expiration or earlier termination of this Contract.

25. *ACC Personnel*

- 25.1. The ACC shall employ an Executive Officer to manage the day-to-day administration of the ACC (the ACC Executive Officer). The selection of such staff shall be based on principles of merit and equal opportunity and undertaken in a fair and transparent process.

The ACC Executive Officer shall take direction from and be directly responsible to the ACC Chair.

- 25.2. The ACC shall employ additional staff as required to support the ACC Executive Officer in the administration of the ACC. The selection of such staff shall be based on principles of merit and equal opportunity and undertaken in a fair and transparent process.
- 25.3. The ACC shall engage ACC Personnel under a formal employment contract which has been developed independently of the ACC employee and endorsed by the ACC Chair and Committee (for example, by an independent organisation such as the Office of the Employment Advocate, an employment expert or an Industrial Relations Consultant, or as agreed by the Department). The employment contract shall:
 - (a) include a clear job description and comprehensive statement of duties;
 - (b) clearly specify the conditions of employment;
 - (c) clearly identify the lines of reporting to the ACC Committee (through the ACC Chair as the employer);
 - (d) include regular performance assessments (at least every six months) that outline the details of the performance measures to be assessed;
 - (f) be endorsed by the ACC Committee; and
 - (g) be signed by the ACC Chair and the employee.
- 25.4. The contract period for employment of all ACC Personnel shall remain consistent with the Funding Period.
- 25.5. Increases in remuneration for ACC Personnel shall be clearly linked to performance assessments.
- 25.6. The ACC shall undertake regular performance assessments of all ACC Personnel (at least on a six monthly basis).
- 25.7. The ACC shall ensure that ACC Personnel undertake their duties in accordance with the terms of this Contract. An induction kit, which includes a copy of the employment contract and ACC Charter, shall be provided to all ACC Personnel upon commencement of employment with the ACC.
- 25.8. The ACC shall maintain and apply sound grievance procedures which are open and accessible to all ACC Personnel.
- 25.9. The ACC shall meet its legal obligations as an employer.
- 25.10. The Commonwealth may, at its absolute discretion, give notice requiring the ACC to remove personnel from activities relating to this Contract. The ACC shall, at its own cost, promptly arrange for:
 - (a) the removal of such personnel from those activities; and
 - (b) their replacement with personnel acceptable to the Commonwealth.
- 25.11. If the ACC is unable to provide acceptable replacement personnel the Commonwealth may terminate this Contract in accordance with the provisions of Clause 23 [Termination for Default].

26. *Subcontracting*

- 26.1. The ACC shall not, without the Commonwealth's prior written approval, subcontract the performance of any part of ACC Activities or replace an existing subcontractor without the prior written approval of the Commonwealth. In granting written approval, the Commonwealth may impose such terms and conditions as it deems fit.

- 26.2. The ACC shall engage a subcontractor under a formal contract. The contract shall:
- (a) include a clear statement of services to be performed;
 - (b) clearly specify the deliverables and obligations of the subcontractor;
 - (c) outline the supervision and reporting arrangements for the subcontractor;
 - (e) be endorsed by the ACC Committee and Chair.
- 26.3. The ACC is fully responsible for the performance of its obligations under this Contract, even though the ACC may have subcontracted any part of them.
- 26.4. Despite any approval given by the Commonwealth under this Clause, the ACC is responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that such work meets the requirements of this Contract.
- 26.5. Upon receipt of a written notice from the Commonwealth revoking its approval of a subcontractor, the ACC shall, as soon as practicable (or as the Commonwealth may direct in its notice) and at its own cost, cease using that subcontractor to perform any part of the ACC's obligations unless the Commonwealth directs that the subcontractor be replaced immediately, in which case the ACC shall comply with the direction.
- 26.6. If the Commonwealth withdraws its approval of a subcontractor, the ACC remains liable under this Contract for the past acts or omissions of the ACC's subcontractors as if they were current subcontractors.
- 26.7. The ACC shall, in any subcontract entered into with a subcontractor for the purposes of carrying out the ACC Activities, reserve a right of termination to take account of the Commonwealth's right of termination under Clause 22 [Termination with Costs] or Clause 23 [Termination for Default], and the ACC shall, where appropriate, make use of those rights in the event of a termination by the Commonwealth.
- 26.8. The ACC shall not enter into a subcontract under this Contract with a subcontractor named by the Director of the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the *Equal Opportunity for Women in the Workplace Act 1999* (Cth).

27. Compliance with Laws and Commonwealth Policies

- 27.1. The ACC shall, in carrying out the obligations under this Contract, 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 the Schedule. The ACC notes that giving false or misleading information is a serious offence under section 137.1 of the *Criminal Code Act 1995* (Cth).
- 27.2. The ACC shall, in carrying out the obligations under this Contract, comply with any Commonwealth policies as notified by the Commonwealth to the ACC in writing, including those listed in the Schedule.
- 27.3. The ACC shall, when using the Commonwealth's premises or facilities, comply with all reasonable directions and procedures relating to occupational health (including the Commonwealth's smoke free work place policy), safety and security in effect at those premises or in regard to those facilities, as notified by the Commonwealth or as might reasonably be inferred from the use to which the premises or facilities are being put.

28. Negation of Relationship of employment, partnership and agency

- 28.1. The ACC, ACC Members, ACC Personnel, partners and agents shall not, by virtue of this Contract, be or for any purpose be deemed to be legal employees, partners or agents of the Commonwealth.

- 28.2. The ACC shall not represent itself as being the partner or agent of the Commonwealth and shall ensure that ACC Members, ACC Personnel, partners and agents of the ACC do not represent themselves as being employees, partners or agents of the Commonwealth.

29. *Entire Agreement, Variation and Severance*

- 29.1. This Contract records the entire agreement between the ACC and the Commonwealth in relation to its subject matter.
- 29.2. Except for action the Commonwealth is expressly authorised to take elsewhere in this Contract, no variation of this Contract is binding unless it is agreed in writing and signed by both the ACC and the Commonwealth.
- 29.3. Any reading down or severance of a particular provision does not affect the other provisions of this Contract.

30. *Waiver*

- 30.1. If either the ACC or the Commonwealth do not exercise (or delay in exercising) any of their respective rights, that failure or delay does not operate as a waiver of those rights.
- 30.2. A single or partial exercise by the ACC or the Commonwealth of any of their respective rights does not prevent the further exercise of any right.
- 30.3. Waiver of any provision of, or right under, this Contract:
- (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.
- 30.4. In this Clause ‘rights’ means rights or remedies provided by this Contract or at law.

31. *Assignment and Novation*

- 31.1. The ACC shall not assign its rights under this Contract without prior written approval from the Commonwealth.
- 31.2. The ACC agrees not to enter into negotiations with any other person for the purposes of entering into an arrangement that shall require novation of this Contract without first consulting the Commonwealth.

32. *Incorporation*

- 32.1. The ACC warrants that it is, and will remain, incorporated under the relevant legislation of the ACC’s State/Territory and that its Constitution is not, and shall not become, inconsistent with this Contract.
- 32.2. The ACC shall obtain the Commonwealth’s written approval to any amendments to its Constitution which may directly or indirectly affect its eligibility for Operational Funding or its capacity to comply with this Contract. If the ACC alters its Constitution in breach of this Clause the Commonwealth may terminate this agreement under paragraph 23.1(b) [Termination for Default].
- 32.3. Copies of the original Rules of Incorporation and any subsequent amendments must be provided to the Commonwealth.

33. *Funding Precondition*

- 33.1. The ACC agrees that it is a precondition of entitlement to Operational Funding that the ACC must:

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

34. *Dispute Resolution*

- 34.1. Subject to subclause 34.3, both Parties shall not commence any legal proceedings in respect of any dispute arising under this Contract, which cannot be resolved by discussion, until the procedure provided by this Clause has been utilised.
- 34.2. Any dispute arising during the course of this Contract shall be dealt with as follows:
- (a) the Party claiming that there is a dispute shall send the other a written notice setting out the nature of the dispute;
 - (b) the Parties shall try to resolve the dispute through direct negotiation by persons who they have given authority to resolve the dispute;
 - (c) the Parties have ten (10) Business Days from the sending 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 fifteen (15) Business Days of the submission, or such extended time as the Parties may agree in writing before the expiration of fifteen (15) Business Days,then either Party may commence legal proceedings.
- 34.3. This Clause does not apply to the following circumstances:
- (a) either Party commences legal proceedings for urgent interlocutory relief;
 - (b) action by the Commonwealth under or purportedly under Clauses 3 [Payment], 20 [Access to Premises and Records], 22 [Termination with Costs] or 23 [Termination for Default]; or
 - (c) an authority of the Commonwealth, State or Territory is investigating a breach or suspected breach of the law by the ACC.
- 34.4. Despite the existence of a dispute, both Parties shall (unless requested in writing by the other Party not to do so) continue to perform obligations under this Contract.
- 34.5. The operation of this Clause survives the expiration or earlier termination of this Contract.

35. *Applicable Law and Jurisdiction*

- 35.1. The laws of the Australian Capital Territory apply to this Contract.
- 35.2. Both Parties shall submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect to any dispute under this Contract.

36. Liaison

- 36.1. The ACC shall:
- (a) provide information to the Commonwealth as reasonably required by the Commonwealth during the period of this Contract;
 - (b) comply with all of the Commonwealth's reasonable requests, directions and monitoring requirements.
- 36.2. The ACC shall liaise with and report to the Commonwealth as reasonably required by the Commonwealth during the period of this Contract through the Liaison Officer nominated in the Schedule. In the absence of the Liaison Officer, the ACC shall direct all communications with the Commonwealth to the Contract Delegate, unless otherwise directed by the Commonwealth. For the purposes of this subclause "communications" includes all reports or requests required or contemplated by this Contract.
- 36.3. The ACC shall provide the Commonwealth with a written copy of all Notices of Meetings, Agendas, Minutes of ACC meetings (including Reports and Financial Statements). The financial report for ACC meetings is to include Year-to-Date expenditure against the ACC budget and a report on the ACC's progress against the Key Performance Indicators. The Commonwealth is to be invited to any ACC meetings where issues relating to Operational Funding are likely to be either directly or indirectly discussed.
- 36.4. The ACC may nominate, from time to time, a person who has authority to receive and sign notices and written communications for the ACC under this Contract and accept any request or direction in relation to ACC Activities.
- 36.5. The ACC shall maintain an email address for Electronic Communication with the Commonwealth.

37. Notices

- 37.1. A Party giving notice or notifying under this Contract shall 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 address details of both Parties are specified in the Schedule. A notice given in accordance with the preceding subclause is taken to be received:
- (a) if hand delivered, on delivery;
 - (b) if sent by pre-paid post, five (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).

THE SCHEDULE

A *Operational Funding Payment Procedures*

A.1 *Operational Funding*

The total Operational Funding for *Funding Period* is \$*Amount*. This includes 10% for the GST.

A.2 *First Instalment*

The first instalment of Operational Funding shall be equal to 50% of the total Operational Funding.

The first instalment shall be paid upon signing subject to the terms and conditions of this Contract.

A.3 *Second Instalment*

The second instalment of Operational Funding shall be equal to 50% of the total Operational Funding less any unacquired Operational Funding under any previous Operational Funding Contract between the ACC and the Commonwealth.

The second instalment shall be paid no earlier than 1 January 2005 and subject to the terms and conditions of this Contract.

B *Invoicing Procedures*

Invoicing Requirements other than under Clause 4 in this Contract

C. *Report Requirements*

C.1 *Final Report*

The ACC shall provide the Commonwealth with a written Final Report which shall:

- (a) include an assessment of actual outcomes achieved against the desired outcomes stated in the ACC Business Plan and ACC Strategic Regional Plan;
- (b) be endorsed by the ACC Committee; and
- (c) be certified as correct by the ACC Chair.

The ACC shall provide the Final Report to the Commonwealth following the expiration of the Funding Period and before 31 August 2005.

C.2 *Quarterly Reports*

The ACC shall provide the Commonwealth with written Quarterly Reports which shall:

- (a) include an assessment of actual outcomes achieved against the desired outcomes stated in the ACC Business Plan and ACC Strategic Regional Plan;
- (b) include a summary of expenditure of Operational Funding to date, compared with projected year-to-date and projected annual expenditure, with explanations for any significant variations from the projected expenditure as stated in the ACC Business Plan;
- (c) be endorsed by the ACC Committee; and
- (d) be certified as correct by the ACC Chair.

The ACC shall provide a Quarterly Report to the Commonwealth on the 10th day of October, January and April of the financial year in which this Contract applies.

OR

C.2 *Six Monthly Report*

The ACC shall provide the Commonwealth with a written Half-Year Report which shall:

- (a) include an assessment of actual outcomes achieved against the desired outcomes stated in the ACC Business Plan and ACC Strategic Regional Plan;
- (b) include a summary of expenditure of Operational Funding to date, compared with projected year-to-date and projected annual expenditure, with explanations for any significant variations from the projected expenditure as stated in the ACC Business Plan;
- (c) be endorsed by the ACC Committee; and
- (d) be certified as correct by the ACC Chair.

The ACC shall provide the Half-Year Report to the Commonwealth on the 10th day of January of the financial year in which this Contract applies.

C.3 *ACC meeting reports and papers*

The ACC shall provide copies of all reports and additional papers to the Regional Office for ACC meetings in a timely manner / with adequate notice. The financial report for ACC meetings is to include Year-to-Date expenditure against the ACC budget and a report on the ACC's progress against the Key Performance Indicators.

C.4 *Acquittal*

The ACC shall provide the Commonwealth with an audited acquittal report of Operational Funding following the expiration of the Funding Period and before 31 August 2005.

C.5 *Quality Assurance Assessment*

The ACC shall conduct a Quality Assurance Assessment of its operations each year against the Department's Quality Assurance Assessment Checklist (provided in May 2004) and as amended from time to time.

The ACC shall provide a report on the findings to the Regional Manager in November each year against the Quality Assurance Assessment Checklist. This report is to be endorsed by the ACC Committee.

Every two years the ACC shall engage an independent person or agency (agreed to in writing by the Department) to conduct the Quality Assurance Assessment of the ACC and to report to the Regional Manager on the findings. This report is to be endorsed by the ACC Committee.

Where a Quality Assurance Assessment Report recommends action on the part of the ACC, the ACC is responsible for implementing these recommendations.

The ACC shall, upon request from the Commonwealth, provide information concerning the steps taken to implement the recommendations of a Quality Assurance Assessment Report.

C.6 *Performance Report*

The ACC shall provide the Commonwealth with a report against the Key Performance Indicators following the expiration of the Funding Period and before 31 August 2005.

C.7 The ACC shall maintain a Register of Assets for all Assets held or controlled by the ACC which are valued at over \$1,000. The Register of Assets shall record:

- (a) a description of the Asset;
 - (b) the date of purchase/lease of the Asset;
 - (c) the purchase/lease price of the Asset;
 - (d) the proportion of Operational Funding used to purchase/lease the Asset;
 - (e) where the Asset is leased, the type of lease agreement for the Asset (finance or operating);
 - (f) the location of the Asset;
 - (g) the amount of depreciation on the Asset; and
 - (h) details of disposal of the Asset (such as the date and method of disposal, sum received and the sale particulars).
- C.8 The Register of Assets shall be updated as Assets are acquired or disposed of by the ACC. An updated copy of the Register of Assets shall be provided to the Commonwealth at the end of each quarter of the Funding Period.
- C.9 The ACC shall undertake an annual stocktake of its Assets. During the stocktake, the ACC will:
- (a) confirm that its Assets are correctly recorded in the Register of Assets; and
 - (b) assess the condition of the Asset.

D. Insurance Requirements

D.1 Workers' Compensation Insurance

The ACC shall maintain workers' compensation insurance for an amount required by the relevant State legislation to cover ACC Personnel.

D.2 Asset Insurance

The ACC shall maintain comprehensive insurance of all Assets and contents insurance for all assets owned or controlled by the ACC.

D.3 Vehicle Insurance

The ACC shall maintain comprehensive insurance of all motor vehicles (subject to conditions of leases) controlled by the ACC.

D.4 Insurance of Subcontractors

The ACC shall ensure that subcontractors of the ACC are covered by insurance, either under the ACC's insurance policies or under separate insurance policies.

E. Acknowledgement, Publicity, and ACC Naming and Branding

E.1 Commonwealth Crest

The ACC shall include the Commonwealth Crest to clearly indicate that the ACC is funded by the Commonwealth.

E.2 ACC Letterhead and other ACC Printed Materials

Without limiting the generality of Clause 24, the ACC's letterhead and all other printed materials generated by the ACC shall include the ACC logo which includes the tagline "ACCs – the Australian Government's Regional Development Network" and the Commonwealth Crest with the words under "Australian Government initiative".

As per the style guide on the ACC website.

E.3 *ACC Letterhead and other ACC Printed Materials*

Without limiting the generality of Clause 24, in all publications, promotional materials and activities relating to individual projects funded under the Australian Government's *Regional Partnerships* programme, the ACC shall acknowledge the financial support received from the Commonwealth by using the words "This project is supported by funding under *Regional Partnerships*, an Australian Government initiative in regional Australia".

E.4 *National ACC Logo and the tagline*

The National ACC Logo and tagline "ACCs - the Australian Government's Regional Development Network" shall be included in all publications and promotional materials and where relevant "© Commonwealth of Australia [*year of publication*]" shall be inserted.

E.5 *ACC Naming*

All ACCs shall be advised in writing by the Minister for Transport and Regional Services to amend their names to include "ACC", preceded by a short descriptor of up to 5 words maximum that accurately identifies the regional location of the ACC. Where an ACC needs to change their name, this will involve amending the ACC's constitution. ACCs have until 30 June 2005 to comply with this name change.

E.6 *ACC Reports*

Where appropriate, or requested by the Commonwealth, the following words shall be inserted on reports released by the ACC: "This report was not produced by the Commonwealth of Australia. Therefore the report does not necessarily represent the views of the Commonwealth of Australia, its officers, employees or agents." Inclusion of this statement does not preclude acknowledgment of Commonwealth funding as required by Clauses E1, E2 or E3.

E.7 *ACC Handbook*

The ACC shall comply with the Department's "*National Network of Area Consultative Committees Handbook*" updated in 2003 / 04 and as amended from time to time.

E.8 *Media Liaison*

The ACC shall comply with the Department's *Guidelines for Media Contact by Area Consultative Committees* as amended from time to time when dealing with media.

F. *Compliance with Commonwealth Laws and Policies*

F.1 *Commonwealth Acts*

In particular, the ACC shall comply with the following:

- (a) the *Privacy Act 1988* (Cth) and the National Privacy Principles;
- (b) the *Disability Discrimination Act 1992* (Cth);
- (c) the *Equal Opportunity for Women in the Workplace Act 1999* (Cth);
- (d) the *Human Rights and Equal Opportunity Commission Act 1986* (Cth);
- (e) the *Racial Discrimination Act 1975* (Cth);
- (f) the *Sex Discrimination Act 1984* (Cth); and
- (g) the *Workplace Relations Act 1996* (Cth).

G. Contact Details

G.1 Contract Delegate

The Contract Delegate shall be the person holding, occupying or performing the duties of:

DOTARS Regional Manager:

Postal Address:

Telephone:

Facsimile:

G.2 Programme Delegate

The Programme Delegate shall be the person holding, occupying or performing the duties of:

Assistant Secretary – Regional Communities Branch

GPO Box 594, Canberra ACT 2601

Telephone: 02 6274 7982

Facsimile: 02 6274 8100

G.3. Liaison Officer

The Liaison Officer shall be the person holding, occupying or performing the duties of the following position:

DOTARS Regional Manager:

Postal Address:

Telephone:

Facsimile:

G.4 ACC

The contact details of the ACC are as follows:

ACC Name:

Physical Address:

Postal Address:

Telephone:

Facsimile:

Signature Blocks

IN WITNESS WHEREOF the Parties have executed this Contract on the date first above written.

SIGNED for and on behalf of THE)
COMMONWEALTH OF AUSTRALIA)
by)

.....)
Print name of Commonwealth signatory above)

The)
.....)

.....)
print office held by Commonwealth signatory above)

of the Australian Government Department)
of Transport and Regional Services)

In the Presence of:)

.....)
print name of witness above)

The Common Seal of *Legal Name of the ACC*)
was duly affixed in execution of this agreement)
in the presence of the undermentioned)
officer(s) of the body who has(have) appended)
their signature(s))

.....)
Print name of officer above)

.....)
Print position in ACC held above)

if a second officer of the ACC is required to)
sign in accordance with the Constitution of the)
ACC:)

.....)
Print name of officer above)

.....)
Print position in ACC held above)

.....)
Commonwealth signatory signs above

.....)
witness signs above

.....)
affix seal above

.....)
ACC officer signs above

.....)
Second ACC officer signs above if required

ANNEXURE 1: ACC BUSINESS PLAN

ANNEXURE 2: ACC STRATEGIC REGIONAL PLAN

ANNEXURE 3: ACC Key Performance Indicators for 2004-05

The three key roles of ACCs as identified in their Charter are:

- To facilitate growth and development throughout their region
- To be the link between Government, business and the community
- To facilitate whole of government responses to opportunities in their communities

ACCs are expected to demonstrate their achievement of the above roles by delivering the following key outcomes:

1. Business – Community – Government Liaison
 - 1.1. Facilitate consultation and feedback to Government on policies / initiatives
 - 1.2. Facilitate awareness of *Regional Partnerships* across ACC region
2. Programme assistance
 - 2.1. Applications received under *Regional Partnerships* are of a high quality
 - 2.2. Applications received under *Regional Partnerships* have a broad commitment to partnership arrangements
 - 2.3. Maximum access to *Regional Partnerships* funding in line with notional allocation to ACC
3. Whole of Government
 - 3.1. Facilitate awareness across ACC region of Government policies / initiatives / programmes pertinent to regional development
4. Community outcomes
 - 4.1. Delivering outcomes with a measurable benefit for communities
5. Corporate Governance
 - 5.1. Managing ACC operations to a high standard

Measures and targets against these proposed indicators are detailed in the attached table which also shows the relationship between the indicators and ACC Charter.

Explanatory notes to each of the KPIs are included after the table at Attachment A.

Indicators	Facilitate growth & development	Link between Govt, business & community	Facilitate whole of government	Measures	Targets
1.1 Facilitate consultation and feedback to Government on policies / initiatives		✓	✓	1.1.A Number of requests & % of total requests ACC provided / facilitated formal input to / through DOTARS on policy issues 1.1.B Number requests & % of total requests for formal comments on applications for other agencies / programmes	100% of mandatory requests 100% of contracted requests
1.2 Facilitate awareness of <i>Regional Partnerships</i> across ACC region	✓	✓		1.2.A Number of applications submitted by sub-region (see notes) 1.2.B Mix of both private and not-for-profit applications submitted	100% of sub-regions covered (ie, one or more application from each sub-region) Not less than 10% of applications of each type
2.1 Applications received under <i>Regional Partnerships</i> are of a high quality	✓			2.1.A Number of projects instigated / facilitated by the ACC that address identified priorities from SRP 2.1.B % of applications, which the ACC rated 4, that are approved	≥ 3 100%
2.2 Applications received under <i>Regional Partnerships</i> have a broad commitment to partnership arrangements	✓		✓	2.2.A Average partnership contributions (total / cash) for approved Regional Partnerships projects	Remote: 50% / 20% Rural: 50% / 45% Metro: 60% / 50% Private (all): 70% / 55%
2.3 Maximum access to <i>Regional Partnerships</i> funding in line with notional allocation to ACC	✓			2.3.A % of notional allocation * achieved	100%

Indicators	Facilitate growth & development	Link between Govt, business & community	Facilitate whole of government	Measures	Targets
3.1 Facilitate awareness across ACC region of Australian Government policies / initiatives / programmes pertinent to regional development		✓	✓	3.1.A Number of contracts / initiatives with other agencies obtained / facilitated 3.1.B % of all grant applications, in which the ACC has facilitated the development, with other Government funding (local, State, Federal)	Results to be reported 80% of non-private sector
4.1 Delivering outcomes for communities	✓			4.1.A Increase in employment through approved Regional Partnerships projects to the private sector 4.1.B Number of additional services provided to communities * 4.1.C Number of Regional Partnerships projects that facilitate improved planning * 4.1.D Funds invested in community infrastructure * 4.1.E Funds invested in private sector enterprises *	≥ 3 direct jobs / \$50K RP \$s for private sector projects * Results to be reported – no set targets as these will be ACC specific.
5.1 Managing ACC corporate affairs to a high standard				5.1.A % reporting requirements met on time and to acceptable standard 5.1.B Contract variations requested within limits and in advance 5.1.B Quality Assurance Assessment (QAA) outcome acceptable	100% 100% of variations requested in accordance with contract QAA rating indicates high consistency for all categories

Explanatory Notes :

1. Business – Community – Government Liaison

1.1 Endeavours to measure feedback to Australian Government on issues / policy initiatives.

1.1.A ACCs will be expected to respond to 100% of mandatory requests from DOTARS – accepting that on occasion for some ACCs’ responses will be ‘Nil response’. Also want to know number of mandatory requests received.

1.1.B ACCs are also expected to respond to 100% of requests relating to other agencies where these agencies have some contractual arrangement with ACC. Again we want to know number of mandatory requests received.

1.2 The Indicator is a measure of the awareness of RP across the ACC region and among both the private and not-for-profit sectors. It does not imply that all areas need to be treated equally – as some areas may be in greater need than others – but that all areas should be serviced.

1.2.A Attempts to provide some measure that all sub-regions of an ACC are aware of RP as evidenced by the submission of an RP application (or an EOI) from each sub-region. The ACC can determine the break-up of their ACC into appropriate sub-regions in consultation with their Regional Managers.

This does not attempt to measure the quality of the applications submitted.

1.2.B Attempts to provide some measure that both the private sector and the not-for-profit sector are aware of RP as evidenced by the submission of RP applications (or an EOI) from each group. 10% of applications submitted is a proposed benchmark for each group ie, a 90/10 split through to a 10/90 split between private / not-for-profit applications by number meets the criteria.

2. Programme assistance

2.1 Attempts to measure the difference that the ACC makes in its region both through project instigation / development and through the quality of project applications where ACCs have had a significant involvement in the development of the proposal.

2.1.A This measures the number of projects that ACCs instigate or take some initiative to ensure are developed that address the key priorities in their region. These projects should be the ones which address priorities / gaps identified in their SRP and which are integral to the growth and development of their region.

This is an indicator of the ACC taking a pro-active role in their region's development to ensure that those projects which are most needed to overcome / remove / address barriers to growth happen.

2.1.B This measures the quality of the ACC assessment of the projects it reviews. It only considers those projects where the ACC has endorsed the project as highly meeting the regional priorities as defined in their SRP.

2.2 Attempts to measure the extent of partnership funding averaged across all approved project proposals for year. KPI recognises the economic differences between metro / regional-rural / remote ACCs and sets different targets accordingly

2.2.A Not every project has to meet the target – but the average of all projects approved should meet the targets proposed.

A 50% / 20% split means that at least 50% of the total value of all approved projects comes from partnership contributions made up of both cash and in-kind contributions – and at least 20% of the total cash value of all approved projects comes from partnership contributions.

The private sector 70% / 55% split applies to all regions (irrespective of ACC classification).

2.3 Assesses ACCs facilitating region accessing all of RP \$s as set by Notional Allocation.

2.3.A Goal is for all ACCs to have all projects to value of or over their Notional Allocation approved in course of year.

* Note : This KPI only applies if Notional allocations for RP are used in 2004-05.

3 Whole of Government

3.1 Attempts to measure ACCs role in either providing service delivery on behalf of other agencies or facilitating the access to these services through supporting other entities bids to provide these services within their region.

3.1.A While no specific targets are being set for 2004-05, ACCs are asked to record and report on the number of such initiatives / arrangements. Examples include :

- contracts the ACC enters into to deliver services on behalf of other agencies
- initiatives (eg workshops, seminars, community consultations) that the ACC coordinates or facilitates either on behalf of or in conjunction with other agencies
- situations where the ACC has successfully supported a joint bid by another local entity to provide services on behalf of other Commonwealth Depts.

Past examples include : IEP with DEWR, Sugar Exec Officer with DAFF, Small Business Answers with DITR, Rural and Regional Program with ACCC, Food Chain seminars and workshops with NFIS, etc.

- 3.1.B Applies only to project applications where the ACC has been significantly involved in the development.

As has been pointed out, some projects will have community and private sector partnerships but no Government partnership funding. These are not ‘unsuccessful’ outcomes and so the target has been reduced to 80% of non-private sector applications.

4 Community outcomes

- 4.1 Attempts to measure the impact of RP funding both in terms of job outcomes and community benefit.

- 4.1.A While RP is not solely about job outcomes, it is a reasonable indicator of the economic impact of RP \$s in communities – particularly for projects in the private sector. For private sector projects, it is expected that on average over the total private sector approved projects, the number of direct jobs generated will be at least 3 jobs for every \$50,000 of RP funds. (This target is based on what was achieved through Dairy RAP).

- 4.1.B through to 4.1.D

These indicators attempt to cover the range of ‘social’ benefits that communities gain through RP projects. Additional services could include access to child minding facilities that weren’t previously available, retention of banking facilities, or improved access to health services. Community infrastructure could include access for disabled people to a particular community venue or site, or some upgrade to a community hall or park.

- 4.1.E Seeks to also record the total funding from RP invested in the private sector.

There are no targets set for these indicators but ACCs are asked to record the number of initiatives or the total value of RP \$s invested in these areas.

5 Corporate Governance

- 5.1 Attempts to measure ACC compliance with Corporate Governance requirements and consistency with ACC Work Principles

- 5.1 A Reporting requirements include (but not limited to):

- Reports to DOTARS as required by contract
- Final audited statement of expenditure and receipts (as required by 31 August)
- Asset register
- Updates to ACC membership and contact details

- Copy of the audited annual financial statement of the ACC (as submitted to their AGM)
- 5.1.B ACC seeks contract variations in accordance with the contract, ie, both prior to proposed changes to expenditure and within allowable limits.
- 5.1.C ACC uses the DOTARS template for QAA and that it achieves a high level of consistency with the benchmarks required through this process.

Where a QAA outcome doesn't meet the benchmark requirements, it is expected that ACC respond promptly to any identified deficiency in their processes and procedures.

ANNEXURE 4: FINAL DOCUMENTATION CHECKLIST

The ACC shall ensure that the following documentation is provided to the Commonwealth by 31 August 2005:

- Final Report
- Audited Statement of Receipts and Expenditure (original copy)
- Balance Sheet (original copy)
- Auditor's report (original copy)
- Auditor's Certification Statement (original copy)
- A report on all other contracts entered into by the ACC during the Funding Period
- Statement of balance of the Nominated Account
- Statement of Asset account (where this is a separate account)
- Statement of Accrued Liabilities account for employee long service leave (where this is a separate account)
- Certification Statement from the ACC Chair (original copy)

**GIVING FALSE OR MISLEADING INFORMATION
IS A SERIOUS OFFENCE UNDER THE
COMMONWEALTH CRIMINAL CODE**

ANNEXURE 5: STATEMENT OF FINANCES FOR YEAR ENDED 30 JUNE 2005
(RECURRENT FUNDING/OPERATIONS)

RECEIPTS

Details	\$ Budgeted	\$ Actual Expenditure	Comments*
Unspent Operational Funding carried forward from 2003/04			
ACC funding from the Commonwealth			
Interest received on Operational Funding			
Accrued GST Input Credits			
TOTAL		(A)	

EXPENDITURE

Details	\$ Budgeted	\$ Actual Expenditure	Comments*
GST Liability			
TOTAL		(B)	

TOTAL UNEXPENDED OPERATIONAL FUNDING

FINAL TOTAL	(A) - (B) =
--------------------	--------------------

* Comments should identify if Items are funded from offsets from other agencies (partially or fully), if increases have been approved through contract variations, or explain significant variations from projected amounts.

**ANNEXURE 6: STATEMENT OF FINANCES FOR QUARTER ENDED XXX XXX XXX
(RECURRENT FUNDING/OPERATIONS)**

RECEIPTS

Details	\$ Budgeted	\$ Actual Expenditure	\$ YTD Projected	\$ YTD/Actual Difference	Comments*
Unspent Operational Funding carried forward from 2003/04					
ACC funding from the Commonwealth					
Interest received on Operational Funding					
Offsets from other agencies					
Accrued GST Input Credits					
TOTAL		(A)			

EXPENDITURE

Details	\$ Budgeted	\$ Actual Expenditure	\$ YTD Projected	\$ YTD/Actual Difference	Comments*
GST Liability					
TOTAL		(B)			

TOTAL UNEXPENDED OPERATIONAL FUNDING

FINAL TOTAL	(A) - (B) =
--------------------	--------------------

* Comments should identify if Items are funded from offsets from other agencies (partially or fully), if increases have been approved through contract variations, or explain significant variations from projected amounts.

ANNEXURE 7: STATEMENT OF INCOME FROM OTHER AGENCIES

RECEIPTS

Details	Contracted Period	\$ Contracted Amount	Amount Offset against ACC Items	Comments
TOTAL				

EXPENDITURE

Details	Agency	\$ Budget 2004/05	\$ Actual Expenditure 2004/05	\$ Amount Recurrent*	\$ Amount Non-recurrent#	Comments
TOTAL						

* ACC recurrent items are items which, if the contract with the other agency ceases, shall then fall to the ACC.

ACC non-recurrent ACC items are items which, if the contract ceases, shall cease to be incurred.