

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

In this agreement:

Activities means the activities and programs to be conducted by the NSO as specified in the Plan/s, the Special Conditions or the schedules to this agreement.

AIS means the Australian Institute of Sport, a division of the ASC.

AIS Performance Support Schedule means Schedule 4 of this agreement.

ASADA means the Australian Sports Anti-Doping Authority as established by the ASADA Act.

ASADA Act means the *Australian Sports Anti-Doping Authority Act 2006* as amended from time to time.

Business Day means a day on which banks are open for general banking business in the Australian Capital Territory.

Commencement Date means 1 July 2015.

Communication Schedule means Schedule 2 of this agreement.

Confidential Information of a party means information that:

- (a) is by its nature confidential;
- (b) is designated by that party as confidential; or
- (c) the other party knows or ought to know is confidential,

but does not include information that:

- (d) is or becomes public knowledge other than by breach of this agreement or any other confidentiality obligation; or
- (e) has been independently developed or acquired by the other party.

Details Schedule means Schedule 1 of this agreement.

Expiry Date means 30 June 2016.

Intellectual Property means copyright, all rights in relation to inventions (including patents), registered and unregistered trade marks (including service marks), registered and unregistered designs, circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Interest means interest accrued daily on the relevant amount of the Investment at the Interest Rate calculated, unless otherwise specified, from the date the Investment is paid to the NSO to the date the Investment is repaid.

Interest Rate means the Indicator Rate for 10-year Commonwealth bonds published in the Australian Financial Review from time to time or, if that rate ceases to be published, any other reasonably equivalent rate determined by the ASC.

International Federation means an international federation recognised by the International Olympic Committee or Sport Accord as the entity responsible for governing the NSO's Sport internationally.

Investment means the amount set out in Item 7 of the Details Schedule.

Investment Objectives means the objectives of the parties for this agreement as set out in clause 3.1.

NAD Scheme has the same meaning as defined in section 4 of the ASADA Act.

NSO's Sport means the particular sport governed in Australia by the NSO.

Performance Measures means the performance measures specified in the Plan/s, the Special Conditions or the schedules to this agreement.

Personal Excellence Schedule means Schedule 5 of this agreement.

Plan/s means the NSO Plans specified in Item 4 of the Details Schedule and attached to this agreement.

Special Conditions means the special conditions (if any) specified in Item 3 of the Details Schedule.

Sporting Administration Body Rules means the sporting administration body rules specified in the NAD Scheme, as amended from time to time.

Sports Governance Schedule means Schedule 3 of this agreement.

Term means the period specified in clause 2.

World Anti-Doping Code means the World Anti-Doping Code as amended from time to time.

1.2 Interpretation

In this agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this agreement, and a reference to this agreement includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Canberra, Australia time;
- (g) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;

- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) the meaning of general words is not limited by specific examples introduced by **'including'**, **'for example'** or similar expressions;
- (k) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (l) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (m) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it; and
- (n) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

1.4 Inconsistency

In the event of any inconsistency between any of the documents comprising this agreement, the documents will prevail in the following descending order:

- (a) these terms;
- (b) the Details Schedule;
- (c) any other schedule to this agreement;
- (d) the Plan/s;
- (e) any other attachments to this agreement.

2. Term and transition

2.1 Term

The term of this agreement commences on the Commencement Date and, subject to early termination pursuant to clause 12, expires on the Expiry Date.

2.2 Condition precedent

If Ministerial approval of this agreement is required under section 47 of the *Australian Sports Commission Act 1989*, this agreement is conditional on that approval being obtained.

3. Investment Objectives

3.1 Objectives

The objectives of the ASC and the NSO in entering this agreement are:

- (a) to build the capability and capacity of the NSO's Sport, from the grassroots community level to high performance sport;
- (b) fostering, supporting and encouraging participation in the NSO's Sport at the community level; and
- (c) providing Australian athletes, coaches and officials with the appropriate support systems and programs needed to build and sustain Australia's international success in the NSO's Sport.

3.2 Collaborative manner

The ASC and the NSO agree to work together under this agreement in a collaborative manner in the interests of the Investment Objectives.

3.3 Interpretation

In the interpretation of a provision of this agreement, a construction that would promote the Investment Objectives will be preferred to a construction that would not promote the Investment Objectives.

4. NSO performance obligations

4.1 Activities and Performance Measures

The NSO must carry out the Activities and achieve the Performance Measures by the respective due dates specified in the Plan/s, the Special Conditions or the schedules to this agreement.

4.2 Standards

In carrying out the Activities, the NSO must:

- (a) regularly liaise with the ASC to ensure that the Investment Objectives are addressed in the method and manner of carrying out the Activities;
- (b) exercise due care, diligence and skill;
- (c) not misrepresent its association with the ASC;
- (d) not do anything which may damage the reputation or standing of the ASC or any of its programs in the minds of the general public, or otherwise bring the ASC into disrepute; and
- (e) not do anything which may damage the reputation or standing of the NSO, the NSO's Sport or Australian sport in the minds of the general public, or otherwise bring the NSO, the NSO's Sport or Australian sport into disrepute.

4.3 Delay

The NSO must promptly notify the ASC if a Performance Measure will not be, or is unlikely to be, achieved by the date required under the Plan/s. The notice must set out:

- (a) the reason for the delay;
- (b) the NSO's proposed action to address the delay;
- (c) the expected date for achievement of the Performance Measure; and
- (d) the expected effect the delay will have on the Activities.

Nothing in this clause 4.3 affects the ASC's rights under this agreement in relation to the delay.

4.4 Reports

- (a) The NSO must give the ASC the reports described in Item 8 of the Details Schedule by the respective specified due dates, in the form and containing the matters as advised by the ASC.
- (b) The ASC may require the NSO to provide additional reports (including financial reports) if, in the ASC's reasonable opinion, such reports are required by the ASC to maintain an understanding of the NSO's Sport, the NSO, its programs, financial position and/or issues or for the ASC to monitor the NSO's progress with the Activities or compliance with this agreement. The NSO will provide the reports required by the ASC at the time and in the manner reasonably specified by the ASC.
- (c) If the ASC considers that the form or content of a report is not satisfactory, it may require the NSO to submit a revised report. The NSO must provide a revised report to the satisfaction of the ASC within 30 days of receipt of notice from the ASC.

4.5 Variations

- (a) The NSO may change or improve its work methods or procedures to achieve efficiency, economy or improved quality. However, the NSO must not materially change the Activities as described in the Plan/s without the ASC's consent.
- (b) The NSO may, by notice to the ASC, propose a variation to the Activities, the date for achievement of a Performance Measure or any other aspect of the Performance Measures. Any such proposed variation must be approved or rejected by the ASC within 30 days of receipt.
- (c) The ASC may, by notice to the NSO, propose a variation to the Activities, the Investment, the date for achievement of a Performance Measure or any other aspect of the Performance Measures. Any such proposed variation must be approved or rejected by the NSO within 30 days of receipt.

4.6 Acknowledgment of ASC support

The NSO must acknowledge the ASC's support in the manner specified in the Communication Schedule.

4.7 Sports Governance

The NSO must comply with the provisions of the Sports Governance Schedule.

4.8 AIS Performance Support

The NSO must comply with the provisions of the AIS Performance Support Schedule.

4.9 Personal Excellence

The NSO must comply with the provisions of the Personal Excellence Schedule.

4.10 Special Conditions

The NSO must comply with any Special Conditions.

5. NSO compliance with policies and practices

5.1 General

The NSO must:

- (a) develop and maintain a strategic and/or business plan for the NSO, a high performance plan (if required by the ASC), and a participation plan (if required by the ASC) and provide to the ASC a copy of such plan/s as amended from time to time, and the NSO must:
 - (i) incorporate significant engagement with NSO stakeholders when developing such plan/s; and
 - (ii) include measurable performance targets for high performance and participation outcomes within such plan/s;
- (b) provide information and assistance as required by the ASC for the purposes of the ASC's Annual Sport Performance Review of the NSO, including:
 - (i) reporting against mandatory key performance indicators and sport specific key performance indicators as detailed in "PMF and KPIs – a High Performance guide for NSOs"; and
 - (ii) reporting on its performance against its participation plan;
- (c) comply with applicable requirements under the relevant state Associations Incorporation Act or the *Corporations Act 2001* as the case may be;
- (d) comply with all other relevant Commonwealth, state and territory legislation, including child protection and anti-discrimination legislation;
- (e) adopt, implement and enforce a member protection policy or similar framework, that addresses issues relating to harassment, discrimination, child abuse and codes of behaviour, to the satisfaction of the ASC and keep such policy or framework updated to ensure that it complies with the legislation referred to in clause 5.1(d);
- (f) adopt and comply with sound policies and practices in relation to its corporate governance and financial management;
- (g) act in accordance with Australian government directives issued by the Department of Foreign Affairs and Trade regarding contact with or in relation to foreign states, including any sanctions with respect to foreign sporting organisations which may from time to time be imposed;
- (h) subject to any confidentiality obligations that the NSO owes to a third party, provide timely information (including results achieved in benchmark events) and advice to the ASC that enables the ASC to maintain an understanding of the sport, the NSO, its programs and issues, so that the ASC can perform its functions, including complying with its obligations to provide information and advice to its responsible Minister, Cabinet, the Parliament and its committees and sub-committees, and to the Auditor-General to enable them to make appropriate decisions in relation to the NSO and the NSO's Sport;
- (i) subject to any confidentiality obligations that the NSO owes to a third party, promptly respond to any reasonable request for information made by the ASC relating to the NSO or this agreement;

- (j) invite the ASC to be involved in the selection and termination of staff of any key positions supported by the Investment and provide copies of duty statements and selection criteria associated with them;
- (k) advise the ASC promptly of any matter that might affect the NSO's entitlement to funding or any alteration to the NSO's strategic or business plans, financial status or other information provided by the NSO to the ASC;
- (l) if the NSO is a participant in the ASC's Sporting Schools Programme, continue to work in collaboration with the ASC to implement the Programme;
- (m) if registered with the National Coaching Accreditation Scheme (NCAS) or National Officiating Accreditation Scheme (NOAS), the NSO must comply with the guidelines and reporting requirements of the NCAS and NOAS in the format specified by the ASC;
- (n) if not registered with the NCAS or NOAS, the NSO must:
 - (i) provide up to date details of coach and official personnel numbers and accreditation levels in the format specified by the ASC; and
 - (ii) provide current information as required relating to overall coaching and officiating training and education in the format specified by the ASC;
- (o) within 30 days following the NSO's annual general meeting, provide the ASC with written notice of the gender representation on the NSO's governing board;
- (p) allow the ASC to access, use and disclose depersonalised NSO data and information for the purposes of the Investment Objectives, including in targeted marketing, publication of statistics and provision of web portals to access the data or information;
- (q) allow the ASC to archive the NSO's annual reports, with public accessibility, in the Australian Sport Publication Archive on the Clearinghouse for Sport website managed by the ASC's National Sport Information Centre and the NSO hereby consents to such use; and
- (r) as requested by the ASC from time to time, provide to the ASC current participation statistics for the NSO's Sport and the NSO hereby consents to the ASC disclosing such statistics to third parties at the ASC's absolute discretion.

5.2 Anti-doping

The NSO must:

- (a) acknowledge ASADA's functions and powers under the ASADA Act and the NAD Scheme, comply with the ASADA Act and the NAD Scheme (including the Sporting Administration Body Rules) and facilitate the execution of ASADA's functions and powers as reasonably required by ASADA;
- (b) adopt, implement and comply with an anti-doping policy and rules that are approved by ASADA and conform with the World Anti-Doping Code, the NAD Scheme and applicable International Federation anti-doping requirements;
- (c) assist, co-operate, and liaise with ASADA, including in relation to the conduct of any investigations or hearings into an alleged or suspected anti-doping rule violation;
- (d) have in place and maintain an executed confidentiality undertaking with ASADA to facilitate ASADA's ability to lawfully share protected information with the NSO;

- (e) where applicable or when requested by ASADA, provide ASADA with timely updates of:
 - (i) registered testing pool details;
 - (ii) domestic testing pool details;
 - (iii) training camp details; and
 - (iv) competition calendars; and
- (f) actively implement an anti-doping education plan.

5.3 Match-fixing

- (a) In this clause 5.3:
 - (i) **Integrity Unit** means the National Integrity of Sport Unit established pursuant to the National Policy;
 - (ii) **National Policy** means the National Policy on Match-Fixing in Sport as agreed by Australian Governments on 10 June 2011; and
 - (iii) **NSO Policy** means an anti-match-fixing policy that incorporates an anti-match-fixing/anti-corruption code of conduct.
- (b) The NSO must:
 - (i) comply with Part 4 of the National Policy;
 - (ii) adopt, maintain and apply, to the satisfaction of the Integrity Unit, an NSO Policy that complies with Part 4 of the National Policy and any applicable legislation;
 - (iii) upon request, promptly provide to the Integrity Unit a copy of its NSO Policy, any subsequent amendments and any related policies;
 - (iv) promptly refer any suspected match-fixing or corrupt activities to any relevant law enforcement and regulatory agencies and co-operate with any investigation by such agencies; and
 - (v) promptly provide the Integrity Unit with details of any suspected match-fixing or corrupt activities and any investigations, hearings and sanctions.

6. ASC Investment

6.1 Payment conditions

The ASC will pay the Investment in instalments as described in Item 9 of the Details Schedule, provided that the following conditions have been met at the respective payment date:

- (a) Commonwealth appropriation to the ASC;
- (b) the NSO having made progress to the ASC's satisfaction in relation to the performance of the Activities, the achievement of the Performance Measures and compliance with any Special Conditions;
- (c) the NSO not being in breach of any obligation under this agreement or any other agreement between the NSO and the ASC; and

- (d) the NSO having acquitted to the ASC's satisfaction all ASC funding to the NSO due for prior years.

6.2 Invoices and payment

- (a) The NSO will submit invoices to the ASC for payment of each instalment of the Investment.
- (b) An invoice must be:
 - (i) addressed to the ASC's Funding Section and the address for the ASC specified in Item 1 of the Details Schedule;
 - (ii) in the form of a Tax Invoice which identifies the NSO's name, address, bank details, the Investment and the GST amount; and
 - (iii) itemised by funding and service area as listed in Item 6 of the Details Schedule.
- (c) Subject to clause 6.1, the ASC agrees to pay an invoice rendered in accordance with clause 6.2(b) within 30 Business Days of receipt.
- (d) The ASC may make payment by electronic funds transfer or cheque.
- (e) For the avoidance of doubt and without limitation to the ASC's rights under this agreement or otherwise, the ASC may withhold all or part of any or all of the scheduled payments of the Investment if any of the conditions described in clause 6.1 have not been met.

6.3 Direction to not spend

The NSO must not spend any unspent Investment it has received if it receives written notice from the ASC directing the NSO not to spend such funds. The ASC may issue such notice if the NSO is in breach of any obligation under this agreement or any other agreement between the NSO and the ASC as at the date of the notice.

6.4 Use of ASC's Investment

The NSO must:

- (a) use the Investment solely for the Activities; and
- (b) where Item 6 of the Details Schedule allocates the Investment amongst particular funding and service areas, use each part of the Investment solely for the particular funding and service area to which it has been allocated.

6.5 Repayment and Interest

Without limitation to the ASC's rights under this agreement or otherwise, if the NSO has breached clause 6.4 the ASC may require the NSO to repay (at the ASC's discretion) all or part of the Investment plus Interest within 14 days of demand.

6.6 Unpaid funds

If any part of the Investment is not paid to the NSO before the expiry or termination of this agreement, the NSO forfeits any right to receive that part of the Investment (except such amounts for which the ASC is unconditionally liable under this agreement to pay to the NSO as at the end of the Term).

6.7 Unspent funds

If any part of the Investment is unspent at the expiry or termination of this agreement, the NSO agrees to return the unspent funds to the ASC, unless approval to carry forward those funds has been given by the ASC.

7. Record-keeping and audit

7.1 Records

The NSO must:

- (a) keep adequate records concerning this agreement, including all documents necessary to provide a complete detailed record and explanation to the ASC's satisfaction of:
 - (i) progress with the Activities; and
 - (ii) expenditure of the Investment, including original receipts and invoices;
- (b) ensure that such records:
 - (i) include sufficient detail to enable progress with the Activities and expenditure of the Investment to be accurately determined;
 - (ii) include appropriate audit trails and be maintained up-to-date;
 - (iii) be kept in a manner that permits them to be conveniently and properly audited; and
 - (iv) be drawn in accordance with any relevant generally accepted accounting standards; and
- (c) retain all such records of expenditure of the Investment for at least 7 years, and all other records for 2 years, after the expiry or termination of this agreement.

7.2 Inspection and audit

- (a) The ASC, its employees and any third parties authorised in writing by the ASC may, at reasonable times (whether during the Term or within 7 years after the expiry or termination of this agreement) and on reasonable notice to the NSO, inspect and/or audit (including examine and copy, on a full 'open book' basis) the records required to be maintained under clause 7.1 and related material to assess the NSO's performance of the Activities and/or the NSO's compliance with this agreement, including entering the NSO's premises for such purpose.
- (b) In conducting an inspection or audit, the ASC, its employees and authorised third parties may at the ASC's cost take copies of any records (books, documents and any other papers) that the ASC, its employees or authorised third parties considers relevant to the Activities or the NSO's compliance with this agreement.
- (c) The NSO must provide all assistance reasonably requested by the ASC, its employees or authorised third parties for the purposes of such inspection and/or audit, including providing full and accurate answers to any questions and allowing access to the NSO's premises.

8. Publicity, confidentiality and privacy

8.1 Publicity

- (a) The ASC may publicise and report on the award by the ASC to the NSO of the Investment, including by publishing details of the NSO, the Activities and the Investment in media releases, annual reports or on the ASC's website.
- (b) The NSO may publicise and report on the award by the ASC to the NSO of the Investment, including by publishing details of the ASC, the Activities and the Investment in media releases, annual reports or on the NSO's website.

8.2 Confidentiality

- (a) Neither party may use any Confidential Information of the other party for any purpose other than in relation to this agreement, or disclose any Confidential Information of the other party, except:
 - (i) to employees, agents, contractors or advisers requiring the information for the purposes of this agreement;
 - (ii) with the consent of the other party;
 - (iii) to the extent it is required to do so by law; or
 - (iv) by the ASC to the responsible Minister.
- (b) When disclosing information under clause 8.2(a)(i) or 8.2(a)(ii), a party must use all reasonable endeavours to ensure that persons receiving Confidential Information from it do not disclose the information except in the circumstances permitted in clause 8.2(a).

8.3 Privacy

- (a) The NSO must, in respect of personal information held by it in connection with this agreement (including the Activities), comply with the *Privacy Act 1988* (Cth) (**Privacy Act**).
- (b) In this clause 8.3, the term '**personal information**' has the same meaning as it has in section 6(1) of the Privacy Act.

9. Work health and safety

9.1 WHS legislative requirements

- (a) The NSO must ensure that the work conducted by the NSO and any of the NSO's workers in connection with this agreement, or otherwise in connection with the Activities, complies with all applicable legislative requirements, standards and policies, and requirements of this agreement, that relate to the health and safety of the NSO's workers, the ASC's workers and third parties.
- (b) The NSO must comply with its obligations under any applicable WHS law, and must ensure, so far as is reasonably practicable, that its officers (as defined by applicable WHS law) and workers comply with their obligations under applicable WHS law.
- (c) The other provisions of this clause 9 do not limit this clause 9.1.

9.2 NSO's primary duty of care

- (a) The NSO must ensure, so far as is reasonably practicable, the health and safety of:

- (i) workers engaged, or caused to be engaged, by the NSO; and
- (ii) workers whose activities in carrying out work are influenced or directed by the NSO,

while the workers are at work in connection with this agreement or otherwise in connection with the Activities.

- (b) The NSO must ensure, so far as is reasonably practicable, that the health and safety of other persons (including the ASC's workers) is not put at risk from work carried out in connection with this agreement or otherwise in connection with the Activities.

9.3 Consultation, co-operation, co-ordination

The NSO must consult, co-operate and co-ordinate with the ASC in relation to the NSO's work health and safety duties in connection with this agreement or otherwise in connection with the Activities.

9.4 Reasonable assistance to the ASC

- (a) Without limiting this agreement, the NSO must, on request, give all reasonable assistance to the ASC, including by way of provision of information and documents, to assist the ASC and its officers (as defined in the WHS Act) to comply with the duties imposed on the ASC and its officers under the WHS Act in connection with this agreement or otherwise in connection with the Activities.
- (b) The NSO must give all reasonable assistance to the ASC to assist the ASC in consulting with workers who carry out work for the ASC (including, but not limited to, the NSO's workers) who are, or are likely to be, directly affected by a matter relating to work health and safety in connection with this agreement or otherwise in connection with the Activities.

9.5 ASC may give directions

The ASC may direct the NSO to take specified measures in relation to the NSO's work in connection with this agreement, or otherwise in connection with the Activities, that the ASC considers reasonably necessary to deal with an event or circumstance that has, or is likely to have, an adverse effect on the health or safety of persons. The NSO must comply with the direction. The NSO is not entitled to an adjustment to the Investment, or to be paid for any additional allowances or expenses, merely because of compliance with the direction.

9.6 Notifiable Incidents

- (a) If an event occurs in relation to the NSO's work in connection with this agreement, or otherwise in connection with the Activities, that leads, or could lead, to the death of, or an injury or illness to, a person (**Notifiable Incident**), the NSO must:
 - (i) immediately report the matter to the ASC, including all relevant details that are known to the NSO;
 - (ii) as soon as possible after the Notifiable Incident, investigate the Notifiable Incident to determine, as far as it can reasonably be done:
 - (A) its cause; and
 - (B) what adverse effects (if any) it will have on the NSO's work under this agreement, including adverse effects on risks to health and safety;

- (iii) as soon as possible after the Notifiable Incident, take all reasonable steps to remedy any effects of the Notifiable Incident on health and safety;
- (iv) as soon as possible after the Notifiable Incident, take all reasonable steps (including by instituting procedures and systems) to ensure that an event or circumstance of the kind that led to the Notifiable Incident does not recur;
- (v) within 10 Business Days after the Notifiable Incident, give the ASC a written report giving further details of the Notifiable Incident, including the results of the investigations required by clause 9.6(a)(ii) and a statement of the steps the NSO has taken or that the NSO proposes to take as required by clauses 9.6(a)(iii) and (iv); and
- (vi) within 3 months after the Notifiable Incident, give the ASC a written report giving full details of its actions in relation to the Notifiable Incident.

The NSO's obligations under this clause 9.6(a) are in addition to any reporting obligation that the NSO has under any applicable legislation.

- (b) The NSO must fully co-operate, at its own cost, with any investigation by any government agency (including Comcare) with respect to a Notifiable Incident, including parliamentary inquiries, boards of inquiry and coroner's investigations.

9.7 Subcontracts

Without limitation to clause 16.3, the NSO must not enter into any subcontract for the purpose of directly or indirectly fulfilling its obligations under this agreement unless such a subcontract obliges the subcontractor to comply with equivalent provisions to those contained in this clause 9.

9.8 Definitions

- (a) In this clause 9:
 - (i) **applicable WHS law** means any applicable occupational health and safety law, including any corresponding WHS law (as defined in section 4 of the WHS Act); and
 - (ii) **WHS Act** means the *Work Health and Safety Act 2011* (Cth).
- (b) A word or expression in this clause 9 that is:
 - (i) used or defined in an applicable WHS law; and
 - (ii) not otherwise defined in this clause 9 or elsewhere in this agreement,
 has, for the purposes of this clause 9, the meaning given to it under the applicable WHS law.

10. Intellectual Property

- (a) Nothing in this agreement affects the ownership of Intellectual Property existing before the Commencement Date.
- (b) Subject to clause 10(c):
 - (i) ownership of all Intellectual Property created or acquired by the NSO as a result of the Activities (**New IP**) vest, on their creation, in the NSO; and

- (ii) the NSO grants to the ASC a perpetual, irrevocable, royalty-free, non-exclusive, worldwide licence to use the New IP and all material in which the New IP subsists.
- (c) Neither party may commercially exploit the New IP or any material in which the New IP subsists without the prior written consent of the other party, which must not be unreasonably withheld. The other party may impose reasonable conditions for consent, which may include payment to it of a reasonable share of any proceeds of commercial exploitation, having regard to factors including the parties' relative contributions (including funding) to the development of the New IP and to the proposed commercial exploitation.
- (d) In clause 10(b), 'use' includes run (in the case of software), copy, modify, adapt, develop, integrate, communicate or deal with in any other way.
- (e) Except as permitted by law, or specifically authorised in this agreement or otherwise in writing by the other party, neither party may use or reproduce any logo or trademark of the other party for any purpose.

11. Indemnity and insurance

11.1 Indemnity

The NSO indemnifies the ASC, its officers, employees, agents and contractors against all claims, damages, costs, losses, liabilities and expenses (on a solicitor and own client basis and whether incurred by or awarded against the ASC, its officers, employees, contractors or agents) arising out of or in connection with:

- (a) any breach of this agreement by the NSO, including any breach of warranty and any breach in respect of which the ASC exercises a right to terminate this agreement; or
- (b) any wrongful, unlawful or negligent act or omission of the NSO, its officers, employees, agents or contractors,

except to the extent that the claim, damages, cost, loss, liability or expense is directly attributable to the ASC breaching this agreement or the wrongful, unlawful or negligent act or omission of the ASC, its officers, employees, agents or contractors (other than the NSO). This indemnity is a continuing obligation, separate and independent from the other obligations of the NSO. It is not necessary for the ASC to incur expense or make payment before enforcing this indemnity.

11.2 Insurance

The NSO must assess its risks and maintain appropriate insurances in respect of any risks arising out of carrying out the Activities.

11.3 Evidence of insurance

If and when requested by the ASC, the NSO must promptly provide to the ASC evidence of the insurance required under clause 11.2.

12. Termination and reduction

12.1 Termination or reduction for breach or insolvency

- (a) The ASC may terminate this agreement or reduce the scope of this agreement with immediate effect by giving notice to the NSO if:

- (i) the NSO breaches clause 6.4 (Use of ASC's Investment);
 - (ii) the NSO breaches any other material provision of this agreement where that breach is not capable of remedy;
 - (iii) the NSO breaches any other provision of this agreement and fails to remedy the breach within 14 days after receipt of a notice from the ASC requiring it to remedy the breach; or
 - (iv) an event specified in clause 12.1(b) happens to the NSO.
- (b) The NSO must notify the ASC immediately if the NSO:
- (i) ceases to carry on business;
 - (ii) ceases to be able to pay its debts as they become due; or
 - (iii) enters into liquidation or has a controller or managing controller or liquidator or administrator appointed.

In this clause 12.1(b), '**controller**', '**managing controller**' and '**administrator**' have the same meanings as in the *Corporations Act 2001*.

12.2 Consequences of termination or reduction

- (a) If the ASC terminates or reduces the scope of this agreement or if the NSO terminates this agreement, the ASC may, without limiting any other rights that it may have against the NSO, require the NSO to repay (at the ASC's discretion) the unspent portion of the ASC's Investment within 14 days of demand (plus Interest if paid later than 14 days).
- (b) If the ASC reduces the scope of this agreement it may reduce the amount of the Investment. If the ASC reduces the scope of this agreement and in doing so reduces the amount of the Investment, the ASC will also allow a corresponding pro rata reduction in the Activities that the NSO is required to perform under this agreement.
- (c) If this agreement is terminated for any reason, the NSO must:
 - (i) comply with any repayment obligation under clause 12.2(a);
 - (ii) within 14 days of termination, give the ASC a statement of expenditure to the date of termination; and
 - (iii) within 30 days of termination, give the ASC a report on the Activities and their progress as at the date of termination, in a form and containing the matters satisfactory to the ASC.
- (d) Termination of this agreement does not affect any accrued rights or remedies of a party.

13. Goods and services tax

13.1 Terminology

In this clause 13:

- (a) **GST-exclusive consideration** means the consideration payable or to be provided for a Supply, but for the application of this clause 13;
- (b) **Recipient** means a party to whom a Supply is made;

- (c) **Supply** means a supply made under or in connection with this agreement;
- (d) **Supplier** means a party making a Supply; and
- (e) words or expressions that are defined in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning in this clause 13.

13.2 Gross-up

If a Supplier makes a Supply in respect of which GST is payable (not being a Supply the consideration for which is specified in this agreement as 'GST-inclusive'), the Recipient must pay to the Supplier an additional amount equal to the GST payable on the Supply at the same time as the GST-exclusive consideration is payable or to be provided.

13.3 Reimbursement or indemnification

If a party must reimburse or indemnify the other party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by the amount of any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 13.213.

13.4 Tax invoices

A Recipient need not make a payment for a taxable Supply until the Supplier has given the Recipient a tax invoice for the Supply to which the payment relates.

13.5 Adjustments

- (a) If the GST payable by a Supplier on any Supply varies from the GST amount paid or payable by the Recipient under clause 13.2 such that a further amount of GST is payable in relation to the Supply or a refund or credit of GST is obtained in relation to the Supply, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.
- (b) Any payment, credit or refund under this clause is deemed to be a payment, credit or refund of the GST amount payable under clause 13.2.
- (c) If an adjustment event occurs in relation to a Supply, the Supplier must issue an adjustment note to the Recipient in relation to that Supply within 14 days after the Supplier becomes aware of the adjustment event.

13.6 Exclusion of GST from calculations

If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment will be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.

14. Notice

14.1 Address details

Each party's address and email address are as specified in the Details Schedule. Either party may change such details by written notice to the other party.

14.2 Giving of notices

A party giving notice or notifying under this agreement must do so in writing:

- (a) in the case of notices to the ASC, directed to the ASC's Funding Section; and

- (b) hand delivered or sent by pre-paid post or email to the other party's address or email address as the case requires.

14.3 Receipt of notice

A notice given in accordance with clause 14.2 is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by pre-paid post, 3 days after the date of posting; or
- (c) if sent by email, at the time that would be the time of receipt under the *Electronic Transactions Act 1999*.

15. Dispute resolution

- (a) Subject to clause 15(d), before resorting to external dispute resolution mechanisms, the parties must use reasonable efforts to resolve any dispute in relation to this agreement, including if applicable by referring the matter to senior personnel of the parties with authority to resolve the dispute.
- (b) If a dispute is not settled by the parties within 14 days of one party first sending to the other party notice that they are in dispute, the dispute may be the subject of court proceedings commenced by either party or, if agreed in writing by both parties, may be submitted to some alternative dispute resolution mechanism as agreed by the parties.
- (c) Notwithstanding the existence of a dispute, each party must continue to perform its obligations under this agreement.
- (d) A party may commence court proceedings relating to any dispute arising from this agreement at any time where that party seeks urgent interlocutory relief.

16. Miscellaneous

16.1 Relationship of the parties

The parties agree that:

- (a) nothing contained in this agreement creates or constitutes a relationship of employment, agency or partnership between the parties;
- (b) except as otherwise specifically provided in this agreement, a party does not have any authority or power to act for, or to create or assume any responsibility or obligation on behalf of, the other party; and
- (c) each party must not represent itself, and must ensure that its officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.

16.2 Assignment

The NSO must not assign or novate this agreement, or any of its rights or obligations hereunder, without the prior written consent of the ASC.

16.3 Subcontracting

The NSO must not subcontract the performance of any of its obligations under this agreement without the prior written consent of the ASC. The NSO entering into a subcontract does not create any contractual relationship between the ASC and the subcontractor or relieve the NSO from liability for the performance of any of its obligations under this agreement.

16.4 Approvals and consents

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

16.5 Variations

This agreement may be varied only in writing signed by each party.

16.6 Costs

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

16.7 Survival

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

- (a) clauses 6.5, 6.6, and 6.7 (ASC Investment);
- (b) clause 7 (Record-keeping and audit);
- (c) clause 8 (Publicity, confidentiality and privacy); and
- (d) clause 10 (Intellectual Property);
- (e) clause 11.1 (Indemnity);
- (f) clause 12.2 (Consequences of termination or reduction); and
- (g) clause 15 (Dispute resolution).

Any other provision of this agreement that by its nature is intended to survive the expiry or termination of this agreement survives the expiry or termination of this agreement.

16.8 No merger

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

16.9 Entire agreement

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

16.10 Further action

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

16.11 Severability

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

16.12 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not

prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

16.13 Governing law and jurisdiction

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