

**CONFIDENTIAL**

**Attachment A**



**Australian Government**  
**Department of Communications**

## **Mobile Black Spot Programme**

### **OUTLINE FUNDING DEED**

Commonwealth of Australia as represented by the  
Department of Communications

[Insert Funding Recipient's name]

**Note to Funding Recipients:**

- 1. This draft Funding Deed outlines the requirements of the Commonwealth for the provision of Funding to the Funding Recipient in respect of the Mobile Black Spot Programme. We note that certain State or Territory governments may provide co-funding either through a tripartite funding agreement with the Commonwealth or through a bilateral funding agreement which sits alongside this Deed. In such circumstances, it may be necessary to supplement or amend the terms of this Deed.***
- 2. The Funding Deed (including the schedules) will be populated during negotiations.***

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## PARTIES

**Commonwealth of Australia as represented by the Department of Communications** ABN 51 491 646 726 of 38 Sydney Avenue, Forrest ACT 2603 (**Commonwealth**)

**[Insert Funding recipient's name]** ABN [insert applicant's ABN] of [insert applicant's registered address] (**Funding Recipient**)

## BACKGROUND

- A. The Commonwealth has made Funding available through the Programme, with the aim of expanding mobile coverage and competition in regional Australia.
- B. The Funding Recipient is committed to helping achieve the Objectives of the Programme in accordance with this Deed.
- C. As a result of this commitment, the Commonwealth has agreed to support the Activity and the achieving of the Objectives by providing Funding to the Funding Recipient, subject to the terms and conditions of this Deed.
- D. The Commonwealth is required by law to ensure accountability for public money, and to be accountable for all Funds provided by the Commonwealth.
- E. The Funding Recipient agrees to accept the Funding for the purposes, and subject to the terms and conditions, set out in this Deed.

## OPERATIVE PROVISIONS

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

### 1. Interpretation

#### 1.1. Defined Terms

1.1.1. In this Deed, unless the contrary intention appears:

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

**Activity** means all things the Funding Recipient is, or may be, required to do to comply with its obligations under this Deed, including undertaking the Rollout and providing the Services.

**Activity Material** means any Material:

- a. created by the Funding Recipient for the purpose of this Deed or in carrying out the Activity;
- b. provided or required to be provided to the Commonwealth under this Deed; or
- c. derived at any time from the Material referred to in paragraphs a. or b., and includes all Reports.

**Actual Asset Capital Costs** means the total construction costs (including all materials and equipment, labour and services) that the Funding Recipient expended or Legally Committed for an individual Asset, and this is to be determined as at the date upon which the Asset Completion has occurred (as determined by the Funding Recipient).

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**Adjustment Note** has the meaning given in section 195-1 of the GST Act.

**Annexure** means any annexure to this Deed.

**Approval** means any approval, authorisation, code of conduct, government policy, consent, exemption, filing, licence, notarization, permit, registration, waiver and conditions attaching to any of them (as applicable) by any government, administrative or judicial body, department, tribunal, agency or entity, including any renewal of, or variation to, any of them.

**Asset** means the component of Network Infrastructure specified in Schedule 1 – Services, to be constructed by the Funding Recipient at a Site.

**Asset Capital Costs** means the estimated total construction costs of an individual Asset, including all materials and equipment, labour and services necessary for performance of the Funding Recipient's obligations in respect of that Asset during the Rollout Period in accordance with this Deed, as specified in Schedule 2 - Funds, Milestones and Contributions.

**Asset Completion** has the meaning given in Schedule 1 – Services.

**Asset Completion Report** has the meaning given in clause 13.

**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** mean the standards made under section 334 of the *Corporations Act 2001* (Cth) by the Australian Accounting Standards Board.

**Australian Accounting Standards Board** means the Australian Accounting Standards Board created by section 226 of the *Australian Securities and Investments Commission Act 2001* (Cth).

**Australian Auditing and Assurance Standards Board** means the Auditing and Assurance Standards Board created by section 227A of the *Australian Securities and Investments Commission Act 2001* (Cth).

**Australian Auditing Standards** mean the standards made pursuant to section 227B of the *Australian Securities and Investments Commission Act 2001* (Cth) by the Australian Auditing and Assurance Standards Board.

**Backhaul** means a link between the core or backbone of a network and sub-networks, transporting data from a series of disparate locations to a more centralised location.

**Backhaul Access and Pricing Agreement** has the meaning given in clause 7.4.

**Best Industry Practice** means practices followed when works or services are undertaken in accordance with all of the following:

- a. in a sound and workmanlike manner;
- b. with due care and skill;
- c. using materials or new and merchantable quality, which are fit for their intended purpose;
- d. experience and competency, where:



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- i. in relation to the Rollout, the design of the asset/s and the construction contractor; and
- ii. in relation to the Services, the contractor providing those services, are of the highest skill and quality, with particular experience in Australia; and
- e. in accordance with all applicable Laws.

**Budget** means the Funding Recipient's multi-year budget for the estimated total capital costs for each Asset to be, or under, construction that form part of the Rollout.

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

**Change in Control** means where, at any time, any person alone, or together with any Related Body Corporate, ceases to or commences to, directly or indirectly have Control of another entity, other than any change in Control occurring due to the transfer of shares or other interests which are listed on a stock exchange.

**Co-Location** means the installation of telecommunications facilities with one or more other telecommunications facility.

**Co-Location Services Agreement** has the meaning given in clause 7.3.

**Commonwealth** means the Commonwealth of Australia as represented by the Department of Communications, and includes the Commonwealth's officers, delegates, employees, professional advisors and agents, and successors.

**Commonwealth Material** means any Material:

- a. provided by the Commonwealth to the Funding Recipient for the purposes of this Deed; or
- b. derived at any time from the Material referred to in paragraph a., except for Activity Material.

**Confidential Information** means information (whether or not owned by the Commonwealth) that is, by its nature, confidential and:

- a. has been designated by the Funding Recipient, and accepted by the Commonwealth, as confidential as specified in Schedule 3 - General details;
- b. the receiving party knows or ought to know is confidential, including:
  - i. information relating to the policies, strategies, practices and procedures of the Commonwealth, including Activity Material;
  - ii. information relating to other contractors of the Commonwealth; and
  - iii. security classified information,

but does not include information that:

- c. is or becomes public knowledge other than by breach of this Deed;
- d. is in the possession of a party without restriction in relation to disclosure before the date of receipt; or

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e. has been independently developed or acquired by the receiving party.

**Conflict** means any matter, circumstance, interest or activity involving or affecting the Funding Recipient which may, or may appear to, impair the Funding Recipient's ability to perform the Activity diligently and independently.

**Consequential Loss** means any:

- a. loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of investment return, loss of business opportunity, loss of contract, loss of goodwill, loss of use or loss of production (whether the loss is direct or indirect);
- b. increase in direct or indirect financing costs; or
- c. any loss, damage, cost, expense or Liability that is:
  - i. special;
  - ii. not a loss, damage, cost, expense or Liability that may be fairly and reasonably be considered to arise naturally (being according to the usual course of things) from the breach or relevant matter; or
  - iii. not fairly and reasonably contemplated by both the Commonwealth and the Funding Recipient at the Date of this Deed as the probable result of the breach or relevant matter, whether present or future, fixed or unascertained, actual or contingent.

**Contributions** means the financial or in-kind contributions to be made by the Funding Recipient and/or third parties as specified in Schedule 2 - Funds, Milestones and Contributions.

**Control** means:

- a. the power to cast, or control the casting of, more than 50% of the voting rights attaching to the voting shares or other form of voting equity in an entity;
- b. the power to dispose of or exercise a right of disposal over more than 50% of the shares or other equity in an entity;
- c. the power to control the appointment or dismissal of the majority of directors of an entity; or
- d. the capacity to control the financial and operating policies or management of an entity.

**Coverage** means the ability to make, receive and hold mobile phone calls and other carriage services in a specified area in accordance with the Specifications.

**Date for Asset Completion** means, in relation to an Asset, the date specified in Schedule 1 – Services for that Asset.

**Date for Rollout Completion** means the date specified in Schedule 1 - Services as the date on which the last Asset will achieve Asset Completion.

**Date of Asset Completion** means the date on which the Commonwealth gives Notice under clause 13.1.2.a that the Commonwealth is satisfied that Asset Completion has occurred in accordance with this Deed in respect of an Asset.

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**Date of Rollout Completion** means the Date of Asset Completion of the last Asset to achieve Asset Completion.

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

**Decision Maker's List** has the meaning given in section 9.1.2 of the Guidelines.

**Deed** means this document and includes any Schedules and Annexures.

**Department of Communications** means the department or agency of the Commonwealth which is from time to time responsible for the administration of this Deed.

**Design Documents** means the drawings, specifications and other design documents required by this Deed and created (or to be created) by the Funding Recipient for the performance of the Activity, including the details of the manner in which the Assets are to be, and subsequently have been, constructed and details of any information regarding the Funding Recipient's Network relevant to the construction of the Assets.

**Designated Location** means each location where new or improved Coverage (and other Services, as applicable) is to be provided by the Funding Recipient from a particular Site, as specified in Schedule 1 – Services.

**Draft Cure Plan** has the meaning given in clause 27.2.1.a.

**Existing Material** means all Material, including the Material specified in Schedule 3 – General Details, in existence prior to the Date of this Deed:

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

the Reports or the Activity Material and includes the Material (if any) set out or described in Schedule 1 – Services.

**Expiry Date** has the meaning given in clause 2.1.1.

**Financial Year** means each period from 1 July to the following 30 June occurring during the Term of this Deed, or any part of such a period occurring at the beginning or end of the Term of this Deed.

**Fit for Purpose** means fit for its intended purposes as specified or reasonably ascertainable from the Project Documents including:

- a. for the purposes of enabling the Funding Recipient to perform the Activities in accordance with the Project Documents; and
- b. without limiting clause a. above, in respect of the Assets, that the Assets will be designed in compliance with health and safety requirements contained in Law.

**Force Majeure** in relation to a Party, is limited to the following specific events or circumstances:

- a. earthquake, flood, landslide, fire or explosion;

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- b. war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, martial law or other like hostilities;
- c. chemical, nuclear or biological contamination or ionising radiation or contamination by radioactivity;
- d. riot, civil disturbance, blockade or acts of terrorism; or
- e. Industrial Action which results in a state wide stoppage or an Australia wide stoppage, that has not arisen by reason of, or in connection with, events in any way connected with the Activity or the Funding Recipient;

but only where such events or circumstances:

- f. are outside the Funding Recipient's reasonable control;
- g. are such that, even with the exercise of Best Industry Practice, an experienced and competent contractor in the Funding Recipient's position would not have been able to prevent or overcome the effect of such events or circumstances on the performance of the Funding Recipient's obligations under this Deed; and
- h. are not caused or contributed to in whole or in part by a breach by the Funding Recipient of this Deed.

**Funded Base Station** means a base station selected for funding under the Programme and (where the context allows) also means an Asset.

**Funding or Funds** means the amount or amounts (in cash or kind) payable by the Commonwealth under this Deed in accordance with clause 9.

**Funding Cap** means the total amount of Funds payable to the Funding Recipient by the Commonwealth under this Deed in relation an Asset to be constructed at a specific Site as specified in Schedule 2 – Funds, Milestones and Contributions.

**Funding Recipient** includes the Funding Recipient's officers, delegates, employees, professional advisors and agents, and its successors.

**Funding Recipient's Contributions** means the financial or in-kind resources (with in-kind resources valued at cost), other than the Funding or Other Contributions, which are specified in Schedule 2 – Funds, Milestones and Contributions and are to be used by the Funding Recipient for the Activity.

**Funding Recipient's Network** means:

- a. the Network Infrastructure (including any active transmission assets) used to provide the Services;
- b. the Assets; and
- c. any other assets owned or controlled by the Funding Recipient and used to provide the Services, including any associated leases, licences or other rights of use or access to Sites, and any associated Intellectual Property Rights.

**Funding Recipient's Personnel** means any employee, director, officer, agent or representative employed or engaged by the Funding Recipient or a Related Body

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Corporate or subcontractor of the Funding Recipient, and any subcontractor and any other person engaged or employed by, or on behalf of, the Funding Recipient.

**Greenfield Assets** means an Asset constructed by the Funding Recipient at a Site where a new mobile base station is to be deployed to deliver the Services.

**Note to Funding Recipient: This definition will only be required to the extent that the Backhaul obligations apply (see clause 7.4).**

**GST** has the meaning given in section 195-1 of the GST Act.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Guidelines** refer to the guidelines for the Programme attached in Annexure 3.

**Health and Safety Law** means all health, safety or security related Laws (including, without limitation, work and occupational health and safety laws) that are in any way applicable to the Activity.

**Industrial Action** means any strike, lockout, demarcation or industrial dispute which affects a Site or the Activity or any claim relating to the employment agreements and other employment arrangements applicable to the Funding Recipient's Personnel, or its agents, consultants, contractors and subcontractors in connection with a Site or the Activity.

**Input Tax Credit** has the meaning given in section 195-1 of the GST Act.

**Intellectual Property Rights** includes:

- a. all copyright (including rights in relation to phonograms and broadcasts);
- b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs, circuit layouts; and
- c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

but does not include:

- d. Moral Rights;
- e. the non-proprietary rights of performers; or
- f. rights in relation to Confidential Information.

**Interest** means interest calculated at an interest rate equal to the 90 day bank-accepted bill rate (available from the Reserve Bank of Australia) less 10 basis points, on a daily compounding basis.

**Laws** include:

- a. legislation of the Commonwealth, the State(s) and Territory(s) in which the Activity will be undertaken, and any other relevant State or Territory;
- b. ordinances, regulations, by-laws, orders and proclamations or other instruments of legal effect made under those Acts referred to in paragraph a.;
- c. directions by any person exercising statutory powers regarding the Activity;

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- d. all the requirements and standards of a government department, authority, agency or regulatory body that commonly applies in respect of the building or construction industry in any State or Territory where the Activity is carried out; and
  - e. common law and rules of equity,
- as applicable from time to time.

**Legally Committed** means irrevocably committed under a legally binding contract between the Funding Recipient and a third party, other than the Commonwealth.

**Liability** includes any liability of any kind whether for debt, cost (including legal costs, deductibles or increased premiums), expense, loss, damage, compensation or charge and whether:

- a. liquidated or not;
- b. arising from or in connection with any obligation (whether as a principal obligation, a surety or an indemnity);
- c. legal or equitable, and whether arising under or for breach of contract, in tort (including negligence), restitution or at Law;
- d. present, prospective or contingent; or
- e. owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others.

**Loss** includes any loss, cost, damage, expense or liability, whether direct, indirect or consequential, present or future, fixed or unascertained, actual or contingent and whether arising under contract (including any breach of Deed), in equity, under statute, in tort (including for negligence or negligent misrepresentation) or otherwise.

**Material** means the subject matter of any category of Intellectual Property Rights.

**Milestone** means a stage of completion of the Rollout, representing the completion of the construction of an Asset and all other works necessary in order to be ready to commence the provision of Services (including Coverage) from the Asset at the Designated Location, as specified in Schedule 2 - Funds, Milestones and Contributions.

**Milestone Date** means the date for achievement of a Milestone as specified in Schedule 2 - Funds, Milestones and Contributions.

**Milestone Payment** means the amount set out in Schedule 2 - Funds, Milestones and Contributions which corresponds to the achievement of a Milestone, payable in accordance with the provisions of this Deed.

**Mobile Network Operators** or **MNOs** means a company that:

- a. supplies or proposes to supply a public mobile telecommunications service within the meaning of the *Telecommunications Act 1997*; and
- b. holds an apparatus or a spectrum licence (or both) for the supply of public mobile telecommunications services under the *Radiocommunications Act 1992*.

**Moral Rights** includes the following rights of an author of copyright Material:

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- a. the right of attribution of authorship;
- b. the right of integrity of authorship; and
- c. the right not to have authorship falsely attributed.

**Network Infrastructure** means network and other infrastructure (including but not limited to mobile stations), technology and plant and equipment used to provide mobile phone services (and other carriage services).

**Notice** has the meaning given to it at clause 37.1 of this Deed and **Notify** and **Notified** has the corresponding meaning.

**Objectives** means the objectives of the Programme as described in clause 3.2.

**Open Access Licence** means a licence for publication of information to the public by the Commonwealth, on any website maintained by the Commonwealth, including, without limitation the 'My Broadband' website.

**Operational Coverage Map** means the maps set out in Annexure 1 – Operational Coverage Maps depicting the Coverage to be provided by the Funding Recipient at each Designated Location.

**Operational Period** means, for each Asset, the period beginning on the Date of Asset Completion for that Asset and ending on the date that is 10 years after the Date of Asset Completion for that Asset.

**Operational Period Report** means the report required by and described in clause 13.2.1.

**Other Contributions** means financial or in-kind resources (with in-kind resources valued at cost), other than the Funding or the Funding Recipient's Contributions, which are specified in Schedule 2 – Funds, Milestones and Contributions and are to be used by the Funding Recipient for the Activity;

**Party** means a party to this Deed and Parties has a corresponding meaning;

**Payment Claim** has the meaning given in clause 9.1.2.

**Privacy Commissioner** means the means the Office of the Privacy Commissioner established under the *Privacy Act 1988* (Cth) exercising the freedom of information functions or the privacy functions as set out in that Act respectively, and includes any other entity that may, from time to time, perform those functions.

**Programme** means the Mobile Black Spot Programme as described in the Guidelines.

**Proposed Base Station** has the same meaning as given in the Guidelines.

**Project Documents** means the Design Documents and other documents required by this Deed or created (or, to be created) by the Funding Recipient for the performance of the Activity), including the Budget, the Project Management Plan and the Risk Management Plan.

**Project Management Plan** means the plan prepared, reviewed and updated by the Funding Recipient in accordance with clause 4.3, detailing the overall management, delivery and completion of the Rollout and performance of the Services in accordance with this Deed.



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

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

**Related Body Corporate** of an entity, means each company:

- a. that is a Subsidiary of that entity;
- b. of which the entity is a Subsidiary; or
- c. that is a Subsidiary of a company of which the entity is also a Subsidiary.

**Related Entity** has the same meaning as given to that term in the Australian Government Implementation Guidelines for the Building Code 2013.

**Report** means Activity Material that is provided to the Commonwealth for reporting purposes as stipulated in clause 13.

**Risk Management Plan** means the plan prepared, reviewed and updated by the Funding Recipient in accordance with clause 4.3 detailing the risks associated with the Activity and the strategies to be implemented to address those risks (including any appropriate mitigation measures).

**Roaming** in relation to inter-carrier roaming for mobile telephony, provides for a user of one mobile telephone network to access the services of another mobile telephone network using the same handset and includes automatic roaming (where the user requires no intervention to roam between mobile networks once the service has been acquired by the user), but excludes the use of mobile satellite services.

**Roaming Services Agreement** means the agreement set out in Attachment 2 of Schedule 1.

**Rollout** means all work and other obligations under this Deed required to design, supply, construct, install, produce, commission or complete the delivery of each Asset at each Site in accordance with this Deed.

**Rollout Completion** means the occurrence of Asset Completion of all Assets.

**Rollout Period** means the period commencing on the Date of this Deed and ending on the Date of Rollout Completion.

**Rollout Schedule** means the details of the timing for the Rollout of each Asset as set out in Schedule 2 - Funds, Milestones and Contributions.

**Schedule** refers to a schedule to this Deed.

**Services** mean the provision of the services, including provision of Coverage in the Designated Locations and (where applicable, Roaming, Co-Location or Backhaul), as specified in Schedule 1 - Services.

**Site** means the locations at which all or part of an Asset is to be installed within a Designated Location as part of the Rollout in order to provide the Services for that Designated Location.

**SOP Act** means (as the context requires):



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- a. the *Building and Construction Industry Security of Payment Act 1999* (NSW);
- b. the *Building and Construction Industry Payments Act 2004* (Qld);
- c. the *Building and Construction Industry Security of Payment Act 2002* (Vic);
- d. the *Building and Construction Industry (Security of Payment) Act 2009* (ACT);
- e. the *Building and Construction Industry (Security of Payment) Act 2009* (SA);
- f. the *Building and Construction Industry Security of Payment Act 2009* (Tas);
- g. the *Construction Contracts Act 2004* (WA); and
- h. the *Construction Contracts (Security of Payments) Act 2004* (NT).

**Specifications** means the specification and standards as specified in Schedule 1 - Services.

**Subsidiary** has the meaning given in the *Corporations Act 2001* (Cth).

**Tax Invoice** has the meaning given in section 195-1 of the GST Act.

**Taxable Supply** has the meaning given in section 195-1 of the GST Act.

**Term of this Deed** the period referred to in clause 2.1.1.

**Total Funding Amount** means the total amount of Funds payable to the Funding Recipient by the Commonwealth under this Deed as specified in Schedule 2 – Funds, Milestones and Contributions, which may not exceed the aggregate of the Funding Cap for all Assets.

**Variation** means:

- a. during the Rollout Period, for each Asset:
  - i. any change to the Designated Location;
  - ii. any addition, decrease, omission, deletion or removal to or from the Asset that will or may affect the Funding Recipient's ability to provide the Coverage;
  - iii. any design or technical change that will or may affect the Funding Recipient's ability to meet the Specifications; and
- b. during the Operational Period for each Asset, any change to the Services or the scope of the Services, including any change that will or may affect the Funding Recipient's ability to provide the Coverage; or
- c. any other change that will or may impact on the Commonwealth's achievements of the Objectives,

but does not include the development and refinement of the Design Documents in accordance with clause 4.3 or the maintenance or refurbishment of the Asset or replacement of any items of plant or equipment required to deliver the Services in accordance with this Deed, or any change in the construction of an Asset in accordance with industry practice.

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**Variation Order** means a written direction from the Commonwealth identified as a 'Variation Order' approving a Variation.

## 1.2. Rules of interpretation

1.2.1. In this Deed, unless the contrary intention appears:

- a. where a clause in this Deed refers to compliance with a particular section of the Guidelines and the particular part of the Guidelines includes:
  - i. the word 'applicant', that word is to be interpreted as a reference to 'Funding Recipient';
  - ii. the term 'Building MNO', that term is to be interpreted as a reference to 'Funding Recipient';
  - iii. the term 'Funded Base Station', that term (if the context allows) is to be interpreted as a reference to 'Asset'; and
  - iv. the term 'Proposed Base Station', that term (if the context allows) is to be interpreted as a reference to 'Asset';
- b. words in the singular number include the plural and words in the plural number include the singular;
- c. words importing a gender include any other gender;
- d. words importing persons include any company, partnership, joint venture, association, corporation or other body whether corporate or otherwise, as well as an individual;
- e. a reference to any clause, Party, Schedule or Annexure is a reference to a clause of, and a Party, Schedule or Annexure to, this Deed;
- f. clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- g. a reference to an Item is to an Item in a Schedule;
- h. all references to dollars are to Australian dollars;
- i. a reference to any Law or provision of any Law includes any delegated legislation or instrument made under it and any modification, substitution or re-enactment of that Law or provision of that Law;
- j. a reference to a document includes all amendments or supplements to, or replacement or novations of, that document;
- k. a reference to a party to a document includes that party's successors and permitted assignees and that party's employees, agents, consultants and contractors;
- l. the words 'include', 'including', 'for example' or 'such as' are not used as, nor are they to be interpreted as, words of limitation and, when introducing an example, do not limit the meaning of the words to which the example relates to examples of a similar kind;
- m. an uncertainty or ambiguity in the meaning of a provision of this Deed will not be interpreted against a Party just because that Party prepared the provision;
- n. 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;
- o. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form;

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- p. any reference to any agreement or other document is to that agreement, or other document as amended, novated, restated or replaced from time to time; and
- q. if a day on 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. Precedence**

- 1.3.1. The Schedules and Annexures (including any documents incorporated by reference) form part of this Deed. In the event of any conflict or inconsistency between any part of:
  - a. sections 4 and 5 and subsections 3.1.3, 3.2 and 11.6.5 of the Guidelines;
  - b. the terms and conditions contained in the clauses of this Deed;
  - c. the Schedules (other than the Guidelines);
  - d. the Annexures, if any;
  - e. the Guidelines (other than section 4 and 5 and subsections 3.1.3, 3.2 and 11.6.5);
  - f. documents incorporated by reference, if any;

then the material mentioned in any one of paragraphs a. to f. of this clause 1.3.1 has precedence over material mentioned in a subsequent paragraph, to the extent of any conflict or inconsistency.

### **1.4. Debt and Interest**

- 1.4.1. Any amount owed or payable to the Commonwealth (including by way of refund), or which the Commonwealth is entitled to recover from the Funding Recipient, under this Deed, including any Interest will, without prejudice to any other rights available to the Commonwealth under this Deed or at Law, be recoverable by the Commonwealth, at the Commonwealth's discretion, as a debt due to the Commonwealth by the Funding Recipient without further proof of the debt by the Commonwealth being necessary.
- 1.4.2. If the Commonwealth notifies the Funding Recipient that an amount is to be refunded or repaid to the Commonwealth or dealt with as notified by the Commonwealth and the amount is not refunded or repaid or dealt with as notified by the Commonwealth within 20 Business Days, or as otherwise notified by the Commonwealth, Interest will accrue and be payable by the Funding Recipient, unless the Commonwealth notifies the Funding Recipient otherwise, on the amount outstanding after the expiry of the date it was due, until the amount is paid in full.
- 1.4.3. In respect to any obligation the Funding Recipient may have under this Deed to pay the Commonwealth any Interest, the Funding Recipient agrees that the Interest represents a reasonable pre-estimate of the Loss incurred by the Commonwealth.

## **2. Term of this Deed**

- 2.1.1. This Deed commences on the Date of this Deed and terminates 10 years after the Date of Rollout Completion, unless terminated earlier, in which case this Deed will terminate on the date of such earlier termination (in each case, the **Expiry Date**).

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## 3. Activity and Objectives

### 3.1. General requirements

3.1.1. The Funding Recipient must:

- a. perform and complete the Activity in accordance with:
  - i. all applicable Laws;
  - ii. this Deed, including the Guidelines;
- b. perform its obligations under this Deed so as to achieve the Objectives; and
- c. carry out the Rollout within the Rollout Period in accordance with clause 4.

3.1.2. Except as otherwise expressly provided in this Deed, the Funding Recipient accepts all risks in connection with performing the Activity, and the Funding Recipient is not entitled to make any claim against the Commonwealth in connection with the Programme or the Activity.

### 3.2. Objectives

3.2.1. The Funding Recipient acknowledges and agrees that the Commonwealth's objectives for the Programme are:

- a. to improve and extend coverage of high quality mobile voice and wireless broadband services in rural and regional Australia (particularly in areas with unique coverage problems, along major transport routes, in small communities or areas that are prone to experiencing natural disasters); and
- b. to maximise the choice of mobile services providers for consumers.

## 4. Rollout

### 4.1. Rollout

4.1.1. The Funding Recipient must:

- a. carry out the Rollout in a cost efficient manner;
- b. commence and expeditiously and diligently perform the Rollout to achieve Asset Completion of each Asset;
- c. achieve Asset Completion of each Asset by the relevant Date for Asset Completion; and
- d. achieve Rollout Completion by the Date for Rollout Completion.

### 4.2. Rollout obligations

4.2.1. The Funding Recipient must supply all plant and equipment, resources, materials or other works and the provision of all labour necessary to carry out the Activity, whether or not expressly referred to in the Project Documents.

### 4.3. Project Documents

4.3.1. The Funding Recipient must:

- a. develop, complete and revise the Project Documents as required for the performance of the Activity;
- b. ensure that all Project Documents are consistent with the requirements of this Deed;

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- c. perform the Rollout in accordance with Project Documents;
- d. provide a copy of any Project Documents to the Commonwealth, promptly upon request; and
- e. annually update the Budget and provide it to the Commonwealth within 20 Business Days of the end of the Funding Recipient's financial year.

***Note to Funding Recipient: The Project Documents will either be attached to the Deed as a schedule or, where the documents are not finalised at the time this Deed is executed, Schedule 1 of this Deed will include the agreed high level requirements for each Project Documents based on the Funding Recipient's application.***

- 4.3.2. The Funding Recipient acknowledges and agrees that:
- a. the Commonwealth will not be acting as 'design authority' and will not assume or owe any duty of care to the Funding Recipient to review or comment on, direct any amendments to or approve any Project Documents, pursuant to this clause 4;
  - b. any review or comment on, amendments directed to or approval of the Project Documents or failure by the Commonwealth to review or comment on, direct amendment to or approve the Project Documents will not:
    - i. limit or relieve the Funding Recipient of any obligation or liability under this Deed;
    - ii. limit any right the Commonwealth has under this Deed;
    - iii. constitute acceptance by the Commonwealth of the performance of the Funding Recipient's obligations under this Deed;
    - iv. be considered as a representation or acknowledgement that the Project Documents comply with this Deed; or
    - v. give rise to any claim on the Funding Recipient's part, whether under this Deed or otherwise at Law; and
  - c. the Funding Recipient has not in any way relied (and will not rely) upon any review or comment on, direction or approval by the Commonwealth, in relation to any Project Document or the failure by the Commonwealth to perform any such function (including any failure to perform such function correctly).

#### **4.4. Funded Base Stations and Site Approval**

- 4.4.1. The Funding Recipient acknowledges and agrees that if it cannot obtain the necessary Approvals to construct an Asset at the Site designated for that Funded Base Station in the Decision Maker's List, the Funded Base Station may be removed from the Decision Maker's List, as provided for under section 11.6.5 of the Guidelines, and the Funding Recipient will be Notified of the decision.
- 4.4.2. Where a Notice is issued under clause 4.4.1, the Funding Recipient may within 15 Business Days of the date of the Notice propose a replacement Site for that Funded Base Station that the Funding Recipient asserts provides the equivalent or similar level of Coverage to the equivalent or similar area as the Site designated for that Funded Base Station.
- 4.4.3. If the Funding Recipient does not propose an alternative Site within the timeframe, specified in accordance with clause 4.4.2, the Commonwealth may by Notice withdraw the Funding in respect of that Funded Base Station upon Notice to the Funding Recipient, and Schedule 1 – Services and Schedule 2 - Funds, Milestones

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and Contributions of this Deed will be deemed to have been varied accordingly by the terms of the Notice.

4.4.4. Where Funding is withdrawn by the Commonwealth in accordance with clause 4.4.3, the Commonwealth will not be liable to the Funding Recipient for any costs incurred by the Funding Recipient with seeking Approvals in respect of the Site.

4.4.5. If the Commonwealth, in its absolute discretion, is satisfied that:

- a. the replacement Site proposed by the Funding Recipient under clause 4.4.2 will provide the equivalent or similar level of Coverage and to the equivalent or similar area as the Site designated for the Funded Base Station in the Decision Maker's List; and
- b. the placement of the Funded Base Station on the replacement Site will otherwise enable the Funding Recipient to comply with the Coverage requirements set out in the Operational Coverage Maps,

the Commonwealth may advise the Funding Recipient that the Funded Base Station may be built on the replacement Site and the parties shall negotiate in good faith the terms on which the Funding will be provided.

4.4.6. If a replacement Site is approved by the Commonwealth pursuant to clause 4.4.5, the Funding to be provided by the Commonwealth shall, under no circumstances, be more than the amount of Funding which had been originally agreed in respect of the Funded Base Station referred to in clause 4.4.1. The Funding Recipient will be liable for any additional costs incurred by the Funding Recipient with respect to, or in connection with, the construction of the Funded Base Station on the replacement Site.

4.4.7. If the Commonwealth, in its absolute discretion, is not satisfied that the construction of the Funded Base Station at the replacement Site proposed by the Funding Recipient under clause 4.4.2 will:

- a. provide the equivalent or similar level of Coverage and to the equivalent or similar area as the Site designated for that Funded Base Station in the Decision Maker's List; or
- b. will otherwise comply with the Coverage requirements set out in the Operational Coverage Maps;

the Commonwealth may, at its absolute discretion, withdraw the Funding in respect of that Funded Base Station upon Notice by the Commonwealth to the Funding Recipient. In such a case, Schedule 1 – Services and Schedule 2 - Funds, Milestones and Contributions will be deemed to have been varied accordingly by the terms of the Notice.

4.4.8. Where Funding is withdrawn by the Commonwealth in accordance with clause 4.4.7, the Commonwealth will not be liable to the Funding Recipient for any costs incurred by the Funding Recipient in connection with seeking Approvals in respect of the replacement Site or any other expense or costs associated with the proposal for the replacement Site.

4.4.9. The Funding Recipient acknowledges that if the Funding is withdrawn by the Commonwealth in respect of a Funded Base Station, that Funded Base Station will be removed from the Decision Maker's List.

4.4.10. The Funding Recipient acknowledges that if a Funded Base Station is removed from the Decision's Maker's List, the Commonwealth may select an alternative Proposed Base Station, in accordance with clause 11.6.5 of the Guidelines.

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- 4.4.11. The Funding Recipient acknowledges that the alternative Proposed Base Station selected by the Commonwealth may not relate to another base station for which the Funding Recipient sought funding under the Programme (whether or not it was successful), and further acknowledges that it has no entitlement to, nor any expectancy of, additional Funding under this Deed or the Programme in the event that Funding is withdrawn in accordance with clause 4.4.3.

### **5. Health and safety obligations**

#### **5.1. Health and Safety**

- 5.1.1. The Funding Recipient is responsible for all aspects of health and safety for, or in connection with, the Activity including:
- a. controlling and managing the performance of the Activity;
  - b. performing the Activity safely, and without risks to the health and safety of any person;
  - c. ensuring any workplace is safe and without risks to the health and safety of any person as a result of the Activity;
  - d. managing all safety hazards and risks, including undertaking a complete review and assessment of any hazards and risks associated with the Activity and identifying and implementing appropriate measures to control all such hazards and risks prior to the Activity commencing and throughout the Activity;
  - e. providing and maintaining a healthy and safe work environment;
  - f. providing and maintaining safe facilities, materials and equipment and construction materials (**materials**) and ensure that the use, and any installation, of materials, is carried out, in a safe manner and without risks to the health of any person;
  - g. providing and maintaining safe systems of work;
  - h. ensuring the safe use, handling, storage and transport of materials and equipment and construction materials; and
  - i. providing all necessary information, training, instruction and supervision necessary to protect persons who may be affected by the Activity from risks to their health and safety.
- 5.1.2. The Funding Recipient must discharge the Commonwealth's obligations under the Health and Safety Law, unless the Commonwealth directs otherwise.
- 5.1.3. The Funding Recipient accepts any relevant appointment necessary for the Funding Recipient to be responsible for all aspects of health and safety for the Activity, including (if applicable) the appointment as principal contractor for any construction work.
- 5.1.4. The Funding Recipient must pay all fees and charges payable under the Health and Safety Law in connection with the Activity.

#### **5.2. Health and safety warranties**

- 5.2.1. The Funding Recipient warrants that:
- a. it is familiar with and has the capability and resources to comply with the Health and Safety Law;
  - b. it and the Funding Recipient's Personnel (and any subcontractors) appointed by it:



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- i. are qualified and competent to comply with the Funding Recipient's obligations under this clause 5.2; and
- ii. have the necessary expertise to carry out their obligations in a manner that is without risk to the health and safety of any person.

5.2.2. it and the Funding Recipient's Personnel (and any subcontractors) appointed by it:

- a. are qualified and competent to comply with the Funding Recipient's obligations under this clause 5.2; and
- b. have the necessary expertise to carry out their obligations in a manner that is without risk to the health and safety of any person.

### **5.3. Health and safety obligations**

5.3.1. At the Commonwealth's request, the Funding Recipient must provide to the Commonwealth:

- a. documentation evidencing the Funding Recipient's compliance with this clause 5;
- b. at the Funding Recipient's expense, an independent verification by a suitably qualified expert, acceptable to the Commonwealth, verifying the Funding Recipient's compliance with this clause 5; and
- c. the Funding Recipient's incident investigation report and any related documents for all incidents or events reportable under the Health and Safety Law.

5.3.2. The Funding Recipient must immediately advise the Commonwealth in writing of:

- a. any incident or event that is in breach of or is reportable under the Health and Safety Law; and
- b. any act, fact or circumstance relevant to the ability of the Funding Recipient to perform the Activity without risk to health or safety.

5.3.3. Without limiting any other rights of the Commonwealth under this Deed (including under clause 39.1.4), the Commonwealth or its other contractors or agents can at any reasonable time review, inspect, audit or otherwise observe the Funding Recipient's health and safety systems, work practices and procedures related to the Activity.

5.3.4. The Funding Recipient acknowledges and agrees that:

- a. the Commonwealth's business or undertaking does not include carrying out any aspect of the Activity;
- b. in entering this Deed, the Commonwealth has relied on the Funding Recipient's warranties under clause 5.2 and any information provided to prequalify the Funding Recipient for the Activity;
- c. any review by the Commonwealth of the Funding Recipient's performance of its obligations under this Deed does not constitute acceptance of the adequacy of the matters reviewed or a waiver by the Commonwealth of any of its rights or the Funding Recipient's obligations under this Deed; and
- d. the Funding Recipient has no right of action against the Commonwealth, or any defence to any action or claim by the Commonwealth, arising from any review, alleged verification, approval or acceptance of any of the Funding Recipient's health and safety systems, work practices or procedures.



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- 5.3.5. Any breach by the Funding Recipient or the Funding Recipient's Personnel of the Health and Safety Law that:
- a. gives rise to circumstances which present in the Commonwealth's opinion (based on reasonable evidence), actual or potential risk to life; or
  - b. is otherwise required to be notified under the Health and Safety Law,
- entitles the Commonwealth to suspend the whole or part of the Activity (until such time as the Funding Recipient satisfies the Commonwealth, acting reasonably, that the breach has been rectified) and the Funding Recipient must bear any costs it incurs as a result of the suspension.

## **6. General risks, site risks and access**

### **6.1. Site risks**

- 6.1.1. The Funding Recipient accepts sole responsibility for, and assumes the risk of, all Loss arising out of or in connection with the nature, characteristics and physical conditions of a Site, including:
- a. all contamination, in under or around a Site and the removal of any contamination from a Site;
  - b. any non-standard soil or subsurface conditions; and
  - c. environmental, heritage, native title and geotechnical risks in connection with a Site.
- 6.1.2. The Funding Recipient will be responsible for, at its own cost:
- a. felling and lopping of trees, clearing and removing vegetation and undergrowth, and undertaking any required excavations or other land surface preparations;
  - b. erecting temporary workshops, sheds and other buildings and erecting fencing or other security; and
  - c. installing any services, including water, electricity, gas, fuel, telephone, drainage, sewerage, fibre optic cable and electronic communication services,
- to the extent necessary to perform the Activity and the Commonwealth is not liable for, or in connection with, any claim arising out of or in connection with, the nature, characteristics and physical conditions of a Site or the environment.
- 6.1.3. The Funding Recipient must, in performing the Activity:
- a. comply with all Laws and other requirements for the protection of the environment;
  - b. not bring on to, or produce any contaminants, pollution or other hazardous materials, or otherwise cause contamination, other than as required for the Activity and compliance with relevant Laws; and
  - c. make good any contamination caused or contributed to by the Funding Recipient on a Site, or arising out of or in any way in connection with the Activity.
- 6.1.4. To the full extent permitted by law, the Funding Recipient indemnifies and holds the Commonwealth harmless against any liability to, or claim by a third party and any Loss suffered or incurred by the Commonwealth arising out of a breach of clause 6.1.3.

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## 6.2. Access to Sites

- 6.2.1. The Funding Recipient is solely responsible for procuring each Site and obtaining access to and from a Site as required to perform the Activity (including any licences, rights, permits or Approvals required for such Access) and the Commonwealth is not liable for, or in connection with any claim arising out of or in connection with, any failure to obtain access to a Site or delay in accessing a Site.

## 7. Services

### 7.1. Provision of the Services

- 7.1.1. During the Operational Period for each Asset, the Funding Recipient must:
- a. provide the Services in each Designated Location in accordance with this Deed and otherwise so as to:
    - i. maintain the Coverage requirements set out in the Operational Coverage Maps; and
    - ii. meet the Specifications;
  - b. ensure that the Services are made available at comparable price and non-price terms and conditions and with the same features (including fault rectification and complaint handling processes) to those generally available for the rest of the Funding Recipient's Network and subject to the price and non-price terms and conditions for equivalent or similar services offered over the rest of the Funding Recipient's Network; and
  - c. ensure that the Assets deliver carriage services in accordance with the performance (and other) relevant standards as referenced in section 4.2.4 of the Guidelines.

### 7.2. Roaming Services

***Note to Funding Recipient: This provision will only be used to the extent that roaming was offered by the Funding Recipient for the Proposed Base Station in its funding application***

- 7.2.1. In respect of the Assets for which a Funding Recipient has agreed to provide Roaming as part of the grant of funding (and as specified in Schedule 1), the Funding Recipient must:
- a. offer to provide Mobile Network Operators with Roaming within the areas of Coverage of the Designated Location under this Deed; and
  - b. comply with:
    - i. the requirements set out in section 4.6.4 of the Guidelines in respect of negotiations (and the timeframe for such negotiations) for the Roaming service; and
    - ii. any specified in accordance with the terms and conditions set out in Schedule 1 - Attachment B - Roaming Services Agreement.

### 7.3. Co-Location Obligations and Co-Location Service Agreements

- 7.3.1. The Funding Recipient must offer Co-Location of facilities of a Mobile Network Operator on each Asset as part of the grant of funding (and as specified in Schedule 1).

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- 7.3.2. The Funding Recipient must:
- a. comply with sections 4.3.2, 4.3.3, 4.3.5, 4.3.7, 4.3.8 and 4.3.10 of the Guidelines; and
  - b. in the case of a Greenfield Asset, facilitate access by Mobile Network Operators to the Greenfield Asset (in order to allow for Co-location and participation in the design and construction of the Greenfield Asset (if required)) in accordance with the terms and conditions set out in Schedule 1 Attachment A - Co-Location Services Agreement (**Co-Location Services Agreement**).

### 7.4. Backhaul access and pricing

***Note to Funding Recipient: This provision will only be used to the extent Backhaul access and co-location is relevant. As noted in the Guidelines, for more remote locations where existing fibre or microwave Backhaul (or a combination of both) is not available or readily accessible, satellite Backhaul technology may be utilised to deliver the mobile services.***

***If satellite Backhaul technology is proposed for a Proposed Base Station, the applicant should clearly define the level of service to be provided. For locations where a microwave or other type of Backhaul solution is to be used for a Proposed Base Station that is not capable of providing a Backhaul service to other MNOs, the Proposed Base Station design will need to enable other MNOs to co-locate a similar Backhaul solution (eg allow the other MNOs to install their own microwave Backhaul solution).***

- 7.4.1. Where the Funding Recipient has entered into a legally binding agreement with another Mobile Network Operator (the Co-locating MNO) to Co-locate on an Asset, the Funding Recipient must comply with section 4.4 of the Guidelines and (as applicable) include any other terms and conditions set out in Schedule 2 Attachment B - Backhaul Access and Pricing Agreement (**Backhaul Access and Pricing Agreement**).

### 7.5. Co-Location, Roaming and Backhaul - Disputes with MNOs

- 7.5.1. The Funding Recipient must negotiate with any Mobile Network Operator in good faith regarding the terms and conditions (price and non-price) upon which each of any or all of the following services (as applicable) are to be supplied by the Funding Recipient (**access agreement**):
- a. Roaming; or
  - b. Co-Location; or
  - c. Backhaul (and access).
- 7.5.2. If the Funding Recipient and the Mobile Network Operator fail to agree an access agreement within [40] Business Days of the date of commencement of negotiations, the Funding Recipient must adhere to the dispute resolution processes specified in section 4.5 of the Guidelines.
- 7.5.3. In the event that:
- a. a dispute between the Funding Recipient and the relevant Mobile Network Operator about a price term is independently determined by a third party, in accordance with the dispute resolution process set out in clause 4.5 of the Guidelines; and

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- b. the Funding Recipient imposes a price term upon the Mobile Network Operator which is higher than the independently determined price any time after the price determination becomes binding,

the Funding Recipient will be liable to repay in full the Funds paid the under this Deed in respect of that Asset within 20 Business Days of receipt of a Notice by the Commonwealth.

### **7.6. The Funding Recipient is to bear its own costs for the delivery of Services**

7.6.1. The Funding Recipient will be responsible for all costs associated with the provision of the Services, including the costs of repairs and upgrades to the Assets.

7.6.2. The Commonwealth will not:

- a. provide any funding or subsidy to support the provision of the Services;
- b. pay any fees for the provision of the Services; or
- c. make any contribution (of any kind) towards any charge, expense or other cost incurred by the Funding Recipient, whether directly or indirectly related to the provision of the Services.

7.6.3. The Commonwealth is not liable for, or in connection with, any claim (and the Funding Recipient is not entitled to make any claim) arising out of or in connection with the performance of the Services, other than a Payment Claim but only in accordance with clause 9.

7.6.4. The Funding Recipient will be entitled to retain all revenue from the provision of the Services to third parties or any revenue received from any third party under any Co-Location Services Agreement, Backhaul Services Agreement or Roaming Services Agreement.

### **7.7. Variations**

7.7.1. If the Funding Recipient wishes to undertake any Variation, it must obtain the Commonwealth's prior written approval. The Commonwealth may, in its absolute discretion:

- a. approve or reject any such Variation and, if approved, issue a Variation Order; and
- b. impose any condition on an approval pursuant to clause 7.7.1.a, provided that the Commonwealth's approval must not be unreasonably withheld where the requested Variation is consistent with the achievement of the Objectives.

7.7.2. The Funding Recipient acknowledges and agrees that it will be responsible for all costs associated with undertaking a Variation approved pursuant to clause 7.7.1.a and that the Commonwealth is not liable for, or in connection with any claim (and the Funding Recipient is not entitled to make any claim) arising out of or in connection with any approval, rejection or deemed rejection of any Variation requested by the Funding Recipient pursuant to this clause 7.7.

### **8. Specific Warranties**

8.1.1. The Funding Recipient warrants to the Commonwealth on the Date of this Deed and each date that it lodges a payment claim under clause 9.1 that:

- a. the Funding Recipient can and will provide the Services in accordance with this Deed;

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- b. the Funding Recipient can and will obtain any licences, approvals, permissions, powers or consents necessary for fulfilling its obligations under this Deed;
- c. the Funding Recipient currently complies with, and will continue to comply with, any applicable Laws;
- d. the design of the Assets (including the Design Documents) will remain at all times Fit for Purpose and will be completed in accordance with the Project Documents; and
- e. the Rollout will:
  - i. be completed in accordance with, and satisfy the requirements of, the Project Documents;
  - ii. upon Asset Completion and Rollout Completion, be Fit for Purpose; and
  - iii. remain at all times Fit for Purpose.

### 9. Payment

#### 9.1. Making of payments

- 9.1.1. Subject to sufficient funds being available to the Commonwealth for the Programme and compliance by the Funding Recipient with this Deed (including the invoicing and reporting requirements), the Commonwealth will provide the Funding Recipient with the Funding at the times and in the manner specified in Schedule 2 – Funds, Milestones and Contributions.
- 9.1.2. Within 10 Business Days of completion of a Milestone, the Funding Recipient must provide a claim for payment (**Payment Claim**).
- 9.1.3. The Payment Claim must be submitted with:
  - a. details and evidence of achievement of the relevant Milestone(s) to the satisfaction of the Commonwealth;
  - b. details of all money the Funding Recipient has expended or Legally Committed for the Capital Costs of the Asset, and such details must be certified in writing by a person duly authorised to make the certification on behalf of the Funding Recipient and who occupies a senior executive position within the Funding Recipient's organisation;
  - c. a statutory declaration (in the prescribed form set out in a relevant SOP Act, if any) stating that all amounts which are then due and payable by the Funding Recipient to any subcontractor, consultant or supplier engaged in respect of the works undertaken to achieve that Milestone have been duly paid by the Funding Recipient;
  - d. any other information required under a relevant SOP Act;
  - e. if a Site is in New South Wales, a statement comprising the statement under each of:
    - i. section 175B of the *Workers Compensation Act 1987* (NSW);
    - ii. Schedule 2 Part 5 of the *Payroll Tax Act 2007* (NSW); and
    - iii. section 127 of the *Industrial Relations Act 1996* (NSW),in such form as satisfies the requirements of that legislation; and

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- f. such other information as reasonably requested by and to the satisfaction of the Commonwealth.
- 9.1.4. The Commonwealth may, within 10 Business Days of receipt of a Payment Claim, provide the Funding Recipient with a payment schedule (**Payment Schedule**), which shall include:
- a. the amount of Funds that the Commonwealth proposes to pay the Funding Recipient in response to the Payment Claim; and
  - b. if the amount of Funds proposed by the Commonwealth differs from the amount claimed by the Funding Recipient in the Payment Claim, an explanation of the reasons for the difference.
- 9.1.5. The Funding Recipient must issue a Tax Invoice to the Commonwealth as required by clause 15.4.1 and containing details of:
- a. the Milestone(s) in respect of which the Tax Invoice relates;
  - b. the number of this Deed and the Date of this Deed; and
  - c. the bank account name and details for payment of the invoice by electronic funds transfer.
- 9.1.6. The Funding Recipient must issue the Tax Invoice described in clause 9.1.5:
- a. if a Payment Schedule has been provided under clause 9.1.4:
    - i. within 2 Business Days after the Payment Schedule has been provided; and
    - ii. for the amount proposed in that Payment Schedule; or
  - b. if a Payment Schedule has not been provided:
    - i. within 12 Business Days after the Payment Claim has been provided; and
    - ii. for the amount claimed in the Payment Claim.
- 9.1.7. The Funding Recipient is not entitled to receive payment unless, the Commonwealth is satisfied that:
- a. all the information required by clauses 9.1.3, 9.1.5 and 9.1.6 has been provided to the Commonwealth;
  - b. the Milestone which is the subject of the Payment Claim has been completed to the Commonwealth's satisfaction; and
  - c. the Funding Recipient has complied with all of its obligations under this Deed which are required to have been complied with.
- 9.1.8. Subject to clauses 9.1.7 and 9.1.10, the Commonwealth will pay to the Funding Recipient:
- a. if a Payment Schedule has been provided under clause 9.1.4, the amount of Funds proposed in that Payment Schedule; or
  - b. if a Payment Schedule has not been provided, the amount of Funds claimed in the Payment Claim, within [15] Business Days of receipt of the Payment Claim.

***Note to Funding Recipient: The time periods above reflect the requirements of the NSW SOP Act. The Commonwealth reserves the right to increase the***

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***number of days for payment depending on the jurisdictions in which construction of Assets will occur, subject to the requirements of the SOP Act in the relevant jurisdictions.***

- 9.1.9. Any payment of Funds under clause 9.1.8, or the issue of a Payment Schedule, is not:
- a. evidence of the value of work or that work has been satisfactorily carried out in accordance with this Deed;
  - b. an admission of liability; or
  - c. approval by the Commonwealth of the Funding Recipient's performance or compliance with this Deed,
- and the payment is only to be taken as payment on account.
- 9.1.10. Without limiting the Commonwealth's rights, the Commonwealth will not be liable to pay any amount included in the Payment Claim and may withhold or suspend any payment in whole or in part:
- a. until the Funding Recipient has complied with all of its obligations under this Deed which are required to have been complied with;
  - b. if the Funding Recipient has amounts to be repaid or un-acquitted moneys under any arrangement (whether contractual or statutory) with the Commonwealth, including between the Funding Recipient and the Commonwealth;
  - c. if the Funding Recipient has not completed the works required to be completed to achieve the relevant Milestone; or
  - d. if a Report provided by the Funding Recipient is not accurate or complete.
- 9.1.11. Notwithstanding such suspension or deferral of any payments in accordance with clause 9.1.10, the Funding Recipient must continue to perform all of its obligations under this Deed, unless the Commonwealth agrees otherwise in writing.

### **9.2. Limitations on Funding**

- 9.2.1. The maximum amount of Funds payable by the Commonwealth under this Deed is limited to the Total Funding Amount. The Commonwealth is not responsible for the provision of additional money to meet any Asset Capital Costs or any other costs related to the Activity in excess of the Total Funding Amount.
- 9.2.2. The maximum amount of Funds payable by the Commonwealth under this Deed in relation to an individual Asset is limited to the Funding Cap in respect of that Asset.
- 9.2.3. In the event that the Actual Asset Capital Costs in relation to an individual Asset is less than the estimated Asset Capital Cost for the Asset, the Funding Cap for that Asset may be reduced, at the Commonwealth's determination, by Notice to the Funding Recipient, by an amount which is directly proportionate to the amount of the reduction.
- 9.2.4. Schedule 1 – Services and Schedule 2 – Funds, Milestones and Contributions will automatically be deemed to have been varied accordingly by the terms of the Notice issued in accordance with clause 9.2.3 above.

***Note to Funding Recipient: Where States or Territories are to make cash contributions to the Rollout, clause 9.2.4 above may be adjusted to reflect an agreed formulae.***



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9.2.5. Subject to this clause 9.2, the Funding Recipient must, in respect of an individual Asset, only use the Funding to pay for the Asset Capital Costs.

9.2.6. The Funding Recipient acknowledges that:

- a. the Funding payable under this Deed is intended to meet, in respect of each Asset, some but not all of the Funding Recipient's Asset Capital Costs; and
- b. the Funding Recipient is solely responsible for, and must contribute or arrange for the contribution of all amounts in addition to the Total Funding Amount which are necessary to meet the Milestones, complete the Rollout and provide the Services, as set out in clause 10.

### **9.3. Receipt of other government funding**

9.3.1. Subject to 9.3.2, no Funding will be paid for the conduct of an activity where the Funding Recipient may be entitled to funding for the same or a similar activity from another Commonwealth agency.

9.3.2. Except for agreed Other Contributions, the Funding Recipient must obtain the Commonwealth's written consent (such consent not to be unreasonably withheld) prior to entering into any arrangement (whether contractual or statutory) under which it is entitled to receive funding from,

- a. another Commonwealth agency; or
- b. a State, Territory or local government,

for the conduct of an activity that is the same or similar to the Activity, and to any amendment to such an arrangement that is likely to adversely affect the Commonwealth's rights under this Deed.

### **9.4. Use as security**

9.4.1. The Funding Recipient warrants that it will, at all relevant times, ensure that the Assets are not used as any form of security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest, or for the preparation of, or in the course of, any litigation, where such an arrangement could adversely affect the Funding Recipient's ability to meet its Services (including Coverage) obligations under this Deed.

## **10. The Funding Recipient's Contributions and Other Contributions**

### **10.1. The Funding Recipient's Contributions**

10.1.1. The Funding Recipient must provide the Funding Recipient's Contributions for the Activity at the times, and in the amounts, as specified in Schedule 2 – Funds, Milestones and Contributions.

### **10.2. Other Contributions**

10.2.1. The Commonwealth and the Funding Recipient acknowledge that prior to the execution of this Deed, the Funding Recipient has entered into legally binding agreements with certain third parties for the provision of the Other Contributions for the Activities as attached in Annexure 2.

***Note to Funding Recipient: For Funded Base Stations that include Co-contributions from other third parties, the Funding Recipient must execute a***



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***separate and binding commitment prior to the execution of this Deed. Also, a copy of the terms of this separate agreement must be attached to the Funding Deed prior to it being executed by the Commonwealth.***

***Prior to agreeing any relevant third party terms, the Funding Recipient must, if required by the Department: (a) provide a copy of the agreement to the Department; and (b) consult with the Department on the agreed terms.***

- 10.2.2. The Funding Recipient must:
- a. ensure that the Other Contributions for the Activities are provided at the times, and in the amounts as specified in Schedule 2 – Funds, Milestones and Contributions; and
  - b. ensure that the Other Contributions for the Activities are provided in accordance with the agreements entered into with each third party for the provision of the Other Contributions as attached in Annexure 2.

***Note to Funding Recipient: Clause 10.2.2.b will be included if the applicable State / Territory / Local government or any third party is not a party to this Deed, in which case the relevant agreements must be executed prior to the execution of this Deed.***

## **11. Assets**

### **11.1. Acquisition of Assets**

- 11.1.1. The Commonwealth acknowledges that the Funding Recipient will use the Funding to acquire Assets (including Network Infrastructure) and that those Assets will be owned by the Funding Recipient.

### **11.2. Terms applicable to Asset**

- 11.2.1. During the Operational Period, the Funding Recipient must use any Asset acquired or built with the Funds in accordance with this Deed and for the purposes of the Activity and the provision of the Services.

## **12. Records**

### **12.1. Keeping Records**

- 12.1.1. The Funding Recipient must create and maintain full and accurate Records of the conduct of the Activity including (without limitation):
- a. the actual progress of the Rollout, including the works undertaken in relation to each Milestone, completion of any Milestones and the nature and effect of any delay to completion of a Milestone by the relevant Milestone Date;
  - b. an Asset register listing all items of plant and equipment incorporated into the Asset as constructed;
  - c. the completion of each Asset and any disposal of Assets or reapplication of Funds to an alternative Asset approved under this deed;
  - d. the implementation and provision of the Services in compliance with the Coverage obligations and the Specifications;
  - e. the creation of Intellectual Property Rights in Activity Material;
  - f. the receipt and use of the Funding;

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- g. the receipt and use of the Funding Recipient's Contributions and the Other Contributions; and
- h. in addition to paragraphs f and g, financial records relating to the performance of the Activity so as to enable:
  - i. all expenditure related to the Activity to be identified in the Funding Recipient's accounts;
  - ii. the preparation of financial statements in accordance with the Australian Accounting Standards;
  - iii. the audit of those financial statements in accordance with the Australian Auditing Standards; and
  - iv. copies of all documentation relating to the notification and resolution of disputes between MNOs in relation to the Assets.

### **12.2. Retention of Records**

- 12.2.1. The Funding Recipient must, for the Term of the Deed, and for a period of no less than 3 years after the Expiry Date, unless otherwise required by law;
  - a. keep secure all Records and accounts required to be created and maintained under clause 12.1 together with all relevant documents and supporting materials; and
  - b. give the Commonwealth or any auditor appointed by the Commonwealth access at all reasonable times to those documents and supporting materials.

### **13. Reporting**

#### **13.1. Asset Completion Reports**

- 13.1.1. For each Asset created at a specific Site, the Funding Recipient must submit an Asset Completion Report to the Commonwealth within 20 Business Days of the date on which the Funding Recipient considers that Asset Completion has occurred, which meets the requirements of Part 1 of Schedule 4 - Reports.
- 13.1.2. Upon receipt of the Asset Completion Report, the Commonwealth will consider whether completion for that Asset has occurred, and will Notify the Funding Recipient either that:
  - a. the Commonwealth is satisfied that Asset Completion has occurred in accordance with this Deed in respect of that Asset, in which case the Notice will also specify the date of acceptance of that Asset by the Commonwealth (the **Date of Asset Completion**); or
  - b. the Commonwealth, acting reasonably and in good faith, is not satisfied that Asset Completion has occurred in accordance with this Deed in respect of that Asset, in which case the Notice will also specify the reason or reasons why the Commonwealth is not so satisfied.
- 13.1.3. If the Commonwealth issues a Notice under clause 13.1.2(b), the Funding Recipient must, at its own expense and within a timeframe required by the Commonwealth, take such remedial action as is required to achieve Asset Completion in respect of that Asset in accordance with this Deed. When the Funding Recipient considers that it has completed the required action, the Funding Recipient must complete a second Asset Completion Report and the Commonwealth must reconsider the final Asset Completion Report in accordance with clause 13.1.2.

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### **13.2. Operational Period Reports**

- 13.2.1. The Funding Recipient must submit reports to the Commonwealth, which meet the requirements of Part 2 of Schedule 4 - Reports (**Operational Period Reports**) at the following times:
- a. within 15 Business Days from [*date to be agreed, eg "30 June 2016"*]; and
  - b. within 15 Business Days of the end of each twelve-month period following the date referred to in paragraph a. above.

### **13.3. Other Reports**

- 13.3.1. The Commonwealth may from time to time and acting reasonably, require the Funding Recipient to provide additional Reports to the Commonwealth. At the time of a request, the Commonwealth will Notify the Funding Recipient of the timing and details required to be included in the Report.

### **13.4. Reporting requirements**

- 13.4.1. All Reports to be provided by the Funding Recipient must be at the Funding Recipient's own expense.
- 13.4.2. If the Commonwealth is not reasonably satisfied with the form or the content of a Report the Commonwealth will, within 10 Business Days of receiving the Report, Notify the Funding Recipient, in writing, that the Funding Recipient is required to submit a revised Report to the Commonwealth within 20 Business Days of the Notice and the Funding Recipient must, at its own expense and within the time specified, re-submit the Report.
- 13.4.3. The Commonwealth is not required to make any payment of Funds until it is satisfied with all Reports (including any Report resubmitted under clause 13.4.2) which are required to have been submitted by the Funding Recipient before that payment of Funds. Each Report must be certified in writing as being an accurate statement of the matters specified in the Report by a person duly authorised to make the statement on behalf of the Funding Recipient and who occupies a senior executive position within the Funding Recipient's organisation.
- 13.4.4. If the Commonwealth requests the Funding Recipient arrange for an independent third Party to audit a Report, or to allow an auditor appointed by the Commonwealth to verify the accuracy of those Reports, the Funding Recipient must undertake, or participate in, any such audit, and provide full co-operation to the auditor during any such audit.
- 13.4.5. If an audit is undertaken in accordance with clause 13.4.4, the Funding Recipient must pay for the audit where the auditor determines that the Report is not accurate and the Commonwealth is adversely affected. Otherwise, the Commonwealth will pay for the audit.

### **13.5. Statements of Receipt and Expenditure**

- 13.5.1. In addition to the Funding Recipient's other reporting obligations under the Deed the Funding Recipient must provide to the Commonwealth within 60 Business Days after the completion of each Financial Year during the Rollout Period an audited statement of receipts and expenditure in respect of the Funds. The audit must be prepared in accordance with Australian Accounting Standards and carried out by a person who is eligible to be registered as an auditor under section 1280 of the *Corporations Act 2001* (Cth) and is not an officer or employee of the Funding Recipient. The audit must

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include a statement as to whether the financial information provided to the Commonwealth in connection with the Activity represents the financial transactions fairly and in accordance with Australian Accounting Standards. The Funding Recipient must pay for the audit.

- 13.5.2. The information provided under clause 13.5.1 must be accompanied by a certificate that all Funding was spent for the purpose of the Rollout and in accordance with this Deed, and that the Funding Recipient has complied with this Deed.
- 13.5.3. The Commonwealth will consider the audited statement provided in accordance with clause 13.5.1 and Notify the Funding Recipient either that:
- a. the Commonwealth is satisfied with the statement; or
  - b. the Commonwealth, acting reasonably, forms the view that there are material deficiencies with the statement, in which case the Notice must specify the reason why the Commonwealth is not so satisfied with the statement.
- 13.5.4. If a Notice is issued under clause 13.5.3, the Funding Recipient must, at its own expense and within a time frame required by the Commonwealth, take such remedial action as is required to remedy the defects in the statement and re-submit it to the Commonwealth for consideration.

### **14. Public database**

- 14.1.1. Prior to the commencement of the detailed design phase for each Funded Base Station (Asset), the Funding Recipient must establish, maintain and keep updated on a monthly basis, a publicly available online database until the date that is 30 Business Days after the Date of Rollout Completion (the **Database**).
- 14.1.2. The information available on the Database must be sufficient to assist the Commonwealth to monitor progress of the Rollout and to enable MNOs and other parties to progressively make informed decisions about co-locating equipment to deliver Services where possible, and must include the following information:
- a. the Funded Base Station location;
  - b. the status and progress of each Funded Base Station;
  - c. the Milestones;
  - d. the anticipated Dates of Asset Completion; and
  - e. any other information reasonably requested by the Commonwealth to advance the Objectives.

### **15. Taxes, duties and government charges**

#### **15.1. General taxes**

- 15.1.1. Subject to this clause, all taxes, duties and government charges imposed in Australia or overseas in connection with this Deed must be borne by the Funding Recipient.

#### **15.2. Funds are GST Inclusive**

- 15.2.1. Funds payable under this Deed include amounts on account of any GST payable by the Funding Recipient on Taxable Supplies to the Commonwealth.

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## **15.3. GST registration and ABN**

- 15.3.1. The provisions of this clause in respect of GST apply if the Funding Recipient is registered or is required to be registered for GST. Each Party has quoted its ABN to the other, and must tell the other immediately about any changes to either the ABN or GST registration.

## **15.4. Tax Invoice**

- 15.4.1. The Funding Recipient must give the Commonwealth a Tax Invoice in accordance with the GST Act in relation to any Taxable Supply by the Funding Recipient to the Commonwealth in connection with this Deed prior to payment of Funds by the Commonwealth. On receipt of a Tax Invoice and subject to clause 9, the Commonwealth will then pay the Funding Recipient without set-off an additional amount equal to the GST imposed on the Taxable Supply.

## **15.5. Input Tax Credit**

- 15.5.1. No Party may claim from the other any amount for which the first one may claim an Input Tax Credit or decreasing adjustment. For the avoidance of doubt, the Funding payable by the Commonwealth to the Funding Recipient under this Deed must not include any amount which represents GST paid by the Funding Recipient on its own inputs and for which an Input Tax Credit is available to the Funding Recipient.

## **15.6. Claims**

- 15.6.1. If a payment to satisfy a claim or a right to claim under or in connection with this Deed (for example, a claim for damages for breach of the Deed) 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).
- 15.6.2. If a Party has a claim under or in connection with this Deed 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).

## **15.7. Refund**

- 15.7.1. If, at any time the Commonwealth determined that:
- a. there remains an amount of Funding that has not been spent or Legally Committed for expenditure in accordance with this Deed;
  - b. Funds have not been spent in accordance with this Deed; or
  - c. Funds have not been properly acquitted to the Commonwealth's satisfaction,
- then, at the Commonwealth's discretion, this amount must within 20 Business Days of a Notice from the Commonwealth be refunded by the Funding Recipient to the Commonwealth or dealt with as notified by the Commonwealth, or the Commonwealth may reduce further payments of Funding to the Funding Recipient by up to this amount.
- 15.7.2. Any refund under this Deed must be inclusive of GST and must be accompanied by an Adjustment Note under the GST Act relating to Taxable Supplies for which the Funding Recipient previously issued to the Commonwealth a Tax Invoice.

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## **16. Commonwealth Material**

### **16.1. Ownership**

- 16.1.1. Ownership of all Commonwealth Material, including Intellectual Property Rights in that Material, remains vested at all times in the Commonwealth but the Commonwealth grants the Funding Recipient a licence to use, copy, reproduce, communicate, adapt and exploit that Material only for the purposes of this Deed and in accordance with any conditions or restrictions specified in the Schedules or that the Commonwealth may Notify to the Funding Recipient.

### **16.2. Possession of Commonwealth Material**

- 16.2.1. On and from the Expiry Date, the Funding Recipient may retain all Commonwealth Material remaining in its possession, unless otherwise notified by the Commonwealth.

### **16.3. Maintain Commonwealth Material**

- 16.3.1. The Funding Recipient must keep safely and maintain Commonwealth Material the Funding Recipient has been given for the purposes of this Deed.

## **17. Intellectual Property Rights**

### **17.1. Ownership**

- 17.1.1. Subject to this clause 17, as between the Commonwealth and the Funding Recipient (but without affecting the position between the Funding Recipient and a third party) Intellectual Property Rights in Activity Material vest immediately in the Funding Recipient.

### **17.2. Licence of Activity Material**

- 17.2.1. The Funding Recipient grants to the Commonwealth (or must procure for the Commonwealth) a permanent, irrevocable, free, world wide, non-exclusive licence (including a right of sublicense) to use, reproduce, communicate, adapt, modify, perform and exploit the Activity Material, including the Intellectual Property Rights in that Material, for any purpose.

### **17.3. Licence of Existing Material**

- 17.3.1. This clause 17 does not affect the ownership of any Intellectual Property Rights in any Existing Material. The Funding Recipient, however, grants to the Commonwealth or must arrange for the grant to the Commonwealth of a permanent, irrevocable, free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, communicate, adapt, modify, perform and exploit the Existing Material, including the Intellectual Property Rights in Existing Material, in conjunction with the Activity Material.

### **17.4. Dealing with Intellectual Property Rights**

- 17.4.1. The Funding Recipient:
- a. must, if requested by the Commonwealth to do so, bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 17; and

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- b. warrant that the Funding Recipient is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Activity Material and the Existing Material in accordance with this clause 17.

### **17.5. Specified Acts relating to Moral Rights**

17.5.1. For this clause 17, the 'Specified Acts' means any of the following classes or types of acts or omissions by or on behalf of the Commonwealth:

- a. reproducing, adapting or exploiting all or any part of the Activity Material without attribution of authorship;
- b. supplementing the Activity Material with any other Material;
- c. using the Activity Material in a different context to that originally envisaged;
- d. releasing the Activity Material to the public under an Open Access Licence;
- e. using, adapting or exploiting the Activity Material to the extent necessary for the Commonwealth to exercise its rights and perform its obligations under this Deed; and
- f. any other acts or omissions specifically set out in the Schedules.

### **17.6. Consent to Specified Acts**

17.6.1. The Funding Recipient agrees:

- a. to obtain from each author of any Activity Material a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly to the performance of the Specified Acts by the Commonwealth or any person claiming under or through the Commonwealth;
- b. to obtain from each author of any Existing Material, a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for the Commonwealth's benefit in relation to the Commonwealth's licensed use of such Material; and
- c. upon request, to provide the executed original of any such consent to the Commonwealth.

## **18. Confidentiality and disclosure**

### **18.1. Confidentiality**

18.1.1. Subject to clause 18.1.3, a Party must not, without the prior written consent of the other, use or disclose any Confidential Information of the other.

18.1.2. In giving written consent to use or disclose Confidential Information, a Party may impose such reasonable conditions as are appropriate in the circumstances, and the Parties agree to comply with those conditions.

18.1.3. The obligations on the Parties under this clause 18 will not be taken to have been breached to the extent that Confidential Information:

- a. is authorised or required by Law to be disclosed or otherwise is permitted to be disclosed under this Deed;
- b. is disclosed by a Party to its advisers or employees solely in order to comply with obligations, or to exercise rights, under this Deed;



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- c. is disclosed by a party to its internal management personnel, solely to enable effective management or auditing of this Deed or any Reports or financial information provided under this Deed;
- d. is in the public domain otherwise than due to a breach of this clause 18;
- e. is disclosed by the Commonwealth to its Ministers;
- f. is shared by the Commonwealth within the Commonwealth's organisation, or with another Commonwealth department, agency, authority or entity, where this serves the legitimate interests of the Commonwealth in relation to the Programme;
- g. is disclosed by the Commonwealth, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia or to any other judicial or parliamentary body; or
- h. is disclosed by the Commonwealth and is information in a material form in respect of which an interest, whether by licence or otherwise, in the Intellectual Property Rights in relation to that material form, has vested in, or is assigned to the Commonwealth under this Deed or otherwise.

18.1.4. Where a Party discloses Confidential Information to another person:

- a. pursuant to clauses 18.1.3(b), (c) or (f), the disclosing Party must:
  - i. Notify the receiving person that the information is Confidential Information; and
  - ii. not provide the information unless the receiving person agrees to keep the information confidential; or
- b. pursuant to clauses 18.1.3(e) or (g) – the disclosing Party must notify the receiving party that the information is Confidential Information.

## 19. Protection of personal information

### 19.1. Definitions

19.1.1. In this clause 19, the terms '**agency**', '**contracted service provider**', and '**personal information**' have the same meaning as they have in section 6 of the *Privacy Act 1988* (Cth) (the **Privacy Act**).

### 19.2. Application of the clause

19.2.1. This clause 19 only applies where the Funding Recipient deals with personal information for the purpose of providing the Services under this Deed.

### 19.3. Obligations

19.3.1. The Funding Recipient acknowledges that it is a 'contracted service provider' within the meaning of section 6 of the Privacy Act and agrees in respect of the provision of the Services under this Deed:

- a. to use or to disclose personal information obtained during the course of providing the Services only for the purposes for which it was collected and for fulfilling its obligations under this Deed;
- b. not to do any act or engage in any practice which, if done or engaged in by the Commonwealth, would be a breach of the requirements of Division 2 of Part III of the Privacy Act;



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- c. to comply with any request under section 95C of the Privacy Act (relating to disclosure of any provisions of a deed or contract that are inconsistent with the relevant requirements binding on a party to that deed or contract);
- d. to immediately Notify the Commonwealth if the Funding Recipient becomes aware of a breach or possible breach of any of the obligations under this clause 19, whether by the Funding Recipient or any subcontractor;
- e. to comply with any directions, guidelines, determination or recommendations of the Privacy Commissioner to the extent that they are no inconsistent with the requirements under this clause; and
- f. to ensure that the Funding Recipient's employee, who is required to deal with personal information for the purposes of a deed or contract is made aware of the Funding Recipient's obligations under this clause 19.

### **19.4. Subcontracts**

- 19.4.1. The Funding Recipient agrees to ensure that any subcontract entered into for the purposes of fulfilling its obligations under this Deed contains provisions to ensure that the subcontractor has the same awareness and obligations as the Funding Recipient has under this clause 19, including this requirement in relation to subcontracts.

## **20. Indemnity**

### **20.1. Proportionate liability regime**

- 20.1.1. To the extent permitted by law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Funding Recipient under or in connection with this Deed.

### **20.2. General indemnity**

- 20.2.1. The Funding Recipient indemnifies (and keeps indemnified) the Commonwealth against any Loss or claim against the Commonwealth, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by the Commonwealth, arising out of or in connection with:
  - a. any act or omission by the Funding Recipient in connection with this Deed, where there was fault on the part of the person whose conduct gave rise to that Loss or claim;
  - b. any breach by the Funding Recipient of this Deed or of any Laws;
  - c. any non-compliance with a Health and Safety Law or breach by the Funding Recipient or subcontractors (and any employees, officers, agents and consultants of the subcontractors and their sub-subcontractors) of any requirement under clause 5 of this Deed;
  - d. wilful misconduct, wilful default, fraudulent or negligent act or omission of the Funding Recipient;
  - e. loss of, or damage to property of any third party and personal injury (including illness) or death of any person arising out of the performance of the Activity, Rollout and Services or any activity for which the Funding Recipient is directly or indirectly responsible;
  - f. use or disposal of the Assets;
  - g. pure economic loss suffered by third parties;

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- h. 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 or Moral Rights in Activity Material or Existing Material; or
- i. the condition or state of repair of a Site,  
arising out of, or in connection with:
- j. the Activities, the Project Documents or the Programme; and
- k. the use or occupation of a Site by the Funding Recipient.

20.2.2. Subject to clause 20.2.3, the Funding Recipient and its Related Bodies Corporate will have no liability to the Commonwealth and its Related Bodies Corporate, nor will the Commonwealth and its Related Bodies Corporate be entitled to make any claim against the Funding Recipient for Consequential Loss incurred or sustained by the Commonwealth or its Related Bodies Corporate.

20.2.3. Clause 20.2.2 does not operate to exclude or limit the Funding Recipient's liability to the Commonwealth or its Related Bodies Corporate:

- a. for Loss in respect of personal injury (including illness) or death of any person;
- b. for Loss arising from any criminal acts;
- c. for Loss arising from any wilful misconduct, wilful default, fraudulent or negligent act or omission of the Funding Recipient; or
- d. for any Liability, which, by law, the parties cannot limit or contract out of.

20.2.4. The Commonwealth and its Related Bodies Corporate will have no liability to the Funding Recipient and its Related Bodies Corporate, nor will the Funding Recipient and its Related Bodies Corporate be entitled to make any claim against the Commonwealth for Consequential Loss incurred or sustained by the Funding Recipient or its Related Bodies Corporate.

### **20.3. Reduction of scope**

20.3.1. The Funding Recipient's liability to indemnify the Commonwealth under this clause 20 will be reduced proportionally to the extent that any fault on the Commonwealth's part contributed to the relevant Loss.

### **20.4. Preservation of other rights**

20.4.1. The Commonwealth's right to be indemnified under this clause 20 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 Loss.

## **21. Insurance**

### **21.1. Obligation to insure**

21.1.1. The Funding Recipient must, for as long as any obligations remain in connection with this Deed, have insurance as specified in the Schedule 3 - General details.

21.1.2. All insurance under this clause 21 is to be taken out with an insurer recognised by the Australian Prudential Regulation Authority or a regulated Auditor-General of a State or Territory.

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## **21.2. Evidence of insurance**

- 21.2.1. Whenever requested, the Funding Recipient must provide the Commonwealth, within 10 Business Days of the request, with evidence satisfactory to the Commonwealth that the Funding Recipient has complied with its obligation to insure.

## **22. Conflict of interest**

### **22.1. Warranty of no Conflict**

- 22.1.1. The Funding Recipient warrants that, to the best of its knowledge after making diligent inquiry, at the Date of this Deed no Conflict exists or is likely to arise in the performance of its obligations under this Deed.

### **22.2. Conflict that may arise**

- 22.2.1. Without limiting the operation of this clause 22, the Funding Recipient must, during the Term of this Deed, ensure that no Conflict arises through its involvement with the parties or Commonwealth programmes if any, notified by the Commonwealth or specified in the Schedules.

### **22.3. Dealing with Conflict**

- 22.3.1. If during the Term of this Deed, a Conflict arises, the Funding Recipient must:
- a. immediately Notify the Commonwealth of that Conflict and of the steps it 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; and
  - c. take such steps as the Commonwealth may, if it chooses to, reasonably require to resolve or otherwise deal with that Conflict.

### **22.4. Failure to deal with Conflict**

- 22.4.1. If the Funding Recipient fails to Notify the Commonwealth under this clause 22, or is unable or unwilling to resolve or deal with the Conflict as required, the Commonwealth may terminate this Deed in accordance with clause 27.

## **23. Access to premises and Records**

### **23.1. The Commonwealth's right of entry**

- 23.1.1. Without limiting any other rights of the Commonwealth under this Deed (including, for the avoidance of doubt, under clause 5.3.3 and 39.1.4), the Commonwealth (and any person authorised by the Commonwealth) may, at any time, enter a Site or any other premises where the Activities are being carried out for the purpose of:
- a. observing or inspecting the Activities;
  - b. monitoring compliance by the Funding Recipient with its obligations under this deed; or
  - c. exercising any right or performing any obligation which the Commonwealth has under this Deed.
- 23.1.2. The Funding Recipient must use reasonable endeavours to:
- a. coordinate the Activities so they do not interfere with the exercise by the Commonwealth of its right of entry; and

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- b. provide the Commonwealth with every reasonable facility and other assistance necessary for any inspection by the Commonwealth, including providing access to any relevant systems, registers, manuals, records (including financial records), plans and programs.

23.1.3. If an inspection shows that the Funding Recipient has not complied or is not complying with its obligations under this Deed, the Commonwealth:

- a. may Notify the Funding Recipient of the details of the non-compliance;
- b. will specify a reasonable period within which the Funding Recipient must carry out appropriate rectification and/or remedy activities; and
- c. will be entitled to be reimbursed by the Funding Recipient for the reasonable costs of the inspection including any reasonable administrative costs incurred by the Funding Recipient in relation to the inspection.

### **23.2. Access to information**

23.2.1. The Funding Recipient must give the Commonwealth, the Auditor-General, the Privacy Commissioner and persons authorised by the Commonwealth (referred to in this clause 23.1.1 collectively as 'those permitted') access to premises at which accounts, Records and Material associated with this Deed are stored or work under the Activity is undertaken at all reasonable times and allow those permitted to inspect and copy accounts, Records and Material, in the Funding Recipient's possession or control, for purposes associated with this Deed or any review of performance under this Deed. The Funding Recipient must also give those permitted access to any Assets, wherever they may be located, and reasonable access to the Funding Recipient's employees, for the same purpose.

### **23.3. Provision of assistance**

23.3.1. The Funding Recipient must provide all reasonable assistance requested by those permitted when they exercise the rights under clause 23.1 and 23.2, including, but not limited to:

- a. making available all information, documentation and data, in any medium required by the Commonwealth at the Funding Recipient's registered office or (with the Commonwealth's consent) the Funding Recipient's principal place of business or other place; and
- b. making available the Funding Recipient's employees, officers, volunteers and agents who must provide access to the Funding Recipient's accounts, Records and copies of documentation, including computer discs or other forms of electronic data.

### **23.4. Limitation on access rights**

23.4.1. The rights referred to in clause 23.1 and 23.2 are subject to:

- a. the provision of reasonable prior notice by those permitted (except where they believe that there is an actual or apprehended breach of the law or a breach of this Deed); and
- b. the Funding Recipient's reasonable security procedures.

### **23.5. No reduction in responsibilities**

23.5.1. This clause 23 does not in any way reduce the Funding Recipient's responsibility to perform its obligations in accordance with this Deed.

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### **23.6. Rights in subcontracts**

- 23.6.1. The Funding Recipient must ensure that any subcontract entered into for the purpose of this Deed contains an equivalent clause allowing those permitted to have access as specified in this clause 23.

### **23.7. Access to Documents**

- 23.7.1. In this clause 23.7, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982 (Cth)*.
- 23.7.2. The Funding Recipient acknowledges that this Deed is a Commonwealth contract.
- 23.7.3. Where the Commonwealth has received a request for access to a document created by, or in the possession of, the Funding Recipient or any subcontractor that relates to the performance of this Deed (and not to the entry into the Deed), the Commonwealth may at any time by Notice require the Funding Recipient to provide the document to the Commonwealth and the Funding Recipient must, at no additional cost to the Commonwealth, promptly comply with the Notice.
- 23.7.4. The Funding Recipient must include in any subcontract relating to the performance of this Deed provisions that will enable the Funding Recipient to comply with its obligations under this clause 23.7.

## **24. Force Majeure**

### **24.1. Force Majeure notice**

- 24.1.1. If the Funding Recipient alleges or wishes to claim that Force Majeure has occurred the Funding Recipient must give the Commonwealth prompt Notice of the Force Majeure once it becomes aware of the same and the obligations affected together with full particulars of all relevant matters including:
- a. details of the Force Majeure;
  - b. details of the obligations affected;
  - c. details of the action that the Funding Recipient has taken and/or proposes to take to remedy the situation; and
  - d. an estimate of the time during which the Funding Recipient will be unable to carry out its obligations due to the Force Majeure.
- 24.1.2. After giving Notice under clause 24.1.1 the Funding Recipient must continue to provide to the Commonwealth all relevant information pertaining to the Force Majeure.

### **24.2. Meeting**

- 24.2.1. The Parties must meet within 3 Business Days of service of a Notice of a Force Majeure to determine the estimated length of time for which the Force Majeure will continue.

### **24.3. Suspension of obligations**

- 24.3.1. If a Force Majeure occurs the Funding Recipient's obligations under this Deed (other than under this clause 24) which are affected by the Force Majeure will be suspended but only to the extent and for so long as such obligations are affected by the Force Majeure.

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- 24.3.2. If a Force Majeure occurs and a notice under clause 24.1.1 is issued, no party will be in default of its obligations under this Deed in so far as the failure or delay in the observance or performance of those obligations by that party is caused by the Force Majeure specified in the notice under clause 24.1.1.
- 24.3.3. During the period of suspension, the Commonwealth may make alternative arrangements for the performance of any suspended obligations (without incurring any liability to the Funding Recipient).
- 24.3.4. The Funding Recipient must Notify the Commonwealth immediately after it ceases to be prevented or delayed from performing its obligations as a result of a Force Majeure.
- 24.3.5. Upon the Funding Recipient becoming able to recommence performing its obligations which were suspended under clause 24.3.1, the Funding Recipient must recommence the performance of those obligations.

### **24.4. Duty to remedy Force Majeure**

- 24.4.1. The Funding Recipient must remedy and mitigate the effects of a Force Majeure promptly.

### **24.5. Costs**

- 24.5.1. Each Party will bear its own costs in connection with a Force Majeure Event.
- 24.5.2. The Commonwealth will not be obliged to provide any financial relief to the Funding Recipient during the period of suspension.
- 24.5.3. The Commonwealth is not liable for, or in connection with, any claim (and the Funding Recipient may not make any claim) arising out of or in connection with a Force Majeure or the consequences of a Force Majeure.

## **25. Delay in Rollout**

### **25.1. Obligation to minimise delay**

- 25.1.1. The Funding Recipient must take all reasonable steps to minimise delay in achieving:
  - a. a Milestone for any Asset by the relevant Milestone Date;
  - b. Asset Completion for any Asset by the Date for Asset Completion; and
  - c. Rollout Completion by the Date for Rollout Completion.

### **25.2. Notification of delay**

- 25.2.1. If the Funding Recipient becomes aware that it will be delayed in achieving:
  - a. a Milestone for any Asset;
  - b. the Date for Asset Completion for any Asset; or
  - c. the Date for Rollout Completion,including because of a Force Majeure, the Funding Recipient must:
  - d. immediately give the Commonwealth a Notice:
    - i. stating that it is a Notice given under this clause 25.2;

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- ii. specifying the cause and nature of the delay; and
  - iii. provide details of the steps the Funding Recipient will take to limit and mitigate the delay, including any consequential impact on the roll-out Schedule and the future Milestone Dates; and
- e. provide fortnightly report updates in relation to the delay and the steps the Funding Recipient has been taking to limit and mitigate the delay, including any consequential impact on the roll-out Schedule and the future Milestone Dates.

### **25.3. Right to publicise**

25.3.1. The Commonwealth reserves the right to publicise and report on the Funding Recipient's failure to achieve:

- a. a Milestone for any Asset by the relevant Milestone Date;
- b. Asset Completion for any Asset by the Date for Asset Completion; and
- c. Rollout Completion by the Date for Rollout Completion,

including on the Commonwealth's website, and in media releases and general announcements, other than if the delay is because of a Force Majeure.

### **26. Termination or reduction with costs**

#### **26.1. Termination or reduction of scope for convenience**

26.1.1. The Commonwealth may, at any time by Notice to the Funding Recipient, immediately terminate or reduce the scope of this Deed for convenience without prejudice to the rights, liabilities, or obligations of either Party accruing prior to the date of termination or reduction.

26.1.2. If this Deed is terminated or reduced in scope under clause 26.1.1 the Commonwealth will only be liable:

- a. for payments of Funds that are due and owing to the Funding Recipient under the payment provisions of this Deed as at the date of the Notice of termination;
- b. subject to clauses 26.5 and 26.6, in respect of termination only, to reimburse the Funding Recipient any expenses the Funding Recipient has unavoidably incurred that relate directly and entirely to the Activity and are not covered by clause 26.1.2.a; and
- c. in respect of termination only, the amount reasonably and properly payable by the Funding Recipient to the Funding Recipient's subcontractors on termination of this Deed, under subcontracts contemplated by clause 28.1.1 to which the Funding Recipient is a party, provided such amounts are incurred under arrangements and/or agreements entered into on arms-length commercial terms prior to the date of termination and both the Funding Recipient and relevant subcontractor have used reasonable efforts to mitigate such amounts.

26.1.3. The Commonwealth will not be liable to pay amounts under clause 26.1.2 which would, added to any payments already paid to the Funding Recipient under this Deed, together exceed the Funding set out in the Schedules.



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## **26.2. Funding Recipient's obligations**

- 26.2.1. Upon receipt of a Notice of termination or reduction in scope the Funding Recipient must:
- a. cease or reduce the performance of its obligations under this Deed in accordance with the notice (and continue to perform any part of the Activity not affected by the notice if requested to do so by the Commonwealth);
  - b. immediately do everything possible to mitigate all Losses, costs, and expenses, arising from the termination or reduction in scope contained in the notice; and
  - c. immediately return to the Commonwealth any Funds in accordance with clause 26.3.1 or deal with any such Funds as the Commonwealth may Notify the Funding Recipient in writing.

## **26.3. The Commonwealth's rights on termination**

- 26.3.1. Where the Commonwealth terminates this Deed under clause 26.1, the Commonwealth will be entitled to recover from the Funding Recipient any part of the Funds which:
- a. are not legally committed for expenditure by the Funding Recipient in accordance with this Deed and payable by the Funding Recipient (written evidence of which will be required) by the earlier of the date the Notice of termination given under clause 26.1 is received or is deemed to be received in accordance with clause 37.2; and
  - b. has not, in the Commonwealth's reasonable opinion, been spent by the Funding Recipient in accordance with this Deed.

## **26.4. Abatement of Funding**

- 26.4.1. If there is a reduction in scope of the obligations under this Deed, the Commonwealth's liability to pay any part of the Funding will be reduced to the amount the Commonwealth specifies in the notice under clause 26.1.1.

## **26.5. Compensation**

- 26.5.1. The Commonwealth's liability to pay any compensation under or in relation to this clause 26 is subject to:
- a. the Funding Recipient's strict compliance with this clause 26; and
  - b. the Funding Recipient's substantiation of any amount claimed under clause 26.1.2.

## **26.6. Limit on compensation**

- 26.6.1. The Commonwealth will not be liable to pay compensation for Loss of prospective profits for a termination or reduction in scope under this clause 26 or loss of any benefits that would have been conferred on the Funding Recipient had the termination or reduction not occurred.

## **27. Termination for default**

### **27.1. Failure to provide or obtain contributions**

- 27.1.1. If in respect of a Funded Base Station the Funding Recipient is not able to:

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- a. provide the Funding Recipient's Contributions within 10 Business Days of a scheduled payment date;
  - b. obtain the Other Contributions within 10 Business Days of a scheduled payment date; or
  - c. provide the Funding Recipient's Contributions or obtain the Other Contributions in time to enable completion of any stage of the Activity,
- then the Commonwealth may:
- d. suspend payment of the Funds or an instalment of the Funds (as the case may be) in respect of that Funded Base Station until the Other Contributions are received and/or the Funding Recipient provides the Funding Recipient's Contributions; or
  - e. terminate this Deed in respect of that Funded Base Station.

27.1.2. Nothing in this clause derogates from the Funding Recipient's obligation to perform the Activity in accordance with this Deed.

### **27.2. Defaults**

27.2.1. If:

- a. the Commonwealth is satisfied on reasonable grounds that the Funding Recipient does not have the capacity to adequately manage the Funds or undertake the Activity, the Commonwealth may immediately suspend the payment of the Funding to the Funding Recipient and require the Funding Recipient to prepare and submit to the Commonwealth a draft plan describing the actions and measures which the Funding Recipient will diligently pursue to remedy the non-compliance (including the proposed cure period which must be no longer than 2 months, unless a later period is agreed by the Commonwealth in writing) (**Draft Cure Plan**); or
- b. where, in the Commonwealth's opinion (acting in good faith and reasonably), the Funding Recipient has not complied with its obligations under this Deed in a manner which seriously compromises its capacity to undertake the Activity, the Commonwealth may:
  - i. if the Commonwealth considers on reasonable grounds that the non-compliance is capable of remedy – by Notice require the Funding Recipient to:
    - A. remedy the non-compliance within the time frame specified in the notice; or
    - B. prepare and submit to the Commonwealth a Draft Cure Plan; or
  - ii. if the Commonwealth considers on reasonable grounds that the non-compliance is not capable of remedy – by Notice terminate this Deed immediately.

27.2.2. Within 12 Business Days after receipt of the Draft Cure Plan which has been submitted by the Funding Recipient under clause 27.2.1.a or clause 27.2.1.b.i.B, the Commonwealth must, acting reasonably, either:

- a. approve the Draft Cure Plan by Notifying the Funding Recipient; or
- b. reject the Draft Cure Plan by Notifying the Funding Recipient and providing reasons to the Funding Recipient for its rejection.

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- 27.2.3. If the Commonwealth approves a Draft Cure Plan pursuant to clause 27.2.2.a (**Approved Cure Plan**):
- a. the period of time in the Approved Cure Plan to remedy the default is the cure period (**Applicable Cure Period**); and
  - b. the Funding Recipient must comply with and implement the Approved Cure Plan (or otherwise diligently pursue the remediation of the default) and remedy the default within the Applicable Cure Period.
- 27.2.4. If the Commonwealth rejects a Draft Cure Plan pursuant to clause 27.2.2.b, the Funding Recipient, in consultation in good faith with the Commonwealth, must amend the Draft Cure Plan to meet the Commonwealth's reasonable requirements and submit the amended Draft Cure Plan to the Commonwealth for the Commonwealth's approval, in which case clauses 27.2.2, 27.2.3 and 27.2.5 will apply to the amended Draft Cure Plan as if it were originally submitted under clause 27.2.1.a or clause 27.2.1.b.i.B.
- 27.2.5. If the Funding Recipient fails to:
- a. remedy the non-compliance or submit a Draft Cure Plan in accordance with clause 27.2.1.a or clause 27.2.1.b.i.B, or the Commonwealth rejects a Draft Cure Plan pursuant to clause 27.2.2.b;
  - b. amend the Draft Cure Plan to meet the Commonwealth's requirements and submit the amended Draft Cure Plan in accordance with clause 27.2.4; or
  - c. comply with and implement the Approved Cure Plan (or otherwise diligently pursue the remediation of the non-compliance),
- and such failure is not remedied by the Funding Recipient within 4 Business Days of notice from the Commonwealth regarding that failure, the Commonwealth may terminate this Deed immediately by giving the Funding Recipient a second notice.
- 27.2.6. The Commonwealth may also by Notice terminate this Deed immediately if:
- a. the Funding Recipient is unable to pay all its debts as and when they become due and payable or the Funding Recipient fails to comply with a statutory demand within the meaning of sections 459E and 459F of the *Corporations Act 2001* (Cth);
  - b. proceedings are initiated with a view to obtaining an order for the Funding Recipient winding up or any shareholder, member or director convenes a meeting for the purpose of considering or passing any resolution for the Funding Recipient winding up;
  - c. the Funding Recipient has applied to come under, received a notice requiring the Funding Recipient to show cause why it should not come under, or have otherwise come under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001* (Cth), or an order has been made for the purpose of placing the Funding Recipient under external administration;
  - d. the Funding Recipient ceases to carry on business;
  - e. the Commonwealth is satisfied that any statement made in the Funding Recipient's application for Funding is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the Funding;
  - f. a Change of Control of the Funding Recipient or a Change in Control of any person who Controls the Funding Recipient without the consent of the Commonwealth in accordance with clause 33;

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- g. the Commonwealth exercises any other specific right of termination under this Deed; or
- h. notice is served on the Funding Recipient or proceedings are taken to cancel the Funding Recipient's incorporation or registration or to dissolve the Funding Recipient as a legal entity.

### **27.3. The Commonwealth's rights on termination**

27.3.1. Where the Commonwealth terminates this Deed under clause 27.1 or 27.2 the Commonwealth:

- a. will only be liable to pay the Funding Recipient Funds that are due and owing to the Funding Recipient under the payment provisions of this Deed at the date of this notice of termination; and
- b. will be entitled to recover from the Funding Recipient:
  - i. any part of the Funds which:
    - A. are not legally committed for expenditure by the Funding Recipient in accordance with this Deed and payable by it (written evidence of which will be required) by the earlier of the date the notice of termination given under clause 27.2 is received or deemed to be received in accordance with clause 37.2; or
    - B. has not, in the Commonwealth's opinion, been spent by the Funding Recipient in accordance with this Deed.

### **27.4. Preservation of other rights**

27.4.1. Clause 27.3 does not limit or exclude any of the Commonwealth's other rights, including the right to recover any other amounts from the Funding Recipient on termination of this Deed.

## **28. Subcontracting**

28.1.1. The Commonwealth acknowledges that the Funding Recipient may be subcontracting parts of the undertaking of the Activity and/or the provision of the Services, including through the use of any subcontractors identified in Schedule 3 - General details.

28.1.2. The Funding Recipient is not relieved of any of its liabilities or obligations under this Deed by entering into the subcontracts as contemplated by clause 28.1.1 and the Funding Recipient is liable to the Commonwealth for the acts, defaults and neglects of any subcontractor or any employee or agent of the subcontractor as fully as if they were the acts, defaults or neglects of the Funding Recipient or the employees or agents of the Funding Recipient.

### **28.2. Responsibility for obligations**

28.2.1. The Funding Recipient is fully responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that the work performed by the subcontractor meets the requirements of the Deed.

### **28.3. Requirements for subcontractors**

28.3.1. The Funding Recipient must, as far as practicable, ensure that any subcontractor identified in Schedule 3 - General details complies with all applicable Laws and:

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- a. clause 17 (Intellectual Property Rights);
- b. clause 18 (Confidentiality and Disclosure);
- c. clause 19 (Protection of personal information);
- d. clause 20 (Indemnity);
- e. clause 21 (Insurance);
- f. clause 22 (Conflict of interest); and
- g. clause 23 (Access to premises and Records),

and that subcontractor's right of termination must take into account the Commonwealth's rights of termination under this Deed.

- 28.3.2. The Funding Recipient must make use of the rights of termination referred to in clause 28.3.1 to mitigate Losses in the event of termination by the Commonwealth under clause 26 or clause 27.

### **28.4. Workplace Gender Equality**

- 28.4.1. This clause 28.4 applies to the extent the Funding Recipient is a 'Relevant Employer' for the purposes of the *Workplace Gender Equality Act 2012* (Cth) (the **WGE Act**).
- 28.4.2. The Funding Recipient must comply with all of its obligations under the WGE Act.
- 28.4.3. The Funding Recipient must Notify the Commonwealth if it becomes non-compliant with the WGE Act during the Term of the Deed.
- 28.4.4. If the Term of the Deed exceeds 18 months, the Funding Recipient must provide a current letter of compliance with the WGE Act within 18 months from the Date of this Deed, and following this annually to the Commonwealth.
- 28.4.5. Compliance with the WGE Act does not relieve the Funding Recipient of its responsibilities to comply with its other obligations under this Deed.

### **29. Acknowledgement and publicity**

#### **29.1. Acknowledgement of support**

- 29.1.1. Subject to clause 29.1.2, the Funding Recipient must not, in any publication, promotional and advertising material, public announcement or public statement, disclose:
- a. any discussions or negotiations between the Funding Recipient and the Commonwealth in relation to, or concerning this Deed; or
  - b. any term of this Deed,
- without the prior written consent of the Commonwealth.
- 29.1.2. Subject to clause 29.4, the Funding Recipient must, in all publications, promotional and advertising materials, public announcements and activities by the Funding Recipient or on its behalf in relation to the Activity, or any products, processes or inventions developed as a result of it, acknowledge the financial and other support the Funding Recipient has received from the Australian Government, in the manner if not set out in Schedule 3 - General details, then to be approved by the Commonwealth in writing prior to its use.

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- 29.1.3. Where the Funding Recipient conducts any unplanned publicity activities, the Funding Recipient must use reasonable endeavours to ensure that the general nature of the proposed publicity activities are consistent with the Commonwealth's public statements in relation to the Programme and provide the Commonwealth, where practicable, with details of the unplanned publicity activities as soon as practicable after it has occurred.
- 29.1.4. The Commonwealth may use any information made available to the Commonwealth by the Funding Recipient under this Deed for the purposes of developing other communications-related government policies and programmes.
- 29.1.5. Without limiting the Commonwealth's rights under this Deed, where practicable, the Commonwealth will endeavour to Notify the Funding Recipient of the general nature of a planned public report on the Funding Recipient's performance prior to it being made. Where the Commonwealth does not Notify the Funding Recipient prior to making a public report, the Commonwealth will endeavour to Notify the Funding Recipient of the general nature of the report as soon as practicable after it has been made.
- 29.1.6. The Funding Recipient must facilitate the participation of the Minister for Communications, Parliamentary Secretary or the Minister's or Parliamentary Secretary's nominated representative at any function associated with the Activity, including the opportunity to speak at the function.

### **29.2. Right to publicise Funding**

- 29.2.1. The Commonwealth reserves the right to publicise and report on the awarding of Funding to the Funding Recipient and the achievement of the Objectives. The Commonwealth may do (but is not limited to doing) this by, amongst other means, including on its website, and in media releases, annual reports and general announcements information about the Funding, including the Funding Recipient's name, the amount of the Funds given to the Funding Recipient, the Date of this Deed, the Term of the Deed, and the title and a brief description of the Activity.

### **29.3. Copies of publications**

- 29.3.1. Where the Funding Recipient has been provided with Funding to produce any publication, a copy of the publications must be provided to the Commonwealth, if notified by the Commonwealth.

### **29.4. Cessation of acknowledgement**

- 29.4.1. If notified by the Commonwealth in writing the Funding Recipient must cease all or any part of the acknowledgement pursuant to clause 29.1 in accordance with the notification.

### **29.5. Approvals**

- 29.5.1. The Funding Recipient must, at its own cost:
- a. obtain all Approvals which are necessary for the performance of the Activity;
  - b. do all things necessary to keep such Approvals valid and effective, including renewing, extending or amending such Approvals when necessary; and
  - c. provide evidence to the Commonwealth that the Funding Recipient has obtained and continues to maintain all such Approvals if requested by the Commonwealth at any time.

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## **29.6. Indemnity**

- 29.6.1. The Funding Recipient must, to the extent permitted by Law, indemnify and hold the Commonwealth harmless against any Loss which the Commonwealth may suffer arising out of, or in connection with the Funding Recipient failing to comply with an Approval or any Law.

## **30. Negation of legal relationship of employment, partnership and agency**

### **30.1. Status**

- 30.1.1. The Funding Recipient, its employees, partners, officers, volunteers, subcontractors or agents will not, by virtue of this Deed, be or for any purpose be deemed to be the Commonwealth's employees, partners, officers, volunteers or agents under the law.

### **30.2. Representatives**

- 30.2.1. The Funding Recipient must not, and must ensure that its employees, partners, officers, volunteers, subcontractors and agents do not, represent itself or themselves as being the Commonwealth's employees, partners, officers, volunteers or agents, or as otherwise able to bind or represent the Commonwealth.

## **31. Entire agreement, variation and severance**

### **31.1. Entire agreement**

- 31.1.1. This Deed (including the Guidelines, Schedules and Annexures) records the entire agreement between the Parties in relation to its subject matter

### **31.2. Variation of Deed**

- 31.2.1. Except for action the Commonwealth is expressly authorised to take elsewhere in this Deed, no variation of this Deed is binding unless it is agreed in writing and signed by both Parties.

### **31.3. Severance**

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

## **32. Waiver**

### **32.1. Exercise of rights**

- 32.1.1. If either Party does not exercise (or delays in exercising) any of its rights that failure or delay does not operate as a waiver of those rights.

### **32.2. Partial exercise of rights**

- 32.2.1. A single or partial exercise by either Party of any of its rights does not prevent the further exercise of any right.

### **32.3. Means of waiver**

- 32.3.1. Waiver of any provision of, or right under, this Deed:



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- 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.

### **32.4. Meaning of 'rights'**

- 32.4.1. In this clause 32, 'rights' means rights or remedies provided by this Deed or at law or in equity.

### **33. Assignment and novation**

#### **33.1. Assignment of rights**

- 33.1.1. The Funding Recipient must not assign its rights under this Deed without the Commonwealth's prior written approval.

#### **33.2. Novation**

- 33.2.1. The Funding Recipient agrees not to enter into negotiations with any other person for the purposes of entering into an arrangement that will require novation of this Deed without first consulting the Commonwealth.

### **34. Joint and several liability**

- 34.1.1. If the Funding Recipient consists of more than one person, then the Funding Recipient's rights and obligations in accordance with this Deed are joint and several as between those persons. A reference to the Funding Recipient is a reference to each of the persons comprising the Funding Recipient jointly and severally.
- 34.1.2. The Commonwealth may proceed against any or all of the companies comprising the Funding Recipient in the event of the Funding Recipient's failure to fulfil its obligations under this Deed.

#### **34.2. Survival**

- 34.2.1. The following clauses survive the expiry or the earlier termination of this Deed:
  - a. clause 11 (Asset);
  - b. clause 12 (Records);
  - c. clause 13 (Reporting);
  - d. clause 16 (Commonwealth Material);
  - e. clause 17 (Intellectual Property Rights);
  - f. clause 18 (Confidentiality and disclosure);
  - g. clause 19 (Protection of personal information);
  - h. clause 20 (Indemnity);
  - i. clause 21 (Insurance);
  - j. clause 26 (Termination or reduction with costs);
  - k. clause 27 (Termination for default);
  - l. clause 40 (Review); and
  - m. any other provision that expressly or by implication from its nature is intended to continue or survive the expiration or earlier termination of this Deed.

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- 34.2.2. The following clauses survive the expiry or the earlier termination of this Deed for a period of 7 years from the date of expiration or earlier termination of this Deed:
- a. clause 23 (Access to premises and Records); and
  - b. clause 29 (Acknowledgement and publicity).

### **35. Dispute resolution between the Funding Recipient and the Commonwealth**

#### **35.1. Informal resolution**

- 35.1.1. The Parties agree that a dispute arising under this Deed, other than a dispute between the Funding Recipient and an MNO, will be dealt with as follows:
- a. the Party claiming that there is a dispute will give the other Party a notice setting out the nature of the dispute;
  - b. within 5 Business Days:
    - i. the Commonwealth will nominate an appropriately senior ranking officer within the agency; and
    - ii. the Funding Recipient will nominate a member of senior management of the Funding Recipient,  
as a representative (each a **Representative**);
  - c. the Representatives will try to settle the dispute by direct negotiation between them;
  - d. failing settlement under clause 35.1.1.c within a further 10 Business Days, the Parties must refer the dispute to an independent third person with power to mediate and recommend some form of non-binding resolution;
  - e. failing resolution of the dispute in accordance with clause 35.1.1.d, the Parties must refer the dispute to an independent third person with the power to intervene and direct some form of resolution in which case the Parties will be bound by that resolution;
  - f. the Parties will cooperate fully with any process instigated under clause 35.1.1.d or clause 35.1.1.e in order to achieve a speedy resolution; and
  - g. if a resolution is not reached within a further 20 Business Days of referring the dispute to an independent third person under clause 35.1.1.e, either Party may commence legal proceedings.

#### **35.2. Costs**

- 35.2.1. Each Party will bear its own costs of complying with this clause 35, and the Parties must bear equally the cost of any third person engaged under clause 35.1.1.d or clause 35.1.1.e.

#### **35.3. Application of clause**

- 35.3.1. This clause 35 does not apply to the following circumstances:
- a. either Party commences legal proceedings for urgent interlocutory relief;
  - b. action by the Commonwealth under or purportedly under the following clauses:
    - i. clause 9 (Payment);
    - ii. clause 23 (Access to premises and Records);
    - iii. clause 24 (Delay in Rollout);

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- iv. clause 26 (Termination or reduction with costs); and
- v. clause 27 (Termination for default);
- c. disputes under clause 7.5; and
- d. an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the law by the Funding Recipient.

### **35.4. Performance of obligations**

- 35.4.1. Despite the existence of a dispute, the Funding Recipient must (unless notified by the Commonwealth not to do so) continue to perform its obligations under this Deed.

## **36. Applicable law and jurisdiction**

### **36.1. Applicable Law**

- 36.1.1. The laws of the Australian Capital Territory apply to this Deed.

### **36.2. Jurisdiction**

- 36.2.1. Both Parties irrevocably and unconditionally submit to the jurisdiction of the courts of the Australian Capital Territory.

### **36.3. Nomination of authorised person**

- 36.3.1. Each of the Parties may nominate, from time to time, a person who has authority to receive and sign notices and written communications for each of them under this Deed and accept any request or direction in relation to the Activity.

## **37. Notice**

### **37.1. Giving of notice**

- 37.1.1. A Party giving notice or notifying under this Deed (**Notice**) must do so in writing or by electronic mail or facsimile transmission:
  - a. directed to the recipient's address, as varied by any notice; and
  - b. hand delivered or sent by pre-paid post or transmitted electronically to that address.

- 37.1.2. The Parties' address details are as specified in Schedule 3 – General Details.

### **37.2. Receipt of notice**

- 37.2.1. A notice given in accordance with clause 37 is taken to be received:
  - a. if hand delivered, on delivery;
  - b. if sent by pre-paid post, 5 Business Days after the date of posting unless it has been received earlier; or
  - c. if transmitted electronically, upon actual receipt by the addressee,  
but:
    - d. if delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a business Day, the notice is taken to be received at 9.00am on the next Business Day.

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## 38. Counterparts

- 38.1.1. This Deed may be executed in any number of counterparts and by the Parties on separate counterparts. Each counterpart constitutes an original of this Deed, and all together constitute one Deed.

## 39. The Building Code

### 39.1. Definitions

- 39.1.1. In this clause 39.1:

<b>Code</b>	means the Building code 2013. The code can be downloaded from <a href="http://www.employment.gov.au/BuildingCode">www.employment.gov.au/BuildingCode</a> ;
<b>Supporting Guidelines</b>	mean the Australian Government Supporting Guidelines for the Building Code 2013; and
<b>Project Parties</b>	means all contractors, subcontractors, consultants and employees who perform on-site work in relation to the Activity.

- 39.1.2. Where the Funding specifically relates to building and construction activity, subject to the thresholds specified in the Supporting Guidelines, the Funding Recipient must comply and ensure that the Project Parties comply with the Code and Implementation Guidelines.

- 39.1.3. The Code requires that the Funding Recipient ensure:

- a. all requests for tender, expressions of interest, submissions and invitations to join 'common use arrangements' in relation to the Activity made by the Funding Recipient or any of the Project Parties contain the commitment to apply the Code and Implementation Guidelines as set out in the Model Tender and Contract Documentation, August 2009; and
- b. all contracts entered into in relation to the Activity by the Funding Recipient or any of the Project Parties contain the commitment to apply the Code and Implementation Guidelines as set out in the Model Tender and Contract Documentation, August 2009.

- 39.1.4. The Funding Recipient must maintain adequate records of compliance by the Funding Recipient and each of the Project Parties with the Code and the Implementation Guidelines. The Funding Recipient must permit the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, full access to the Funding Recipient and the Funding Recipient's Project Parties' premises and records to:

- a. inspect any work, material, machinery, appliance, article or facility;
- b. inspect and copy any record relevant to the Activity and works governed by this Deed; and
- c. interview any person,

as is necessary to monitor compliance with the Code.

- 39.1.5. Additionally, the Funding Recipient undertakes that the Funding Recipient and each of the Project Parties will agree to a request from the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction

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Commissioner, to produce a specified document within a specified period, in person, by fax, or by post.

- 39.1.6. The Commonwealth and those authorised by it may publish or otherwise disclose information in relation to compliance by the Funding Recipient and the Project Parties with the Code and the Implementation Guidelines. The Funding Recipient must obtain the consent of the Project Parties to the publication or disclosure of information under this clause.
- 39.1.7. While acknowledging that value for money is the core principle underpinning decisions on Government procurement, when issuing tenders the Funding Recipient may preference contractors, subcontractors and consultants that have a demonstrated commitment to:
- a. adding and/or retaining trainees and apprentices;
  - b. increasing the participation of women in all aspects of the industry; or
  - c. promoting employment and training opportunities for Indigenous Australians in regions where significant indigenous populations exist.
- 39.1.8. The Funding Recipient must not appoint a contractor, subcontractor or consultant in relation to the Activity where:
- a. the appointment would breach a sanction imposed by the Minister for Employment and Workplace Relations; or
  - b. the contractor, subcontractor or consultant has had a judicial decision against them relation to employee entitlements, not including decision under appeal, and has not paid the claim.

### **39.2. Australian Government Building and Construction OHS Accreditation Scheme**

39.2.1. In this clause 39.2:

<b>FW (BI) Act</b>	means the Fair Work (Building Industry) Act 2012 (Cth);
<b>Building Work</b>	has the meaning given to it by subsection 35(8) of the FW (BI) Act; and
<b>Scheme</b>	means the Scheme described at section 35 of the FW (BI) Act.

- 39.2.2. Subject to the exclusions specified in the *Fair Work (Building Industry - Accreditation Scheme) Regulations 2005*, the Funding Recipient must ensure that all head contracts for Building Work for this Activity that are valued at \$3 million or more:
- a. are notified to the Office of the Federal Safety Commissioner at the earliest possible opportunity; and
  - b. contain a requirement that the builder:
    - i. is accredited under the Scheme;
    - ii. maintains Scheme accreditation for the life of the contract; and
    - iii. must comply with all conditions of the Scheme accreditation.

### **40. Review**

#### **40.1. Assistance with review**

- 40.1.1. As contemplated by clause 3.3.2 of the Guidelines, the Funding Recipient agrees to:

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- a. provide all reasonable assistance required by the Commonwealth;
- b. respond to all the Commonwealth's reasonable requests; and
- c. provide any information the Commonwealth reasonably requires, in relation to conducting a review and final evaluation of the Programme.

## SCHEDULE 1- SERVICES

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### 1 Assets

Site	Asset	Designated Location	Date for Asset Completion	Specifications

### 3 Date for Rollout Completion

### 4 Asset Completion

'Asset Completion' means, in respect of an Asset, that stage in the execution of the Rollout when the Asset has been completed and Services are being provided from that Site in accordance with this Deed.

### 4 Services

- a. Backhaul
- b. Co-Location
- c. Roaming
- d. Other services *[insert details]* (for example, 4G Upgrade, HSPA, 3G , PMTS)

***Note to Funding Recipient: The Services Schedule may include details from the Funding Recipient's application in relation to:***

***\*The dates upon which each specified Service will be made available from a specified Asset.***

### 5 Personnel

### 6 Project Documents

- a. Project Plan
- b. Risk Management Plan
- c. Design Documents
- d. Budget

***Attachment A - Co-Location Services Agreement***

***Attachment B – Backhaul Access and Pricing***

***Attachment C– Roaming Services Agreement***



**SCHEDULE 2 - FUNDS, MILESTONES AND CONTRIBUTIONS**

---

**1 Total Funding Amount**

\$ [ ] (including GST).

**2 Funding Cap**

**Asset:**

**Funding Cap:**

***[Note to Funding Recipients: Unless otherwise specified, the Funding Cap in respect of each Asset is based on the Budget submitted by the Funding Recipient to the Commonwealth in its funding application under the Programme.]***

**3 Milestones**

**Asset:**

<b>Milestone</b>	<b>Estimated Date of Completion</b>	<b>Milestone Payment (\$)</b>	<b>Funding Recipient's Contribution (\$)</b>	<b>Third Party's Contribution (\$)</b>

**4 Date of Rollout Completion**

## SCHEDULE 3 - GENERAL DETAILS

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### 1 Parties address details

### 2 Confidential Information

### 3 Existing Material

### 4 Insurance

Product	Insurer	ABN	Policy number	Insured Amount	Expiry Date	Exclusions, if any
Public and Product Liability Insurance				<i>[Amount to be notified by the Department]</i>		
Professional Indemnity				<i>[Amount to be notified by the Department]</i>		
Workers' Compensation including common law liability				<i>[Amount to be notified by the Department]</i>		
Motor Vehicle Third Party Liability				<i>[Amount to be notified by the Department]</i>		
Construction Insurance				<i>[Amount to be notified by the Department]</i>		
Property Insurance				<i>[Amount to be notified by the Department]</i>		

**Note to Funding Recipient: Please insert proposed insurance amounts for each of the above insurances.**

### 5 Conflicts

### 6 Subcontractors

### 7 Acknowledgement

## **SCHEDULE 4 – REPORTS**

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### **Part 1 – Asset Completion Report**

1.1.1. Each Asset Completion Report will be a stand-alone document. At a minimum, each Asset Completion Report must include the following information:

- i. a description of the Asset constructed;
- ii. a statement given by the Funding Recipient in which the Funding Recipient warrants that Coverage obligations for the Asset have been met by the Funding Recipient. The statement must be made and signed by a person duly authorised to make such a statement on behalf of the Funding Recipient and who occupies a senior executive position within the Funding Recipient's organisation;
- iii. the total cost of the Asset compared for the Budget for the Asset, including an expenditure breakdown of the Funds, the Funding Recipients contribution and any Third-Party Contributions;
- iv. an approximation of the number of people with new [or improved] mobile phone Coverage as a result of the Asset;
- v. the number of square kilometres of land mass covered by new terrestrial mobile phone coverage as a result of the Asset being completed;
- vi. the type of Services provided at each Asset;
- vii. an Operational Coverage Map for the Asset;
- viii. an as-built map of the Asset; and
- ix. any other information that is reasonably requested by the Commonwealth.

### **Part 2 – Operational Period Reports**

1.1.2. Each Operational Period Report must include the following information:

- i. a statement warranting that the Funding Recipient warrants that it has, all times during the reporting period covered by the Operational Period Report complied with the Service requirements (including the Coverage obligations) set out in this Deed for all completed Assets. The statement must be signed and given by a person duly authorised to make such a statement on behalf of the Funding Recipient and who occupies a senior executive position within the Funding Recipient's organisation.
- ii. any other information that is reasonably requested by the Commonwealth.

**ANNEXURE 1 - OPERATIONAL COVERAGE MAPS**

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***Note to Funding Recipient: The Operational Coverage Maps to be inserted in this Annexure will be provided from the Asset Completion Reports.***

**ANNEXURE 2 – AGREEMENTS FOR OTHER CONTRIBUTIONS**

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***Note to Funding Recipient: Any Agreements for Other Contributions will be attached. These must be signed prior to the execution of this Deed***

**ANNEXURE 3 – MOBILE BLACK SPOT PROGRAMME GUIDELINES**

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***Note to Funding Recipient: A copy of the Mobile Black Spot Programme Guidelines (as issued) will be attached.***

**THIS DEED is made on the ..... day of ..... 201**

**EXECUTION CLAUSES**

**Executed by the Parties as a Deed.**

**SIGNED, SEALED AND DELIVERED for and on behalf of the COMMONWEALTH OF AUSTRALIA represented by and acting through the Department of Communications**

**ABN 51 491 646 726 by [print full name of delegate] in the presence of:**

.....

**sign here**

.....

**print name of witness**

.....

**witness sign here**

**SIGNED, SEALED AND DELIVERED on behalf of**

**(insert name of Funding recipient], a company registered under the Corporations Act (Cth) 2001, ACN [insert] pursuant to section 127(1) of the Corporations Act 2001 (Cth) by:**

**Director**

.....

**sign here**

**Name of Director**

.....

**please print**

**Director/Secretary**

.....

**sign here**

**Name of Director/Secretary**

.....

**please print**

**OR OTHER MODE OF ATTESTATION REQUIRED BY THE COMPANY'S CONSTITUTION**