

Department of Defence

Budget Estimates Hearing – 2 & 3 June 2014

Question on Notice No. 47 – Grants and Tenders

Senator Conroy asked on 3 June 2014, Hansard page 33:

Senator CONROY: I would like to ask some questions about grants from table 44 on page 84.

Mr Prior: Table 44, yes.

Senator CONROY: This table appears to show that organisations like ASPI and the Kokoda Foundation will not receive any funding in 2014-15. It does seem very unlikely. Are details of the funding that they are likely to receive this year available in the budget?

Mr Prior: These are grants to be approved. ASPI has a grant program which goes across three years, from recollection, so it will not be an approved grant in that period.

Senator CONROY: So help me with the white paper. There is an approved grant, yes, very interesting. How much has been set aside for grants in this portfolio in 2014-15? I am presuming that is what it is, although I have 2014-14 here?

Mr Prior: I do not have that information here, but we can provide that to you.

Senator CONROY: Can you provide a full list of all grant recipients within the Defence portfolio, including high-level details of the projects that are being funded under programs like the Army history research grants scheme?

Mr Prior: We can.

Senator CONROY: For the larger grant recipients, like ASPI and the ANU, can you provide a copy of the funding deed?

Mr Prior: I do not understand why we could not, but there may be some commercial sensitivities around looking at that.

Senator CONROY: Or jealousies.

Senator Johnston: Do they count?

Mr Prior: There may be some commercial issues.

Response:

A full list of all Department of Defence grant recipients for 2013-14 and grants approved to date in 2014-15 can be found at www.defence.gov.au/Publications/#D.

Full details of all grants made by the Defence Materiel Organisation (DMO) are reported on the following websites:

- Skilling Australia's Defence Industry (SADI) Program for financial year 2013-14 is available at:
www.defence.gov.au/dmo/ID/SADI/SADI_CommonwealthGrantsTable_FY1314_r1.pdf
- Defence Industry Innovation Centre (DIIC) is available at:
www.defence.gov.au/dmo/id/industry_skilling/ISPE_GrantsReporting.pdf
- Priority Industry Capability Innovation Program (PICIP) is available at:
www.defence.gov.au/dmo/id/picip/PICIP_Round2_Grant_recipients.pdf

- New Air Combat Capability Industry Support Program for financial year 2013-14 is available at:
www.defence.gov.au/dmo/jsf/NACC-ISP_Grant_Recipients_FY2013_14.pdf

Funding agreements for the larger grant recipients, the Australian National University (two grants), ASPI (agreement and variation to deed are attached) and the Kokoda Foundation, are included at Attachments A, B and C.

Deed of Variation

This Deed is dated the ^{February} 14 day of ~~January~~ 2014.

Between

The COMMONWEALTH OF AUSTRALIA represented by the Department of Defence A.B.N. 68 706 814 312 ("the Commonwealth")

And

The AUSTRALIAN NATIONAL UNIVERSITY (ABN 52 234 063 906), a body corporate established pursuant to the Australian National University Act 1991 (Cth) in the Australian Capital Territory, Australia, represented by the Strategic and Defence Studies Centre ('the Recipient').

RECITALS:

A. The Commonwealth and the Recipient have entered into the Funding Agreement for the Shedden Professor of Strategic Policy Studies at the Australian National University (ANU) dated 25th July 2012 ("the Funding Agreement").

B. The Parties have agreed to vary the Funding Agreement on the terms and conditions set out in this Deed.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1. Previous Definitions

Unless a contrary intention appears, a word or phrase defined in the Funding Agreement has the same meaning in this Deed. In the event of inconsistency, the word or phrase contained in this Deed will prevail.

1.2. Interpretation

(1) Reference to:

- (a) one gender includes the other gender;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a person includes a body corporate;
- (d) a Party to this Deed includes the Party's executors, administrators, successors and permitted assigns;
- (e) a thing includes the whole and each part of it separately;
- (f) a statute, regulation, code or other law or a provision of any of them includes:
 - (i) any amendment or replacement of it; and
 - (ii) any other regulation or other statutory instrument made under it, or made under it as amended or replaced;
- (g) "dollars" or "\$" means Australian dollars, unless otherwise stated;

- (h) a clause or schedule is to a clause or schedule of this Deed unless otherwise stated.
- (2) "Including" and similar expressions are not words of limitation.
- (3) Where a word or expression is given particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (4) Headings are for convenience only and do not form part of this Deed or affect its interpretation.
- (5) A provision of this Deed must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of this Deed or the inclusion of the provision in this Deed.
- (6) Where this Deed contemplates that a Party may elect, determine, approve, nominate, decide or consider any matter or thing, that Party may make such election, determination, approval, nomination, decision or consideration in its absolute discretion without being required to give reasons, unless this Deed expressly requires otherwise.
- (7) If an act must be done on a specified day that is not a Business Day, it must be done instead on the next Business Day.

2. ACKNOWLEDGEMENTS AND WARRANTIES

- 2.1. Each of the Parties warrants that it has full power to enter into this Deed and do all things required by it.
- 2.2. Each Party warrants and represents to each other Party that:
 - (1) it understands the legal significance and effect of signing this Deed and has obtained independent legal advice in relation to these matters; and
 - (2) it has not been induced to execute this Deed by any improper pressure, coercion or undue influence.
 - (3) it has had adequate opportunity to obtain competent legal and other professional advice concerning the terms and effect of this Deed;
 - (4) it has had the opportunity to negotiate the terms of this Deed;
 - (5) it considers that the terms of this Deed are fair in all the circumstances;
 - (6) it enters into this Deed voluntarily and without duress; and
 - (7) the terms of this Deed are binding upon it according to its terms.

3. CONTRACT VARIATION

- 3.1 Pursuant to Clause 16 of the Funding Agreement the Parties agree to the following variations with effect from the Date this Deed has been properly executed by both parties:

a. Funding Agreement

Old Text:

2.1 The term of this Agreement commences on the Commencement Date and (unless terminated earlier) ends at 30 June 2015.

New Text

2.1 The term of this Agreement commences on the Commencement Date and (unless terminated earlier) ends at 30 June 2016.

Justification: The Parties have agreed that Dr Evelyn Goh will hold the position of Shedden Professor for the period 26 August 2013 to 30 June 2016.

b. Schedule 1

Old Text

2. The total payable by the Commonwealth to the Contractor for the Funding Purposes is AUD\$803,396 (GST Inclusive). The monies will be payable annually upon receipt of a correctly rendered invoices as per below:

- a. AUD\$261,267 for the FY 2012-13;
- b. AUD\$269,985 for the FY 2013-14; and
- c. AUD\$272,684 for the FY 2014-15.

Invoices must be presented by the first quarter of each financial year. On receipt of an invoice the Commonwealth Representative shall either approve the claim or reject the claim if the invoice is not correctly rendered, or the Funding Purposes have not been met.

New Text

2. The total payable by the Commonwealth to the Recipient under this Agreement shall not exceed AUD\$ 803,936 (GST Inclusive). The monies will be payable annually upon receipt of a correctly rendered invoice as per below:

- a. AUD\$261,267 for the FY 2013-14;
- b. AUD\$269,985 for the FY 2014-15; and
- c. AUD\$272,684 for the FY 2015-16.

The Recipient acknowledges and agrees that it is responsible for any and all:

- (i) additional money payable in relation to this Agreement for FY 2013-14, FY 2014-15 and FY 2015-16; and

(ii) money payable in relation to this Agreement for the period 1 July 2016 to the expiration of this Agreement.

Invoices must be presented by the Recipient as follows:

- a. Prior to 30 January 2014 for the FY 2013-14;
- b. Between 1 July 2014 and 30 September 2014 for the FY 2014-15;
and
- c. Between 1 July 2015 and 30 September 2015 for the FY 2015-16.

On receipt of an invoice the Commonwealth Representative shall either approve the claim or reject the claim if the invoice is not correctly rendered, or the Funding Purposes have not been met.

Justification: The Parties have agreed that Dr Goh will hold the position of Shedden Professor for the period 26 August 2013 to 30 June 2016, and that no extra funding will be provided by the Commonwealth.

SIGNED AS A DEED

SIGNED for and on behalf of:

THE COMMONWEALTH OF AUSTRALIA

(signature)

(print name and position)

(date)

In the presence of:

(signature)

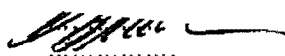
(print name and position)

(date)

SIGNED for and on behalf of
THE RECIPIENT:

/ (signature) (print name and position) (date)

In the presence of:

 (signature) (print name and position) (date)

FUNDING AGREEMENT

BETWEEN

THE COMMONWEALTH OF AUSTRALIA
as represented by the Department of Defence
A.B.N. 68 706 814 312

AND

THE AUSTRALIAN NATIONAL UNIVERSITY
as represented by the Strategic and Defence Studies Centre (SDSC),
School of International, Political and Strategies Studies
A.B.N 52 234 063 906,

**For funding the Shedden Professor of Strategic Policy Studies at the
Australian National University (ANU)
for Financial Years FY2012-13 to FY2014-15**

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THIS AGREEMENT is made on the 25th day of JULY ²⁰¹²~~2012~~

BETWEEN:

THE COMMONWEALTH OF AUSTRALIA (ABN 68 706 814 312), represented by and acting through the Department of Defence ('Commonwealth')

AND

THE AUSTRALIAN NATIONAL UNIVERSITY (ABN 52 234 063 906), a body corporate established pursuant to the *Australian National University Act 1991* (Cth) in the Australian Capital Territory, Australia, represented by the Strategic and Defence Studies Centre ('the Recipient').

RECITALS

This Agreement is made in the following context:

- A. The Commonwealth has agreed to provide the Recipient with Funding for the sole purpose of the provision of services as described in the Funding Purpose and Deliverables in Schedule 1.
- B. The Recipient has agreed to accept the Funding for the sole purpose of rendering the services on the terms set out in this Agreement.
- C. This Agreement sets out the terms on which the Commonwealth agrees to provide the Funding to the Recipient.

OPERATIVE PROVISIONS

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

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless the contrary intention appears:

'Agreement' refers to this document as signed and dated by the Parties, and includes Schedule 1 and any annexures;

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

'Commencement Date' means the date both Parties sign this Agreement, or if it is signed on separate days, the date on which the last Party to sign this Agreement does so;

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

'Funding' or 'Funds' means the amount or amounts payable under this Agreement by the Commonwealth to the Recipient for the Funding Purposes;

'Funding Purposes' means the activities described in Schedule 1;

'GST Act' means *A New Tax System (Goods and Services Tax) Act 1999* and associated taxation legislation. The expressions "adjustment note", "taxable supply" and "tax invoice" have the meanings given to those expressions in the GST Act.

"GST paid" or "GST payable" refers to the imposition of Goods and Services Tax as required by the GST Act.

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

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

'Party' means a party to this Agreement; and

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

1.2 In this Agreement, unless the contrary intention appears:

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

1.3 If the day on or by which a person must do something under this Agreement is not a Business Day, the person must do it on or by the next Business Day.

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

- (a) the terms and conditions contained in the clauses of this Agreement;
- (b) the Schedule;
- (c) the annexures, if any; and

(d) documents incorporated by reference, if any,

then the material mentioned in any one of paragraphs (a) to (d) of this subclause 1.4 has precedence over material mentioned in a subsequent paragraph, to the extent of any conflict or inconsistency.

2. TERM

- 2.1 The term of this Agreement commences on the Commencement Date and (unless terminated earlier) ends at 30 June 2015.

3. PAYMENT

- 3.1 Subject to sufficient funds being available, and compliance by the Recipient with this Agreement, the Commonwealth will provide the Recipient, upon receipt of a correctly rendered invoice, the Funding at the times and in the manner specified in Schedule 1.
- 3.2 Unless otherwise expressly agreed in writing by the Commonwealth, the Funding specified in Schedule 1 is the maximum amount that the Commonwealth will be providing to the Recipient for the Funding Purposes.
- 3.3 Without limiting the Commonwealth's rights, the Commonwealth may withhold or suspend any Funding in whole or in part if the Recipient is in breach of this Agreement.

4. MANAGEMENT OF FUNDING

- 4.1 The Recipient must carry out the Funding Purposes in accordance with this Agreement.
- 4.2 The Funding must be expended by the Recipient only for the Funding Purposes in accordance with this Agreement.
- 4.3 The Recipient must identify the receipt and expenditure of the Funds separately within the Recipient's accounting Records so that at all times the Funds are identifiable and ascertainable.
- 4.4 The Recipient must ensure that the Funds are paid into an account in the Recipient's name, and which the Recipient solely controls, with an authorised deposit-taking institution as agreed in writing between the Parties, and provide the Commonwealth with written details sufficient to identify this account prior to receipt of any Funds.
- 4.5 The Recipient must keep financial Records relating to the receipt and expenditure of the Funding so as to enable the Recipient to comply with any reporting obligations under this Agreement.
- 4.6 If, at the end of the Term or earlier termination of this Agreement, there remains an amount of Funding that has not been expended in accordance with this Agreement, then this amount must be:
- a. dealt with as directed in writing by the Commonwealth; or

- b. refunded by the Recipient to the Commonwealth within 30 Business Days of a written notice from the Commonwealth.
- 4.7 Without limiting the Commonwealth's rights set out in clause 4.2 of this Agreement, any Funding paid by the Commonwealth to the Recipient under this Agreement must be refunded by the Recipient to the Commonwealth if:
 - a. the Funding it is not required for the Funding Purposes; or
 - b. the Recipient breaches any of the conditions of this Agreement.
- 4.8 Any amount owed to the Commonwealth will be recoverable by the Commonwealth in a court of competent jurisdiction as a debt due to the Commonwealth by the Recipient.

5. RECORDS AND REPORTS

- 5.1 The Recipient must make full and accurate Records of receipt and expenditure of the Funding and retain them for a period of no less than seven years after the end of the term of this Agreement.
- 5.2 The Recipient must provide to the Commonwealth reports at the times and in the manner stated in Schedule 1 of receipt and expenditure of the Funding and the Recipient's progress in undertaking the Funding Purposes.

6. TAXES, DUTIES AND GOVERNMENT CHARGES

- 6.1 All taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Agreement must be borne by the Recipient.
- 6.2 The Recipient shall submit each claim for payment in the form of a valid tax invoice. The tax invoice shall include the amount and method of calculation of any GST payable by the Recipient in relation to that claim for payment as a separate item.
- 6.3 If the Recipient incorrectly states the amount of GST payable, or paid, by the Commonwealth on an otherwise valid tax invoice, the Recipient shall issue to the Commonwealth a valid adjustment note in accordance with the GST Act.
- 6.4 If the Commonwealth makes, or is assessed by the ATO as having made, a taxable supply to the Recipient under or in connection with this Agreement, the Commonwealth shall be entitled to recover from the Recipient upon presentation of a valid tax invoice, the amount of GST paid or payable by the Commonwealth to the ATO.
- 6.5 Any amount of GST to be paid by the Recipient under clause 6.4 shall be a debt recoverable by the Commonwealth in accordance with clause 4.8.

7. DISCLOSURE OF INFORMATION

- 7.1 The Recipient acknowledges that the Commonwealth may be required to provide information in relation to the Funding or this Agreement, as required by the operation of any law, judicial or parliamentary body or governmental

agency and accordingly the Commonwealth can give no undertakings to treat any of the Recipient's information or this Agreement as confidential information.

8. ACCESS TO PREMISES AND RECORDS

- 8.1 The Recipient must, at all reasonable times, give the Commonwealth and any persons authorised by the Commonwealth (referred to in this clause 8 collectively as "those permitted") access to premises at which Material and Records associated with this Agreement are stored, or work as part of the Funding Purposes is undertaken, and the right to inspect and copy Material and Records, in the Recipient's possession or control, for purposes associated with this Agreement or any review of performance under this Agreement.
- 8.2 The Recipient must provide all reasonable assistance requested by those permitted when they exercise the rights under subclause 8.1.
- 8.3 The rights referred to in subclause 8.1 are subject to:
- (a) the provision of reasonable prior notice by those permitted (except where they believe that there is an actual or apprehended breach of the law); and
 - (b) the Recipient's reasonable security procedures.

9. TERMINATION

- 9.1 If the Recipient fails to fulfil, or is in breach of any of the Recipient's obligations under this Agreement, and the Recipient does not rectify the omission or breach after receiving 10 Business Days notice in writing from the Commonwealth to do so then the Commonwealth may immediately terminate this Agreement by giving notice to the Recipient of the termination. The Recipient must comply with any requirements in the Commonwealth's notice of termination.
- 9.2 Where the Commonwealth terminates this Agreement under subclause 9.1 the Commonwealth:
- (a) will not be obliged to pay to the Recipient any outstanding amount of the Funds except to the extent that those monies have been legally committed for expenditure by the Recipient in accordance with this Agreement and payable by the Recipient as a current liability (written evidence of which will be required) by the date notice of termination given under subclause 9.1 is deemed to be received in accordance with subclause 12.2; and
 - (b) will be entitled to recover from the Recipient any part of the Funds which have not, in the Commonwealth's opinion, been expended by the Recipient in accordance with the terms and conditions of this Agreement and all such Funds will be regarded as a debt due to the

Commonwealth capable of being recovered as such in any court of competent jurisdiction.

- 9.3 Subclause 9.2 does not limit or exclude any of the Commonwealth's other rights, including the right to recover any other amounts from the Recipient on termination of this Agreement.
- 9.4 The Commonwealth will not be liable to pay compensation for loss for termination under this clause 9 or loss of any benefits that would have been conferred on the Recipient had the termination not occurred.

10. ASSIGNMENT

- 10.1 The Recipient must not assign the Recipient's rights under this Agreement without prior written approval from the Commonwealth.

11. APPLICABLE LAW AND JURISDICTION

- 11.1 The laws of the Australia Capital Territory apply to this Agreement and the courts of the Australia Capital Territory shall have non-exclusive jurisdiction in respect to any dispute under this Agreement.

12. NOTICES

12.1 Giving of notices

A Party giving notice or notifying under this Agreement must do so in writing:

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

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

12.2 Receipt of notice

A notice given in accordance with subclause 12.1 is taken to be received:

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

13. SURVIVAL

- 13.1 Any provision of this Agreement which expressly or by implication from its nature is intended to survive the termination or expiration of this Agreement and any rights arising on termination or expiration shall survive.

14. DISPUTE RESOLUTION

- 14.1 Subject to subclause 14.3, the Parties agree not to commence any legal proceedings in respect of any dispute arising under this Agreement, which cannot be resolved by informal discussion, until the procedure provided by this clause has been utilised.

- 14.2 The Parties agree that any dispute arising during the course of this Agreement is dealt with as follows:

- (a) the Party claiming that there is a dispute will send the other a written notice setting out the nature of the dispute;
- (b) the Parties will try to resolve the dispute through direct negotiation by persons who they have given authority to resolve the dispute;
- (c) if the Parties are unable to resolve the dispute within 10 Business Days from the receipt of the notice referred to in subclause 15.2(a), the dispute is to be submitted to a higher level of management within each party's organisation;
- (d) if the Parties are unable to resolve the dispute within 10 Business Days from referral of the dispute under subclause 15.2(c), the dispute is to be submitted to mediation or some other alternative dispute resolution procedure agreed by the Parties; and
- (e) if:
 - (i) there is no resolution of the dispute;
 - (ii) there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
 - (iii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 Business Days of the submission, or such extended time as the parties may agree in writing before the expiration of the 15 Business Days,

then either Party may commence legal proceedings.

- 14.3 This clause 15 does not apply to the following circumstances:

- (a) either Party commences legal proceedings for urgent interlocutory relief;

- (b) action by the Commonwealth under or purportedly under clauses 3 [Payment], 8 [Access to Premises and Records] or 9 [Termination]; and
 - (c) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the law by AUS-CSCAP.
- 14.4 Despite the existence of a dispute, both Parties must (unless requested in writing by the other Party not to do so) continue to perform obligations under this Agreement.
- 15. **ENTIRE AGREEMENT**
- 15.1 This Agreement records the entire agreement and undertaking between the Parties in relation to the Funding, and supersedes, in relation to these matters, any previous deeds, agreements, arrangements, and undertakings between them.
- 16. **VARIATION**
- 16.1 Except for action the Commonwealth is expressly authorised to take elsewhere in this Agreement, no variation of this Agreement is binding unless it is agreed in writing and signed by both Parties to this Agreement.
- 17. **WAIVER**
- 17.1 If either Party does not exercise (or delays in exercising) any of its rights under this Agreement, that failure or delay does not operate as a waiver of those rights.
- 17.2 A single or partial exercise by either Party of any of its rights under this Agreement does not prevent the further exercise of any right.
- 17.3 Waiver of any provision of, or right under this Agreement:
 - (a) must be in writing signed by the Party entitled to the benefit of that provision or right; and
 - (b) is effective only to the extent set out in the written waiver.
- 17.4 In this clause 'rights' means rights or remedies provided by this Agreement or at law.
- 18. **CAPACITY**
- 18.1 Each of the Parties warrants and declares that it has full capacity to enter into and execute this Agreement and that by doing so the terms, conditions, covenants and agreement herein contained shall be binding on each of them.
- 18.2 The Recipient is aware that the Commonwealth is relying on the warranties in this clause 18 in executing this Agreement.

19. ILLEGALITY, INVALIDITY OR UNENFORCEABILITY

- 19.1 The illegality, invalidity or unenforceability of any provision of this Agreement or any part of a provision of this Agreement shall not effect the legality, validity or enforceability of any other provision of this Agreement. Any provision which is illegal, invalid or unenforceable shall be severed from the remainder of this Agreement.

20. NEGATION OF AGENCY ETC

- 20.1 Each Party agrees that it is not, and agrees not to claim or imply that it is, a partner or agent of the other Party or otherwise able to bind or represent the other Party.

21. INDEMNITY

- 21.1 The Recipient agrees that the Commonwealth, its employees and agents will not be liable for the injury or death of any person or loss or damage to any property arising out of the Recipient's performance of its obligations under this Agreement and the Recipient indemnifies the Commonwealth in respect of any claim made against the Commonwealth in this respect.

SCHEDULE 1

1. FUNDING PURPOSES, APPOINTMENT PROCESS AND DELIVERABLES

An academic appointed at Professorial level at the ANU will typically have achieved international recognition through original, innovative and distinguished contributions to his or her field of research, which is demonstrated by sustained and distinguished performance. A Professorial level academic will provide leadership in his or her field of research, within his or her institution, discipline and/or profession and within the scholarly and/or general community. He or she will foster excellence in research, teaching and, in the case of the current position, public policy.

Consistent with these expected academic standards, the Shedden Professor in Strategic Policy Studies will:

- develop and teach courses in SDSC's education programs in the area of Australian strategic policy;
- undertake and publish high quality academic research in the field of Australian strategic policy;
- contribute to public policy debates on Australian strategic policy issues;
- supervise Honours, Masters, and PhD candidates;
- contribute to the management of SDSC and the organization of its activities;
- contribute to the development and delivery of professional development courses, such as the Defence Graduate program;
- develop SDSC's relations with external stakeholders, particularly the Department of Defence; and
- secure external funding to support research and other activities, on behalf of the ANU.

Appointment process:

Selection committee membership for all Professorial level appointments at the ANU is determined by the ANU Vice Chancellor. Selection committees should be comprised of at least one external representative. The Head of SDSC will recommend to the ANU VC that an appropriate representative from the Department of Defence (for example the Director of Strategic External Relations and Education Branch from Strategic Policy Division) be invited as an external representative on the selection committee for this position.

Upon appointment, the Shedden Professor of Strategic Policy Studies will be responsible to the Head of SDSC, who is in turn responsible to the Director of the School of International, Political and Strategic Studies.

Deliverables:

Within six weeks of appointment as Shedden Professor, the appointee will, in cooperation with the ANU, outline to Defence proposed priorities for at least the first year of the grant.

The Shedden Professor of Strategic Policy Studies will provide an annual report to Defence outlining their activities and progress over the previous year. Courtesy copies of all major research and public policy outputs produced by the Professor during that period will also accompany the annual report.

2. FUNDING AND PAYMENT

The total payable by the Commonwealth to the Contractor for the Funding Purposes is AUD\$803,936 (GST inclusive). The monies will be payable annually upon receipt of a correctly rendered invoice as per below:

- a. AUD\$261,267 for the FY 2012-13;
- b. AUD\$269,985 for the FY 2013-14; and
- c. AUD\$272,684 for the FY 2014-15.

Invoices must be presented by the first quarter of each financial year. On receipt of an invoice the Commonwealth Representative shall either approve the claim or reject the claim if the invoice is not correctly rendered, or the Funding Purposes have not been met.

When a claim is approved, the Commonwealth shall make payment within 30 days of approval of the invoice or the submission of the invoice, whichever occurs last.

If the Commonwealth Representative rejects the claim the Commonwealth Representative shall, within 14 days of receipt of the claim, notify the Recipient in writing of the need to resubmit the claim and the reasons for rejection and any action to be taken by the Recipient for the claim to be rendered correct for payment. Upon receipt of a notice, the Recipient shall immediately take all necessary steps to make the claim for payment conform to the requirements of this Agreement and shall submit a revised claim to the Commonwealth Representative when such action is complete. The resubmitted claim shall be subject to the same conditions as if it were the original claim.

3. REPORTS

The Recipient must provide to the Commonwealth an audited report of the receipt and expenditure of Funding and the Recipient's progress in undertaking the Funding Purposes within 60 days of the end of the Term or earlier termination of this Agreement.

4. NOTICES

Any notice or other communication relating to this Agreement must be sent to the Commonwealth at the following address (or to such other address as notified by the Commonwealth to the Recipient):

Attention: Kathryn Hitchings
Director, Strategic Education and External Relations
R1-01-D007
Department of Defence
CANBERRA ACT 2600
facsimile: (02) 6265-4945

Invoices should also be forwarded, quoting Purchase Order No. *TBA* to:

Accounts Processing Centre – ISIS
Morobe Road
Puckapunyal VIC 3662
ISIS.ProcessingSV@defence.gov.au

Any notice or other communication relating to this Agreement must be sent to the Recipient at the following address:

Attention: Deanne Drummond
School Manager
School of International, Political & Strategic Studies
ANU College of Asia & the Pacific
The Australian National University
ACT 0200 Australia
P: +61 (0)2 6125 3104
E:deanne.drummond@anu.edu.au

EXECUTION CLAUSES

Executed by the parties.

SIGNED for and on behalf of the
COMMONWEALTH OF AUSTRALIA
(ABN 68 706 814 312) represented by
and acting through the Department of
Defence by Kathryn Hitchings

in the presence of:

print name of witness

witness sign here

SIGNED for and on behalf of the
THE AUSTRALIAN NATIONAL
UNIVERSITY (ABN 52 234 063 906), a
body corporate established pursuant to
the *Australian National University Act*
1991 (Cth) in the Australian Capital
Territory, Australia, represented by the
Strategic and Defence Studies Centre
by ~~Matthew R. Taylor~~

sign here

in the presence of:

print name of witness

WITNESS SIGN HERE

FUNDING AGREEMENT

BETWEEN

THE COMMONWEALTH OF AUSTRALIA
as represented by the Department of Defence
A.B.N. 68 706 814 312

AND

**The Australian National University (ABN 52 234 063 906)), a body
corporate established under section 4 of the Australian National University
Act 1991 (Cth) and acting through Strategic and Defence Studies Centre**

*in relation to the provision of funding for the Strategic and Defence Studies
Centre Post Doctoral Fellowship*

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THIS AGREEMENT is made on the _____ day of _____ 2013

BETWEEN:

THE COMMONWEALTH OF AUSTRALIA (ABN 68 706 814 312) represented by the Department of Defence ('Commonwealth')

AND

The AUSTRALIAN NATIONAL UNIVERSITY (ABN 52 234 063 906), a body corporate established under section 4 of the Australian National University Act 1991 (Cth) and acting through Strategic and Defence Studies Centre (SDSC) ('University').

RECITALS

This Agreement is made in the following context:

- A. *The SDSC is among the leaders in academic research and graduate teaching on Australian national security and defence issues. The SDSC hosts many of Australia's foremost scholars and practitioners in this field and is active in current policy and public debates. The Parties have agreed to maintain a Post Doctoral Fellowship at the SDSC for the term of this Agreement.*
- B. *The Commonwealth will provide Funding to the University for a Post Doctoral Fellowship and the University will select a candidate of an appropriate calibre whose proposed work is beneficial to the Commonwealth.*
- C. *The Post Doctoral Fellowship will provide mutual benefits to the Parties by enabling the development of future academics in the field of strategic security and defence issues. The Parties have also agreed that in return for the Funding the University will provide certain Services to the Commonwealth.*
- D. *This Agreement sets out the terms on which the Commonwealth agrees to provide the Funding, and the University agrees to accept and use the Funding.*

OPERATIVE PROVISIONS

In consideration of the mutual promises contained in this Agreement, the Parties hereby agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the contrary intention appears:

'Agreement' means this document as executed by the Commonwealth and the University, and includes Schedule 1, the Post Doctoral Fellowship Plan and any other annexures.

'Annual Progress Report' means the report identified in Schedule 1 of this Agreement detailing the Post Doctoral Fellow's progress in the delivery of the Post Doctoral Fellowship Delivery Plan.

'Background IP' means Intellectual Property, other than Third Party IP, that:

- (a) is in existence at the Commencement Date or is subsequently brought into existence other than as a result of the performance of this Agreement; and
- (b) is embodied in, or attaches to, the Foreground IP, or is otherwise necessarily related to the functioning or operation of the Foreground IP.

'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.

'Commencement Date' means the date both Parties sign this Agreement, or if it is signed on separate days, the date on which the last Party to sign this Agreement does so.

'Commonwealth Material' means any material including but not limited to documents, equipment, information and data stored by any means and includes Intellectual Property therein provided or disclosed by the Commonwealth to the University for the purposes of this Agreement, whether in tangible or recorded form or communicated orally.

'Confidential Information' means information that is by its nature confidential or the receiving Party knows or ought to know is confidential, but does not include information which:

- (a) is or becomes public knowledge other than by breach of this Agreement;
- (b) is in the possession of a Party without restriction in relation to disclosure before the date of receipt; or
- (c) has been independently developed or acquired by the receiving Party.

'Defence Purpose' means any purpose within the power of the Commonwealth with respect to the defence of the Commonwealth and includes purposes that are necessary or incidental to that purpose.

'Electronic Communication' has the same meaning as in the *Electronic Transactions Act 1999* (Cth).

'End Date' means 11:59pm on 30 June 2016.

'Financial Year' means the period from 1 July to 30 June.

'Foreground IP' means Intellectual Property which is created under or otherwise in connection with this Agreement, other than Third Party IP and, where applicable, includes, but is not limited to, all Material created under this Agreement that relates to the Funding and the Funding Purposes.

'Funding' or 'Funds' means the amount or amounts recorded in Schedule 1 of this Agreement and payable by the Commonwealth to the University for the Funding Purposes and where applicable includes Goods and Services Tax, as defined in the GST Act.

'Funding Purposes' means for the purposes of supporting the SDSC Post Doctoral Fellowship at the University and includes the activities described in the Post Doctoral Fellowship Delivery Plan and Schedule 1 to this Agreement.

'GST Act' means *A New Tax System (Goods and Services Tax) Act 1999* and associated taxation legislation. The expressions "adjustment note" and "taxable supply" have the meanings given to those expressions in the GST Act, and the terms "GST paid" and "GST payable" refer to the imposition of Goods and Services Tax as required by the GST Act.

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

'Intellectual Property' or 'IP' means all copyright and all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered and unregistered designs, confidential information (including trade secrets and know-how), and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.

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

'Party' means a party to this Agreement, and **'Parties'** has a corresponding meaning.

'Post Doctoral Fellow' means the person appointed by the University as the SDSC Post Doctoral Fellow and named in clause 1 of Schedule 1 of this Agreement.

'Post Doctoral Fellowship Delivery Plan' ('PDF Delivery Plan') means the plan named in Schedule 1 of this Agreement.

'Post Doctoral Fellowship Supervisor' means the person appointed by the University who has responsibility for supervising the Post Doctoral Fellow in accordance with clause 6.1 of this Agreement.

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

'Replacement Post Doctoral Fellow' means a person appointed in accordance with clause 4 of this Agreement.

'Services' means the provision of services to the Commonwealth by the University under this Agreement and includes the deliverables set out in both Schedule 1 of this Agreement and the Post Doctoral Fellowship Delivery Plan.

'Tax Invoice' means an invoice which complies with the GST Act for the supply to which the Funds relates and is correctly rendered in accordance with the times and in the manner specified in Schedule 1 to this Agreement. An invoice shall include the amount and method of calculation of any GST payable by the University in relation to that claim for payment as a separate item.

'Technical Data' or 'TD' means all technical know-how and information reduced to material form produced or acquired by the University in relation to the Funding Purposes and includes all data, manuals, handbooks, designs, standards, specifications, reports, writings, models, sketches, plans, drawings, calculations, software, source code, software design data, software updates and other items describing or providing information relating to the Funding Purposes or their operations.

'Third Party IP' means that IP which is owned by a party other than the Commonwealth or the University and is embodied in the Funding Purposes, or attaches to the Funding Purposes, or is otherwise necessarily related to the functioning or operation of the Funding Purposes, and is not limited to commercial off the shelf items.

1.2 In this Agreement, unless the contrary intention appears:

- (a) headings are for the purpose of convenient reference only and do not form part of this Agreement;
- (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 a partnership and a body whether corporate or otherwise;
- (e) where the last day of any period prescribed for the doing of an action falls on a day which is not a Business Day, the action shall be done no later than the end of the next Business Day;
- (f) a reference to a clause includes a reference to a subclause of that clause;
- (g) a reference to a "dollar", "\$", "\$A" or AUD means the Australian dollar unless otherwise stated;

- (h) a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
- (i) any uncertainty or ambiguity in the meaning of a provision of this Agreement will not be interpreted against a Party just because that Party prepared the provision;
- (j) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning; and
- (k) a reference to a Party includes that Party's administrators, successors, and permitted assigns.

1.3 Schedule 1 (and annexures and documents incorporated by reference, if any) forms part of this Agreement. In the event of any conflict or inconsistency between any part of:

- (a) the terms and conditions contained in the clauses of this Agreement;
- (b) Schedule 1;
- (c) the Post Doctoral Fellowship Delivery Plan;
- (d) the annexures, if any; and
- (e) documents incorporated by reference, if any,

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

2. TERM

- 2.1 The term of this Agreement commences on the Commencement Date and unless terminated earlier or extended by the Parties in accordance with clause 2.2 will expire on the End Date .
- 2.2 Prior to the End Date, the Parties may agree in writing to extend the term of this Agreement for an additional period of up to 12 months.

3. GENERAL REQUIREMENTS

- 3.1 The University must use the Funding for the purposes of the appointment of a Post Doctoral Fellow for the SDSC Post Doctoral Fellowship.
- 3.2 In consideration of the Commonwealth agreeing to provide the Funding, the University agrees to provide the Services.

- 3.3 The work of the Post Doctoral Fellow shall, in the absolute discretion of the Commonwealth, be beneficial to the Commonwealth.
- 3.4 The Parties have agreed to the appointment of the Post Doctoral Fellow identified in clause 1 of Schedule 1 of this Agreement.
- 3.5 The University shall require the Post Doctoral Fellow to deliver the Post Doctoral Fellowship Delivery Plan and undertake any other tasks as outlined in Schedule 1 of this Agreement.

4. REPLACEMENT OF POST DOCTORAL FELLOW

- 4.1 Subject to clause 4.2, where the Post Doctoral Fellow leaves the position, the Commonwealth may in its absolute discretion agree to the University appointing a Replacement Post Doctoral Fellow.
- 4.2 Before appointing a Replacement Post Doctoral Fellow, the University must undertake a panel selection process in a manner agreed to by both Parties. As a minimum, a representative from the Commonwealth must be part of the selection panel.
- 4.3 Before finalising contractual arrangements between the University and a Replacement Post Doctoral Fellow, the University must obtain the Commonwealth's written agreement to the arrangements.
- 4.4 Where the Post Doctoral Fellow has not delivered the Post Doctoral Fellow Delivery Plan, the University must ensure that the Replacement Post Doctoral Fellow delivers the Post Doctoral Fellow Delivery Plan subject to any reasonable amendments agreed to by the Commonwealth in writing.
- 4.5 The appointment of a Replacement Post Doctoral Fellow will not alter the terms of this Agreement.
- 4.6 If no Replacement Post Doctoral Fellow is appointed, the Parties may terminate this Agreement and any Funds not expended by the University will be managed in accordance with clause 9.

5. STATUS OF POST DOCTORAL FELLOW

- 5.1 For the purpose of the Post Doctoral Fellowship, a Post Doctoral Fellow, and a Replacement Post Doctoral Fellow (if any), shall at all times remain an employee of the University and in no circumstances will be deemed to be an employee of the Commonwealth.

6. MANAGEMENT OF THE POST DOCTORAL FELLOW

- 6.1 The University has appointed Associate Professor Brendan Taylor as the Post Doctoral Fellowship Supervisor:

- 6.2 Where a new Post Doctoral Fellowship Supervisor is required to be appointed, the University shall notify the Commonwealth in writing within 5 Business Days of the identity of the new Post Doctoral Fellowship Supervisor and their contact details.
- 6.3 The Post Doctoral Fellowship Supervisor shall be responsible for ensuring that induction and familiarisation and supervision are properly implemented with respect to a Post Doctoral Fellow.
- 6.4 The University will ensure that the Post Doctoral Fellow will be provided with appropriate supervision in the conduct of their research. The Post Doctoral Fellowship Supervisor will work with the Post Doctoral Fellow in the construction and delivery of the PDF Delivery Plan and participate in the Annual Progress Report and any other reporting to the Commonwealth.
- 6.5 Performance issues regarding the work of the Post Doctoral Fellow will be managed between the University and the Post Doctoral Fellow in accordance with the existing ANU Enterprise Agreement and the University's Human Resources management system.
- 6.5.1 The University shall inform the Commonwealth regarding Post Doctoral Fellow performance issues and any action taken to address any under-performance.
- 6.5.2 In the event that the Commonwealth has particular concerns regarding the performance of the Post Doctoral Fellow, the Commonwealth may raise them with the **Associate Professor Brendan Taylor** at first instance.
- 7. COSTS AND EXPENSES RELATING TO THE POST DOCTORAL FELLOWSHIP**
- 7.1 The Commonwealth's contribution to the Post Doctoral Fellowship is limited to providing the Funding and the University is wholly responsible for the costs of employing the Post Doctoral Fellow during term of this Agreement including payment of salary, superannuation, tax and other expenses normally associated with the employment of personnel.
- 7.2 The University shall provide all necessary resources to enable the Post Doctoral Fellow to complete the activities described in the Post Doctoral Fellowship Delivery Plan and Schedule 1 to this Agreement, including a workstation, computer, and telephone.
- 7.3 The University will remunerate the Post Doctoral Fellow in accordance with their experience and qualifications and the applicable ANU Enterprise Agreement.
- 7.4 Except as provided in this Agreement or unless otherwise agreed in writing, each party will be fully responsible for all costs and expenses incurred by it in relation to this Agreement.

8. PAYMENT

- 8.1 Subject to sufficient Funds being available, and compliance by the University with this Agreement, the Commonwealth will provide the University, upon receipt of a correctly rendered Tax Invoice, with the Funding at the times and in the manner specified in Schedule 1 to this Agreement.
- 8.2 The Commonwealth shall be entitled, without derogating from any other rights it may have, to defer payment of a component of the Funding until the University and the Post Doctoral Fellow have completed, to the reasonable satisfaction of the Commonwealth, that part of this Agreement which relates to that component of the Funding.
- 8.3 Unless otherwise expressly agreed in writing by the Commonwealth, the Funding is the maximum amount of funds that the Commonwealth will provide to the University under this Agreement.
- 8.4 Without limiting the Commonwealth's rights, the Commonwealth may withhold or suspend any Funding in whole or in part if the University is in breach of this Agreement.

9. MANAGEMENT OF FUNDING

- 9.1 The Funding must be expended by the University only for the Funding Purposes in accordance with this Agreement.
- 9.2 The University must identify the receipt and expenditure of the Funds separately within the University's accounting Records so that at all times the Funds are identifiable and ascertainable.
- 9.3 The University must ensure that the Funds are paid into an account in the University's name, and which the University solely controls, with an authorised deposit-taking institution, and provide the Commonwealth with written details sufficient to identify this account prior to receipt of any Funds.
- 9.4 The University must keep financial Records relating to the receipt and expenditure of the Funding so as to enable the University to comply with any reporting obligations under this Agreement.
- 9.5 If, at the end of the term of this Agreement or upon earlier termination of this Agreement, there remains an amount of Funding that has not been expended in accordance with this Agreement, then this amount must be:
- (a) dealt with by the University as directed in writing by the Commonwealth;
or
 - (b) refunded by the University to the Commonwealth within 30 Business Days of a written notice from the Commonwealth.

- 9.6 Without limiting any of the Commonwealth's rights set out in this Agreement, any Funding paid by the Commonwealth to the University under this Agreement must be refunded by the University to the Commonwealth if:
- (a) the purpose for which the Funding is provided ceases to exist for any reason; or
 - (b) the Post Doctoral Fellow ceases their appointment; or
 - (b) the University breaches any of the conditions of this Agreement.

- 9.7 Any amount owed to the Commonwealth will be recoverable by the Commonwealth in a court of competent jurisdiction as a debt due to the Commonwealth by the University.

10. RECORDS AND REPORTS

- 10.1 The University must make full and accurate Records of receipt and expenditure of the Funding and retain the Records for a period of no less than seven years after the end of the term of this Agreement.
- 10.2 The University must provide to the Commonwealth reports at the times and in the manner stated in Schedule 1 of this Agreement of receipt and expenditure of the Funding and the University's progress in undertaking the Funding Purposes.

11. INTELLECTUAL PROPERTY

- 11.1 Nothing in this Agreement affects the ownership of Background IP or Third Party IP.
- 11.2 Commonwealth Material will remain the property of the Commonwealth and nothing in this Agreement will affect the ownership of Commonwealth Material.
- 11.3 For the purposes of enabling the development of the 'Post Doctoral Fellowship Delivery Plan', the Commonwealth grants to the University a non-exclusive, royalty-free licence to use the Commonwealth Material for the Funding Purposes.
- 11.4 Unless otherwise agreed, the University will promptly return to the Commonwealth upon written demand and otherwise on expiration or earlier termination of this Agreement, all Commonwealth Material in tangible, visible or recorded form and all copies thereof.
- 11.5 Subject to the rights set out in this clause 11, for the purposes of this Agreement Foreground IP will be owned by the University.
- 11.6 The University grants, or will otherwise arrange for the grant, to the Commonwealth of a royalty-free, irrevocable, world-wide, perpetual, non-exclusive licence, (including a right to sub-licence) to use all Foreground IP, and all Background IP to the extent that it is incorporated in the Foreground IP, for Defence Purposes.

11.7 The University may commercially exploit any Foreground IP subject to first notifying the Commonwealth. However, any commercialisation arrangement undertaken, or entered into, by the University with a third party must, unless otherwise agreed in writing by the Commonwealth:

- (a) not prejudice the Commonwealth's rights with respect to the Foreground IP and Background IP, as set out in this Agreement; and
- (b) ensure that any improvement, variation or modification of the Foreground IP developed or made pursuant to any commercialisation arrangement can be used by the Commonwealth for Defence Purposes without charge or restriction (including allowing use of such improvements, variations or modifications by third party contractors for the purpose of providing goods or services to the Commonwealth) under a non-exclusive, royalty-free, irrevocable, world-wide, perpetual licence (including a right to sub-licence) granted by the University to the Commonwealth.

This clause shall not apply to the use of Foreground IP by the University for teaching purposes for which fees may be charged. Any such arrangement will be agreed to in writing separately by the Parties.

11.8 The University undertakes to obtain from the Post Doctoral Fellow a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for the benefit of the Parties.

11.9 For the purposes of clause 11.7, "Specified Acts" in relation to the Background IP or the Foreground IP, means the following classes or types of acts or omissions performed by or on behalf of the Parties:

- (a) those which would, but for this clause, infringe the author's right of attribution of authorship; and
- (b) those which would, but for this clause, infringe the author's right of integrity of authorship,

but does not include those which would infringe the author's right not to have authorship falsely attributed.

11.10 While the Commonwealth encourages publication of articles of an academic, scientific and technical nature intended for learned journals, the University shall not, without the prior written approval of the Commonwealth, publish or present (whether in journal, electronic form or otherwise) any material which might disclose Commonwealth Confidential Information.

12. TAXES, DUTIES AND GOVERNMENT CHARGES

12.1 Words or expressions used in this clause which are defined in the GST Act have the same meaning in this clause.

12.2 Each party is GST registered, has quoted its ABN to the other and must inform the other immediately of any changes to either.

- 12.3 All taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Agreement must be borne by the University.
- 12.4 The University shall submit each claim for payment of Funding in the form of a Tax Invoice.
- 12.5 If the University incorrectly states the amount of GST payable, or paid, by the Commonwealth on an otherwise valid Tax Invoice, the University shall issue to the Commonwealth a valid adjustment note in accordance with the GST Act.
- 12.6 If the Commonwealth makes, or is assessed by the ATO as having made, a taxable supply to the University under or in connection with this Agreement, the Commonwealth shall be entitled to recover from the University upon presentation of a valid Tax Invoice, the amount of GST paid or payable by the Commonwealth to the ATO.
- 12.7 Any amount of GST to be paid by the University under clause 12.6 shall be a debt recoverable by the Commonwealth in accordance with clause 9.8.
- 12.8 If a payment to a Party under this Deed is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that Party, then the payment must be inclusive of any GST payable and will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense. That Party is assumed to be entitled to a full input tax credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.

13. DISCLOSURE OF INFORMATION

- 13.1 The University acknowledges that the Commonwealth may be required to provide information in relation to the Funding, the Funding Purposes, or this Agreement, as required by the operation of any law, judicial or parliamentary body or governmental agency and accordingly the Commonwealth can give no undertakings to treat any of the University's information or this Agreement as confidential information.

14. CONFIDENTIAL INFORMATION

- 14.1 Where, in connection with this Agreement, Confidential Information is provided or produced, the relevant Party shall ensure that any person receiving or producing the information protects the confidential nature of the information, except where disclosure of the information is required in accordance with clause 13.1 of this Agreement.
- 14.2 The Commonwealth may at any time require the University to give, and to arrange for its officers, employees, and agents to give, written undertakings in a form required by the Commonwealth relating to the non-disclosure of specified material. The University shall promptly arrange for such undertakings to be given.
- 14.3 Where it is necessary to disclose Confidential Information belonging to the other Party, to a third party, other than a legal adviser or for a purpose within an exception

listed in clause 13.1 of this Agreement, the Party wishing to make the disclosure shall obtain the written consent of the other Party to this Agreement.

15. COMMONWEALTH ACCESS TO PREMISES AND RECORDS

- 15.1 The University must, at all reasonable times, give the Commonwealth and any persons authorised by the Commonwealth (referred to in this clause 15 collectively as "those permitted") access to premises at which Material and Records associated with this Agreement are stored, or work as part of the Funding Purposes is undertaken, and the right to inspect and copy Material and Records, in the University's possession or control, for purposes associated with this Agreement or any review of performance under this Agreement.
- 15.2 The University must provide all reasonable assistance requested by those permitted when they exercise the rights under clause 15.1.
- 15.3 The rights referred to in clause 15.1 are subject to:
- (a) the provision of reasonable prior notice by those permitted (except where they believe that there is an actual or apprehended breach of the law); and
 - (b) the University's reasonable security procedures.

16. ACCESS TO COMMONWEALTH PREMISES

- 16.1 Where University personnel are granted access to Commonwealth premises in accordance with this Agreement, the University shall comply with, and require its personnel granted access to comply with, all relevant Commonwealth, security and safety requirements, regulations, standing orders, or codes of behaviour for the Commonwealth premises.
- 16.2 The Commonwealth retains the right to deny access or remove any University personnel for safety and security reasons or as a result of a failure to comply with clause 17.

17. COMMONWEALTH SECURITY

- 17.1 Where University personnel are granted access to Commonwealth premises in accordance with this Agreement, the University shall ensure that such personnel are aware of the Commonwealth's security requirements and comply with such requirements. This includes but is not limited to the University ensuring that its personnel:
- (a) agree to and co-operate with any security checks or clearances as required by the Commonwealth; and
 - (b) provide any written undertakings in respect of security or access to the Commonwealth premises in the form required by the Commonwealth.

18. ACKNOWLEDGMENT AND PUBLICITY

- 18.1 The University must, in all publications, promotional and advertising materials, public announcements and activities by the University or on the University's behalf in relation to the Funding Purposes, or any products, processes or inventions developed as a result of it, *acknowledge the financial and other support the University has received from the Commonwealth.*
- 18.2 The Commonwealth reserves the right to publicise and report on the provision of Funding to the University. The Commonwealth may do this by including in media releases general announcements about the Funding and in annual reports the University's name, the amount of the Funds given to the University and the title and a brief description of the Funding Purposes.

19. INDEMNITY

- 19.1 The University agrees that the Commonwealth, its officers, employees and agents will not be liable for the injury or death of any person or loss or damage to any property arising out of the University's performance of its obligations under this Agreement, and the University indemnifies the Commonwealth in respect of any claim made against the Commonwealth in this respect.

20. INSURANCE

- 20.1 Before utilising the Funding for the Funding Purposes, the University shall be fully insured or registered with the appropriate statutory authority against liability for death of or injury to persons employed by the University, including liability under statute and common law.
- 20.2 Before utilising the Funding for the Funding Purposes, the University shall have professional indemnity insurance for an amount of not less than \$1,000,000 for any one event/claim, and public liability insurance of \$10,000,000.
- 20.3 The University shall maintain the insurance or registration required under this clause 20 for the duration of this Agreement and, for the obligations that survive expiry or termination of this Agreement, shall ensure that cover is maintained for the period that those obligations survive expiry or termination or for a period as otherwise specified by the Commonwealth.
- 20.4 The University shall, on request, produce satisfactory evidence of the insurance or registration to the Commonwealth.

21. CONFLICT OF INTEREST

- 21.1 All Parties warrant that, to the best of their knowledge after making diligent inquiry, at the date of signing this Agreement no conflict of interest exists or is likely to arise in the performance of their obligations under this Agreement.
- 21.2 If during this Agreement, a conflict of interest or a risk of a conflict arises, each party undertakes to notify the other party immediately in writing of that conflict of

interest and to take such steps as the other party may reasonably require to resolve or otherwise deal with the conflict.

22 RESTRAINT

- 22.1 The Commonwealth agrees that it will not, and must ensure that its officers, employees, agents, and related entities do not solicit, entice away or attempt to solicit or entice away the *Post Doctoral Fellow* from continuing to be engaged by the University.

23. ASSIGNMENT

- 23.1 The University must not assign the University's rights under this Agreement without prior written approval from the Commonwealth.

24. NOTICES

- 24.1 A Party giving notice or notifying under this Agreement must do so in writing:
- (a) directed to the Party's address, as varied by any written notice; and
 - (b) hand delivered or sent by pre-paid post or Electronic Communication to that address.
- 24.2 The Parties' address details are as specified in Schedule 1 to this Agreement.
- 24.3 A notice given in accordance with clause 24.1 is taken to be received:
- (a) if hand delivered, on delivery;
 - (b) if sent by pre-paid post, five Business Days after the date of posting unless it has been received earlier; or
 - (c) if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth) if a notice was being given under a law of the Commonwealth, which is currently when the Electronic Communication enters the addressee's Information System.

25. DISPUTE RESOLUTION

- 25.1 Subject to clause 25.3, the Parties agree not to commence any legal proceedings in respect of any dispute arising under this Agreement, which cannot be resolved by informal discussion, until the procedure provided by this clause has been utilised.
- 25.2 The Parties agree that any dispute arising during the course of this Agreement is dealt with as follows:
- (a) the Party claiming that there is a dispute will send the other a written notice setting out the nature of the dispute;

- (b) the Parties will try to resolve the dispute through direct negotiation by persons who they have given authority to resolve the dispute;
- (c) if the Parties are unable to resolve the dispute within 10 Business Days from the receipt of the notice referred to in clause 25.2(a), the dispute is to be submitted to a higher level of management within each Party's organisation;
- (d) if the Parties are unable to resolve the dispute within 10 Business Days from referral of the dispute under clause 25.2(c), the dispute is to be submitted to mediation or some other alternative dispute resolution procedure agreed by the Parties; and
- (e) if:
 - (i) there is no resolution of the dispute;
 - (ii) there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
 - (iii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 Business Days of the submission, or such extended time as the parties may agree in writing before the expiration of the 15 Business Days,

then either Party may commence legal proceedings.

25.3 This clause 25 does not apply to the following circumstances:

- (a) either Party commences legal proceedings for urgent interlocutory relief;
- (b) action by the Commonwealth under or purportedly under clauses 8 [Payment], 15 [Commonwealth Access to Premises and Records] or 26 [Termination]; and
- (c) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the law by the University.

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

26. TERMINATION

26.1 If the University fails to fulfil, or is in breach of, any of the University's obligations under this Agreement, and the University does not rectify the omission or breach after receiving 10 Business Days notice in writing from the Commonwealth to do so, then the Commonwealth may immediately terminate this Agreement by giving

notice to the University of the termination. The University must comply with any requirements in the Commonwealth's notice of termination.

26.2 Where the Commonwealth terminates this Agreement under clause 26.1 the Commonwealth:

- (a) will not be obliged to pay to the University any outstanding amount of the Funds except to the extent that those monies have been legally committed for expenditure by the University in accordance with this Agreement and are payable by the University as a current liability (written evidence of which will be required) by the date notice of termination given under subclause 26.1 is deemed to be received in accordance with clause 24; and
- (b) will be entitled to recover from the University any part of the Funds which have not, in the Commonwealth's opinion, been expended or committed by the University in accordance with the terms and conditions of this Agreement, and all such Funds will be regarded as a debt due to the Commonwealth capable of being recovered as such in any court of competent jurisdiction.

26.3 Clause 26.2 does not limit or exclude any of the Commonwealth's other rights, including the right to recover any other amounts from the University on termination of this Agreement.

26.4 The Commonwealth will not be liable to pay compensation for loss for termination under this clause 26 or loss of any benefits that would have been conferred on the University had the termination not occurred.

27. APPLICABLE LAW AND JURISDICTION

27.1 The laws of the Australia Capital Territory apply to this Agreement and the courts of the Australia Capital Territory shall have non-exclusive jurisdiction in respect to any dispute under this Agreement.

28. SURVIVAL

28.1 Any provision of this Agreement which expressly or by implication from its nature is intended to survive the termination or expiration of this Agreement and any rights arising on termination or expiration shall survive.

29. ENTIRE AGREEMENT

29.1 This Agreement records the entire agreement and undertaking between the Parties in relation to the Funding, and supersedes, in relation to these matters, any previous deeds, agreements, arrangements, and undertakings between them.

30. VARIATION

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

31. WAIVER

- 31.1 If either Party does not exercise (or delays in exercising) any of its rights under this Agreement, that failure or delay does not operate as a waiver of those rights.
- 31.2 A single or partial exercise by either Party of any of its rights under this Agreement does not prevent the further exercise of any right.
- 31.3 Waiver of any provision of, or right under this Agreement:
- (a) must be in writing signed by the Party entitled to the benefit of that provision or right; and
 - (b) is effective only to the extent set out in the written waiver.
- 31.4 In this clause 'rights' means rights or remedies provided by this Agreement or at law.

32. CAPACITY

- 32.1 Each of the Parties warrants and declares that it has full capacity to enter into and execute this Agreement and that by doing so the terms, conditions, covenants and agreement herein contained shall be binding on each of them.
- 32.2 The University is aware that the Commonwealth is relying on the warranties in this clause 32 in executing this Agreement.

33. ILLEGALITY, INVALIDITY OR UNENFORCEABILITY

- 33.1 The illegality, invalidity or unenforceability of any provision of this Agreement or any part of a provision of this Agreement shall not effect the legality, validity or enforceability of any other provision of this Agreement. Any provision which is illegal, invalid or unenforceable shall be severed from the remainder of this Agreement.

34. NEGATION OF EMPLOYMENT AND AGENCY

- 34.1 Each Party agrees not to represent itself, and shall ensure that its officers, employees and agents do not represent themselves, as being employees, partners or agents of the other Party.
- 34.2 Each Party, its officers, employees and agents, shall not by virtue of this Agreement be, or for any purpose be deemed to be, an employee, partner or agent of the other Party.

EXECUTION CLAUSES

Executed by the parties as an Agreement.

**SIGNED for and on behalf of the
COMMONWEALTH OF
AUSTRALIA represented by and
acting through the Department of
Defence (ABN 68 706 814 312) by its
authorised delegate:** _____

...
Print full name of delegate
in the presence of: _____

print name of witness

.....
witness sign here

SIGNED by CFO Delegate:

Print full name of delegate

.....
sign here

**SIGNED for and on behalf of The
Australian National University Strategic
Defence Studies Centre,
by its authorised officer, Associate
Professor Brendan Taylor, Head of
School ANU SDSC:** _____

in the presence of:

print name of witness

.....

.....

SCHEDULE 1

1. DETAILS OF THE POST DOCTORAL FELLOW

The Post Doctoral Fellow must perform quality research that has a strong bearing on Australia's long-term strategic and defence challenges, including strategic interests and objectives, force priorities, and capability management and delivery. To deliver these outcomes, the Post Doctoral Fellow must develop a PDF Delivery Plan for the Commonwealth's agreement. Additionally, the Post Doctoral Fellow must proactively engage with the Commonwealth. In particular, the Post Doctoral Fellow must foster good communication and networks with the Defence Strategic Policy Division.

2. FUNDING PURPOSES

The Commonwealth will provide the Funds to support the University's appointment of the Post Doctoral Fellow and to enable the development of future academics in the field of strategic security and defence issues.

3. DELIVERABLES

University (Post Doctoral Fellow)

In consultation with the Commonwealth, the Post Doctoral Fellow will develop a realistic and detailed PDF Delivery Plan that will include the delivery of annual presentations, workshops and research assignments within the Department of Defence. All deliverables in the PDF Delivery Plan must be specified in detail, with delivery due dates. Additionally, the PDF Delivery Plan will include the submission of book manuscripts, articles, book chapters or any other publications (or any drafts for comment). The PDF Delivery Plan must be delivered to the Commonwealth for approval within one month after the Commencement Date, and the Commonwealth must not unreasonably withhold approval.

During the term of this Agreement, an Annual Progress Report is to be submitted by the Post Doctoral Fellow two months prior to the end of each financial year, for approval by the Commonwealth. The Annual Progress Report must detail the Post Doctoral Fellow's progress against the deliverables contained in the PDF Delivery Plan. The Commonwealth's approval will be based on an assessment of the progress of the Post Doctoral Fellow's research against the proposed research activities and outcomes in the PDF Delivery Plan.

The Commonwealth recognises the academic independence of the University and any persons appointed to the Post Doctoral Fellowship in respect of their work. All views published by the Post Doctoral Fellow will be those of the author and not of the Commonwealth.

4. FUNDING

The Funding will not exceed:

- \$138,225 (exclusive of GST) for the 2013-14 Financial Year;
- \$143,062 (exclusive of GST) for the 2014-15 Financial Year;

- \$153,003 (exclusive of GST) for the 2015-16 Financial Year; and
- \$434,290 (exclusive of GST) in Total for the term of this Agreement, unless otherwise agreed in writing by the Parties.

Noting the University's obligations under clause 7 of this Agreement, in accordance with the *Australian National University Enterprise Agreement of 2010-2012*, the Post Doctoral Fellow's salary is recorded in Table 1 (with an annual 2% salary increase has been applied) and the Parties agree the Funding may be applied by the University in support of the Post Doctoral Fellow's salary..

Provision has been included in the eventuality of the Post Doctoral Fellow being successfully progressed by the promotion committee from Academic Level B2 to Academic Level B4 during the term of this Agreement.

Post-Doctoral Fellow	2013-14 Academic Level B.2 +2% salary increase 1 July 2013	2014-15 Academic Level B.2 +2% salary increase 1 July 2014	2015-16 Academic Level B.4 +2% salary increase 1 July 2015	Total ex GST
Salary	\$	\$	\$	\$
Salary-on-costs	\$	\$	\$	\$
Sub Salaries total	\$	\$	\$	\$
Infrastructure and Overheads	\$	\$	\$	\$
Funding Total	\$138,225*	\$143,062	\$153,003	\$434,290

Table 1. Post Doctoral Fellow – Funding Breakdown

Other contributors to the cost of the project:
The Australian National University

Source of funding	2013-14	2014-15	2015-16
SDSC, ANU	\$25,000 (Relocation and research funding)	\$10,000 (Research funding)	\$10,000 (Research funding)

The University will contribute funding for removal costs and research activities.

5. PAYMENT

The Funding will be paid by the Commonwealth to the University in fixed annual instalments (GST exclusive), during the term of this Agreement upon receipt, in accordance with clause

5, of a correctly rendered Tax Invoice and satisfaction of the relevant performance criteria listed in Table 2. The Tax Invoice must detail the gross breakdown of the price for that year in accordance with Table 1 above.

Tax Invoice Due (to be paid 30 days post receipt of the Tax Invoice)	For work to be performed in period	Tax Invoice Price (GST Exclusive)	Performance Criteria
Commencement Date	Commencement date to 30 June 2014	TBA	
1 July 2014	1 July 2014 to 30 June 2015	\$143,062	Defence acceptance of 2013-14 Annual Progress Report and receipt of copies of all agreed manuscripts, articles, book chapters, or other publications where completed.
1 July 2015	1 July 2015 to 30 June 2016	\$153,003	Defence acceptance of 2014-15 Annual Progress Report and receipt of copies of all agreed manuscripts, articles, book chapters, or other publications where completed.

Table 2. Post Doctoral Fellow – Payment Schedule

6. NOTICES

Commonwealth

Any notice or other communication relating to this Agreement must be sent to the Commonwealth at the following address (or to such other address as notified by the Commonwealth to the University):

Attention:
 Matt Ramage
 Acting Assistant Secretary Strategic Policy
 R1-1-A056
 Department of Defence
 CANBERRA ACT 2600
 Matt.Ramage@defence.gov.au

Tax Invoices should also be forwarded to:
invoices@defence.gov.au

or

Defence Accounts Payable
 PO Box 800
 Salisbury South SA 5106

All Tax Invoices must include a Purchase Order Number. This will be provided to the University post signing of this Agreement.

University

Any notice or other communication relating to this Agreement must be sent to the University (or to such other address as notified by the University to the Commonwealth) at the following address:

Mrs Deanne Drummond
School Manager
School of International, Political and Strategic Studies
College of Asia and the Pacific
Australian National University ACT 0200
Tel: 02 6125 3104
E-mail: deanne.drummond@anu.edu.au

FUNDING AGREEMENT

BETWEEN

THE COMMONWEALTH OF AUSTRALIA
as represented by the Department of Defence
A.B.N. 68 706 814 312

AND

THE AUSTRALIAN STRATEGIC POLICY INSTITUTE
A.B.N 77 097 369 045

P.J. DW

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THIS AGREEMENT is made on the Third day of June 2010

BETWEEN:

THE COMMONWEALTH OF AUSTRALIA (ABN 68 706 814 312) represented by the Department of Defence ('Commonwealth')

AND

THE AUSTRALIAN STRATEGIC POLICY INSTITUTE (ABN 77 097 369 045) of Level 2, Arts House, 40 Macquarie Street, BARTON ACT 2600 ('ASPI Limited').

RECITALS

This Agreement is made in the following context:

- A. The Commonwealth wishes to encourage independent research into and analysis of defence and security issues relevant to Australia, to increase public awareness of those issues and to provide a centre of expertise of value to support government decision making on strategic and defence issues. The government's vision for ASPI, (as expressed in the 2008 Statement of Expectations from the Minister for Defence) is that "it will be a high-performing Commonwealth company which provides fresh independent and non-partisan ideas, and promotes discussion among the public service, academia and the wider public on Australia's defence and strategic policy choices."
- B. The Commonwealth has agreed to provide ASPI Limited with Funding to further the objects specified in Schedule 1 of this Agreement.
- C. ASPI Limited has agreed to accept the Funding to further the objects specified in Schedule 1 of this Agreement.
- D. This Agreement sets out the terms on which the Commonwealth agrees to provide the Funding, and ASPI Limited agrees to accept and use the Funding.

OPERATIVE PROVISIONS

In consideration of the mutual promises contained in this Agreement, the Parties hereby agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the contrary intention appears:

'Agreement' means this document as signed and dated by the Commonwealth and ASPI Limited, and includes Schedule 1 and any annexures.

'Annual Funding Amount' in respect of each full Financial Year means the amount provided by Defence to ASPI Limited for its research program.

'Audited Financial Report' means an audited statement certified by a person qualified to be a member of a recognised accounting body in Australia.

'Background IP' means Intellectual Property, other than Third Party IP, that:

- (a) is in existence at the Commencement Date or is subsequently brought into existence other than as a result of the performance of this Agreement; and
- (b) is embodied in, or attaches to, the Funding Purposes, or is otherwise necessarily related to the functioning or operation of the Funding Purposes.

'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.

'Commencement Date' means the date both Parties sign this Agreement, or if it is signed on separate days, the date on which the last Party to sign this Agreement does so.

'Confidential Information' means information that is by its nature confidential or the receiving Party knows or ought to know is confidential, but does not include information which:

- (a) is or becomes public knowledge other than by breach of this Agreement;
- (b) is in the possession of a Party without restriction in relation to disclosure before the date of receipt; or
- (c) has been independently developed or acquired by the receiving Party.

'Constitution' means the Constitution of ASPI Limited.

'Contract Manager' means the person for the time being holding or occupying the position of Assistant Secretary Strategic Policy of the Department of Defence or the contract manager's nominated delegate in the Department of Defence.

'Council' means the directors of ASPI Limited acting collectively under the Constitution.

'Department' means the Department of Defence, or the Commonwealth Department with primary responsibility for assisting the Minister with portfolio responsibilities for Defence.

'Electronic Communication' has the same meaning as in the *Electronic Transactions Act 1999* (Cth).

'Financial year' means a period of twelve months ending on 30 June.

'Foreground IP' means Intellectual Property which is created under or otherwise in connection with this Agreement, other than Third Party IP and, where applicable, includes, but is not limited to, all Material created under this Agreement that relates to the Funding and the Funding Purposes.

'Funding' or **'Funds'** means the amount or amounts payable under this Agreement by the Commonwealth to ASPI Limited for the Funding Purposes, and excludes Goods and Services Tax, as defined in the GST Act, where applicable.

'Funding Purposes' means the activities described in Schedule 1 to this Agreement.

'GST Act' means *A New Tax System (Goods and Services Tax) Act 1999* and associated taxation legislation. The expressions "adjustment note", "taxable supply" and "tax invoice" have the meanings given to those expressions in the GST Act, and the terms "GST paid" and "GST payable" refer to the imposition of Goods and Services Tax as required by the GST Act.

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

'Intellectual Property' or **'IP'** means all copyright and all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered and unregistered designs, confidential information (including trade secrets and know-how), and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.

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

'Member' means a member of ASPI Limited as that term is defined in the Constitution.

'Minister' means the Commonwealth Minister with portfolio responsibilities for Defence.

'Party' means a party to this Agreement, and **'Parties'** has a corresponding meaning.

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

'Material breach' or **'breach...to a material degree'** means a serious or substantial breach of the terms of the Agreement by either party which contravenes the purpose of the Agreement.

'Technical Data' or **'TD'** means all technical know-how and information reduced to material form produced or acquired by ASPI Limited in relation to the Funding Purposes and includes all data, manuals, handbooks, designs, standards, specifications, reports, writings, models, sketches, plans, drawings, calculations, software, source code, software design data, software updates and other items describing or providing information relating to the Funding Purposes or their operations.

1.2 In this Agreement, unless the contrary intention appears:

- (a) headings are for the purpose of convenient reference only and do not form part of this Agreement;
- (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 a partnership and a body whether corporate or otherwise;

- (e) where the last day of any period prescribed for the doing of an action falls on a day which is not a Business Day, the action shall be done no later than the end of the next Business Day;
- (f) a reference to a clause includes a reference to a subclause of that clause;
- (g) a reference to a "dollar", "\$", "\$A" or AUD means the Australian dollar unless otherwise stated;
- (h) a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
- (i) any uncertainty or ambiguity in the meaning of a provision of this Agreement will not be interpreted against a Party just because that Party prepared the provision;
- (j) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning; and
- (k) a reference to a Party includes that Party's administrators, successors, and permitted assigns.

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

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

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

2. TERM

2.1 This Agreement commences on 1 July 2010 and, unless terminated earlier, in accordance with this Agreement, expires on 30 June 2014.

2.2 The Parties may agree in writing to extend this Agreement for an additional period of up to four years.

3. PAYMENT

3.1 Subject to sufficient funds being available, and compliance by ASPI Limited with this Agreement, the Commonwealth will provide ASPI Limited, upon receipt of a correctly rendered invoice, with the Funding at the time and in the manner specified in Schedule 1 to this Agreement.

3.2 Unless otherwise expressly agreed in writing by the Commonwealth, the Funding specified in Schedule 1 is the maximum amount that the Commonwealth will be providing to ASPI Limited for the Funding Purposes.

3.3 Without limiting the Commonwealth's rights, the Commonwealth may withhold or suspend any Funding in whole or in part if ASPI Limited is in material breach of this Agreement.

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4. MANAGEMENT OF FUNDING

- 4.1 ASPI Limited must carry out the Funding Purposes in accordance with this Agreement.
- 4.2 The Funding must be expended by ASPI Limited only for the Funding Purposes.
- 4.3 ASPI Limited must identify the receipt and expenditure of the Funds separately within ASPI Limited's accounting Records so that at all times the Funds are identifiable and ascertainable.
- 4.4 ASPI Limited must ensure that the Funds are paid into an account in ASPI Limited's name, and which ASPI Limited solely controls, with an authorised deposit-taking institution, and provide the Commonwealth with written details sufficient to identify this account prior to receipt of any Funds.
- 4.5 ASPI Limited must keep financial Records relating to the receipt and expenditure of the Funding so as to enable ASPI Limited to comply with any reporting obligations under this Agreement including but not limited to, those reporting obligations set out in clause 5.
- 4.6 Any uncommitted funds from a financial year's Funding amount should be returned to the Commonwealth prior to ASPI Limited signing off its financial statements for that financial year.
- 4.7 If, at the end of the term of this Agreement or upon earlier termination of this Agreement, there remains an amount of Funding that has not been expended in accordance with this Agreement, then ASPI Limited must deal with this amount as directed in writing by the Commonwealth. Where the Commonwealth directs ASPI Limited to refund the amount to the Commonwealth, ASPI must do so within 90 Business Days from receipt of the notice.
- 4.8 Without limiting the Commonwealth's rights set out in clause 4.2 of this Agreement, any Funding paid by the Commonwealth to ASPI Limited under this Agreement must be refunded by ASPI Limited to the Commonwealth if:
- (a) the purpose for which the Funding is provided ceases to exist for any reason; or
 - (b) ASPI Limited breaches any of the conditions of this Agreement to a material degree, and which is not capable of remedy.
- 4.9 Any amount owed to the Commonwealth will be recoverable by the Commonwealth in a court of competent jurisdiction as a debt due to the Commonwealth by ASPI Limited.

5. RECORDS AND REPORTS

- 5.1 ASPI Limited must make full and accurate Records of receipt and expenditure of the Funding and retain the Records for a period of no less than seven years after the expiration or termination of this Agreement.

- 5.2 ASPI Limited must provide to the Commonwealth reports, at the times and in the manner stated in clauses 5.5, 5.6 and 5.7 of this Agreement, of receipt and expenditure of the Funding, and ASPI Limited's progress in undertaking the Funding Purposes.
- 5.3 The Commonwealth will be entitled, in addition to any other right it may have, to defer payment of any Funding until ASPI Limited has provided to the Commonwealth the reports stated in clauses 5.5, 5.6 and 5.7 of this Agreement.
- 5.4 ASPI Limited will continue to develop additional funding sources and continue to report to Government on its additional sources.
- 5.5 ASPI Limited agrees to provide the Commonwealth:
- (a) Such reports as ASPI Limited may be required to prepare pursuant to the *Commonwealth Authorities and Companies Act 1997* or the *Corporations Act 2001*;
 - (b) Any other information that the Contract Manager may from time to time notify to ASPI Limited in writing that it requires.
- 5.6 Where ASPI Limited is required by the *Commonwealth Authorities and Companies Act 1997* (the CAC Act) to provide a document to its responsible Minister, ASPI Limited must also provide a copy of the document to the Contract Manager.
- 5.7 The timeframe for delivery of any document under this clause is the same timeframe by which ASPI Limited must provide any documents to its responsible Minister under the CAC Act.

6. REVIEWS

- 6.1 When considering any extension of this Agreement under Clause 2.2, the Commonwealth may, starting in 2013, review the future of ASPI Limited in light of the development of the National Security College at the Australian National University.
- 6.2 ASPI Limited must supply any and all information in its possession or control requested by a review team, (collectively, or members individually) for the purposes of the review.
- 6.3 ASPI Limited will be required to respond to any recommendations made through the review, and to negotiate with the contract manager appropriate steps to address any recommendations.

7. INTELLECTUAL PROPERTY

- 7.1 Nothing in this Agreement affects the ownership of Background IP.
- 7.2 Subject to any specific arrangements to the contrary, Intellectual Property in all Material developed by ASPI Limited using the Funds shall vest in ASPI Limited.

8. CONTROLS

8.1 ASPI Limited shall not act contrary to its Constitution, and in particular to the objects and powers of its Constitution.

8.2 Subject to clause 8.3, ASPI Limited shall not:

- (a) pass any resolution or do any act or thing the effect of which results, or will result, in a change in the identity of the directors;
- (b) pass any resolution to wind up ASPI Limited;
- (c) pass any resolution or take any action the effect of which has or will have the result that ASPI Limited is amalgamated with any other person;
- (d) pass any resolution or take any action the effect of which has or will have the result that the Commonwealth, if a member of ASPI Limited, ceases to be a member; or
- (e) pass any resolution or take any action the effect of which results, or will result in a change to the objects and powers of ASPI Limited;

without first notifying the Commonwealth in writing and obtaining the consent of the Commonwealth, which may be given or withheld in the absolute discretion of the Commonwealth.

8.3 ASPI Limited will not be in breach of any provision of this clause 8 where ASPI Limited is required to act, or refrain from acting, by operation of law.

9. ASSETS

9.1 For the purpose of this clause "asset" includes personal and real property, and Intellectual Property.

9.2 Ownership of any asset purchased by ASPI Limited wholly or partially with the use of the Funds shall be vested in ASPI Limited.

9.3 ASPI shall not use the Funds as security for the purpose of obtaining commercial loans.

10. COMPLIANCE WITH LAW

10.1 ASPI Limited acknowledges its obligations, in carrying out this Agreement and its activities, to comply with:

- (a) all relevant legislation of the Commonwealth (particularly the *Crimes Act 1914*, *Racial Discrimination Act 1975*, *Sex Discrimination Act 1984*, and *Disability Discrimination Act 1992*), or of any State, Territory or local authority; and
- (b) any obligations it has under the *Equal Opportunity for Women in the Workplace Act 1999*.

11. CONFLICT OF INTEREST

11.1 ASPI Limited warrants that, to the best of its knowledge after making diligent inquiry, at the date of commencement of this Agreement no conflict with the

interests of the Commonwealth exists or is likely to arise in the performance of this Agreement.

- 11.2 If, during the term of this Agreement a conflict of interests arises, or appears likely to arise, ASPI Limited agrees to:
- (a) notify the Commonwealth immediately in writing;
 - (b) make full disclosure of all relevant information relating to the conflict; and
 - (c) take such steps as the Commonwealth may reasonably require to resolve or otherwise deal with the conflict.
- 11.3 If ASPI Limited does not notify the Commonwealth or is unable or unwilling to resolve or deal with the conflict as required, the Commonwealth may terminate this Agreement for default under clause 22.
- 11.4 ASPI Limited agrees that it will not, and will use its best endeavours to ensure that any officer, employee, agent or subcontractor of ASPI Limited does not, engage in any activity or obtain any interest during the course of this Agreement that is likely to conflict with or restrict ASPI Limited in performing this Agreement.

12. TAXES, DUTIES AND GOVERNMENT CHARGES

- 12.1 All taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Agreement must be borne by ASPI Limited.
- 12.2 ASPI Limited shall submit each claim for payment in the form of a valid tax invoice. The tax invoice shall include the amount and method of calculation of any GST payable by ASPI Limited in relation to that claim for payment as a separate item.
- 12.3 If ASPI Limited incorrectly states the amount of GST payable, or paid, by the Commonwealth on an otherwise valid tax invoice, ASPI Limited shall issue to the Commonwealth a valid adjustment note in accordance with the GST Act.
- 12.4 If the Commonwealth makes, or is assessed by the ATO as having made, a taxable supply to ASPI Limited under or in connection with this Agreement, the Commonwealth shall be entitled to recover from ASPI Limited upon presentation of a valid tax invoice, the amount of GST paid or payable by the Commonwealth to the ATO.
- 12.5 Any amount of GST to be paid by ASPI Limited under clause 12.4 shall be a debt recoverable by the Commonwealth in accordance with clause 4.9.

13. DISCLOSURE OF INFORMATION

- 13.1 ASPI Limited acknowledges that the Commonwealth may be required to provide information in relation to the Funding, the Funding Purposes, or this Agreement, as required by the operation of any law, judicial or parliamentary body or governmental agency and accordingly the Commonwealth can give no undertakings to treat any of ASPI Limited's information or this Agreement as Confidential Information.

14. CONFIDENTIAL INFORMATION

- 14.1 Where, in connection with this Agreement, Confidential Information is provided or produced, the relevant Party shall ensure that any person receiving or producing the information protects the confidential nature of the information, except where disclosure of the information is required in accordance with clause 13.1 of this Agreement.
- 14.2 The Commonwealth may at any time require ASPI Limited to give, and to arrange for its officers, employees, and agents to give, written undertakings in a form required by the Commonwealth relating to the non-disclosure of specified material. ASPI Limited shall promptly arrange for such undertakings to be given.
- 14.3 Where it is necessary for a Party to disclose to a third party Confidential Information belonging to the other Party, the disclosing Party shall obtain the written consent of the other Party except where disclosure is being made to a legal adviser or is required in accordance with clause 13.1.
- 14.4 The Commonwealth may impose any conditions or restrictions it considers appropriate when giving its approval under clause 14.3.

15. COMMONWEALTH ACCESS TO PREMISES AND RECORDS

- 15.1 ASPI Limited must, at all reasonable times, give the Commonwealth and any persons authorised by the Commonwealth (referred to in this clause 15 collectively as "those permitted") access to premises at which Material and Records associated with this Agreement are stored, or work as part of the Funding Purposes is undertaken, and the right to inspect and copy Material and Records, in ASPI Limited's possession or control, for purposes associated with this Agreement or any review of performance under this Agreement.
- 15.2 ASPI Limited must provide all reasonable assistance requested by those permitted when they exercise the Commonwealth's rights under clause 15.1.
- 15.3 The rights referred to in clause 15.1 are subject to:
- (a) the provision of not less than 48 hours' notice during business hours by those permitted (except where they believe that there is an actual or apprehended breach of the law); and
 - (b) ASPI Limited's reasonable security procedures.

16. ACKNOWLEDGMENT AND PUBLICITY

- 16.1 ASPI Limited must, in all publications, promotional and advertising materials, public announcements and activities by ASPI Limited or on ASPI Limited's behalf in relation to the Funding Purposes, or any products, processes or inventions developed as a result of it, acknowledge the financial and other support ASPI Limited has received from the Commonwealth.
- 16.2 The Commonwealth reserves the right to publicise and report on the awarding of Funding to ASPI Limited. The Commonwealth may do this by including in media releases general announcements about the Funding and in annual reports ASPI

Limited's name, the amount of the Funds given to ASPI Limited and the title and a brief description of the Funding Purposes.

17. INDEMNITY

- 17.1 ASPI Limited agrees to indemnify the Commonwealth, its officers, employees and agents against any direct or indirect loss, damage, liability, expense, legal proceedings or claim arising in respect of the injury or death of any person or loss or damage to any property arising out of ASPI Limited's performance of its obligations under this Agreement, except to the extent that such death or injury or loss or damage to property resulted from any unlawful or negligent act or omission on the part of the Commonwealth or its officers, employees or agents.

18. INSURANCE

- 18.1 Before utilising the Funding for the Funding Purposes, ASPI Limited shall be fully insured or registered with the appropriate statutory authority against liability for death of or injury to persons employed by ASPI Limited, including liability under statute and common law.
- 18.2 ASPI Limited shall maintain the insurance or registration required under this clause 18 for the duration of this Agreement and, for the obligations that survive expiry or termination of this Agreement, shall ensure that cover is maintained for the period that those obligations survive expiry or termination or for a period as otherwise specified by the Commonwealth.
- 18.3 ASPI Limited shall, on request, produce satisfactory evidence of the insurance or registration to the Commonwealth.

19. ASSIGNMENT

- 19.1 ASPI Limited must not assign ASPI Limited's rights under this Agreement without prior written approval from the Commonwealth.

20. NOTICES

- 20.1 A Party giving notice or notifying under this Agreement must do so in writing:
- (a) directed to the Party's address, as varied by any written notice; and
 - (b) hand delivered or sent by pre-paid post or Electronic Communication to that address.
- 20.2 The Parties' address details are as specified in Schedule 1 to this Agreement.
- 20.3 A notice given in accordance with clause 20.1 is taken to be received:
- (a) if hand delivered, on delivery;
 - (b) if sent by pre-paid post, five Business Days after the date of posting unless it has been received earlier; or
 - (c) if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth) if a notice was being given under a law of the Commonwealth, which is currently when the Electronic Communication enters the addressee's Information System.

21. DISPUTE RESOLUTION

- 21.1 Subject to clause 21.3, the Parties agree not to commence any legal proceedings in respect of any dispute arising under this Agreement, which cannot be resolved by informal discussion, until the procedure provided by this clause has been utilised.
- 21.2 The Parties agree that any dispute arising during the course of this Agreement is dealt with as follows:
- (a) the Party claiming that there is a dispute will send the other a written notice setting out the nature of the dispute;
 - (b) the Parties will try to resolve the dispute through direct negotiation by persons who they have given authority to resolve the dispute;
 - (c) if the Parties are unable to resolve the dispute within 10 Business Days from the receipt of the notice referred to in clause 21.2(a), the dispute is to be submitted to a higher level of management within each Party's organisation;
 - (d) if the Parties are unable to resolve the dispute within 15 Business Days from referral of the dispute under clause 21.2(c), the dispute is to be submitted to mediation or some other alternative dispute resolution procedure agreed by the Parties; and
 - (e) if:
 - (i) there is no resolution of the dispute;
 - (ii) there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
 - (iii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 Business Days of the submission, or such extended time as the parties may agree in writing before the expiration of the 15 Business Days,
- then either Party may commence legal proceedings.
- 21.3 This clause 21 does not apply to the following circumstances:
- (a) either Party commences legal proceedings for urgent interlocutory relief;
 - (b) action by the Commonwealth under or purportedly under clauses 3 [Payment], 15 [Commonwealth Access to Premises and Records] or 22 [Termination]; or
 - (c) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the law by ASPI Limited.
- 21.4 Despite the existence of a dispute, both Parties must, unless requested in writing by the other Party not to do so, continue to perform its obligations under this Agreement.

22. TERMINATION

- 22.1 If ASPI Limited fails to fulfil, or is in material breach of, any of ASPI Limited's obligations under this Agreement, and ASPI Limited does not rectify the omission or material breach after receiving 10 Business Days notice in writing from the Commonwealth to do so, then the Commonwealth may immediately terminate this Agreement by giving notice to ASPI Limited of the termination. ASPI Limited must comply with any requirements in the Commonwealth's notice of termination.

- 22.2 Where the Commonwealth terminates this Agreement under clause 22.1 the Commonwealth:
- (a) will not be obliged to pay to ASPI Limited any outstanding amount of the Funds except to the extent that those monies have been legally committed for expenditure by ASPI Limited in accordance with this Agreement and are payable by ASPI Limited as a current liability (written evidence of which will be required) by the date notice of termination given under subclause 22.1 is deemed to be received in accordance with clause 20.3; and
 - (b) will be entitled to recover from ASPI Limited any part of the Funds which have not, in the Commonwealth's opinion, been expended by ASPI Limited in accordance with the terms and conditions of this Agreement, and all such Funds will be regarded as a debt due to the Commonwealth capable of being recovered as such in any court of competent jurisdiction.
- 22.3 Clause 22.2 does not limit or exclude any of the Commonwealth's other rights, including the right to recover any other amounts from ASPI Limited on termination of this Agreement.
- 22.4 The Commonwealth will not be liable to pay compensation for loss for termination under this clause 22 or loss of any benefits that would have been conferred on ASPI Limited had the termination not occurred.
- 22.5 The Commonwealth may also, by notice in writing, terminate this Agreement immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if ASPI Limited comes under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001*, or an order has been made for the purpose of placing ASPI Limited under external administration.

23. APPLICABLE LAW AND JURISDICTION

- 23.1 The laws of the Australian Capital Territory apply to this Agreement and the courts of the Australian Capital Territory shall have non-exclusive jurisdiction in respect to any dispute under this Agreement.

24. SURVIVAL

- 24.1 Any provision of this Agreement which expressly or by implication from its nature is intended to survive the termination or expiration of this Agreement and any rights arising on termination or expiration shall survive.

25. ENTIRE AGREEMENT

- 25.1 This Agreement records the entire agreement and undertaking between the Parties in relation to the Funding, and supersedes, in relation to these matters, any previous deeds, agreements, arrangements, and undertakings between them.

26. VARIATION

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

27. WAIVER

- 27.1 If either Party does not exercise (or delays in exercising) any of its rights under this Agreement, that failure or delay does not operate as a waiver of those rights.
- 27.2 A single or partial exercise by either Party of any of its rights under this Agreement does not prevent the further exercise of any right.
- 27.3 Waiver of any provision of, or right under this Agreement:
- (a) must be in writing signed by the Party entitled to the benefit of that provision or right; and
 - (b) is effective only to the extent set out in the written waiver.
- 27.4 In this clause 'rights' means rights or remedies provided by this Agreement or at law.

28. CAPACITY

- 28.1 Each of the Parties warrants and declares that it has full capacity to enter into and execute this Agreement and that by doing so the terms, conditions, covenants and agreement herein contained shall be binding on each of them.
- 28.2 ASPI Limited is aware that the Commonwealth is relying on the warranties in this clause 28 in executing this Agreement.

29. ILLEGALITY, INVALIDITY OR UNENFORCEABILITY

- 29.1 The illegality, invalidity or unenforceability of any provision of this Agreement or any part of a provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement. Any provision which is illegal, invalid or unenforceable shall be severed from the remainder of this Agreement.

30. NEGATION OF EMPLOYMENT AND AGENCY

- 30.1 Each Party agrees not to represent itself, and shall ensure that its officers, employees and agents do not represent themselves, as being employees, partners or agents of the other Party.
- 30.2 Each Party, its officers, employees and agents, shall not by virtue of this Agreement be, or for any purpose be deemed to be, an employee, partner or agent of the other Party.

EXECUTION CLAUSES

Executed by the parties.

SIGNED for and on behalf of the
COMMONWEALTH OF AUSTRALIA
represented by and acting through the
Department of Defence ABN
68 706 814 312 by

in the presence of:

print name of witness

witness sign here

SIGNED for and on behalf of THE
AUSTRALIAN STRATEGIC
POLICY INSTITUTE ABN 77 097 369
045 of Level 2, Arts House, 40
Macquarie Street, BARTON ACT 2600
by

print name of witness

witness sign here

SCHEDULE 1

This Schedule should be read in conjunction with the periodic Statement of Expectations provided to ASPI by the Minister for Defence, and the corresponding Statement of Intent in reply from the ASPI Council.

1. FUNDING PURPOSES

The purpose of this Agreement is to provide Funds to assist ASPI Limited to meet the objectives set out in its Constitution, namely:

- (a) Conducting and publishing research on issues related to Australia's strategic and defence policy choices;
- (b) Preparing policy inputs on strategic and defence issues to Government, as requested by Government, subject to funding;
- (c) Conducting a program of activities to increase understanding of strategic and defence policy issues among Australians, and to encourage the development of expertise in topics relevant to Australia's strategic and defence policy choices; and
- (d) Promoting international understanding of Australia's strategic and defence policy perspectives.

The Commonwealth's investment through this Agreement is the primary enabling input for ASPI's operations. The Funding provided by this Agreement will be used to support ASPI Limited's deliverables as provided in this Schedule and may also be used to cover:

- (a) ASPI Limited's facilities costs and associated operating costs; and
- (b) the costs associated with ASPI's staffing, management and administration, including costs of Council Activities and costs of meeting ASPI Limited's obligations under the *Commonwealth Authorities and Companies Act 1997*

as necessary to support the objectives set out above.

2. FUNDING AND PAYMENT

The Commonwealth will pay ASPI Limited the annual funding amount at the commencement of each financial year. Total funding for each year, excluding GST, will be: \$3,000,000 in 2010-11, \$3,051,000 in 2011-12, \$3,118,122 in 2012-13, and \$3,196,075 in 2013-14. This payment includes the effect of indexation consistent with the Defence funding model currently agreed with Government. Should Government change the Defence funding model, these changes will be applied to ASPI's funding.

ASPI Limited shall submit a claim for payment of the Funds on a correctly rendered invoice.

On receipt of a claim for payment of the Funds, the Commonwealth shall within 7 days either:

- (a) approve the claim where it is correctly rendered and where the services to which the claim for payment relates are to the reasonable satisfaction of the Commonwealth, as outlined in Schedule 1; or
- (b) reject the claim, where the services to which the claim for payment is related are unsatisfactory.

Where a claim is approved by the Commonwealth, the Commonwealth shall make payment within 30 days of the approval of the claim.

Where the Commonwealth rejects the claim, the Commonwealth shall, within 14 days of receipt of the claim notify ASPI Limited in writing of the reasons for rejection and any action

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to be taken by ASPI Limited for the claim to be rendered correct for payment. ASPI Limited shall immediately take all necessary steps to make the Services and the claim for payment conform to the requirements and shall submit a revised claim to the Commonwealth when such action is complete. The resubmitted claim shall be subject to the same conditions as if it were the original claim.

3. ASPI LIMITED DELIVERABLES

Research Program

ASPI Limited will provide the Contract Manager with an updated research program, agreed by the ASPI Council and suitable to the achievement of its objectives set out above, twice in each Funding period, at appropriate times in the ASPI research planning cycle (nominally in December and June). This research program will have been developed by the ASPI Research Committee, whose membership will include at least one representative of the Commonwealth.

The Commonwealth may seek advice from ASPI Limited concerning the content and progress of the research program at any time, through a written request from the Contract Manager to the Company.

ASPI will use all reasonable endeavours to complete the agreed research program.

Publications

ASPI Limited agrees to:

- (a) Ensure that its outputs are of a high level of intellectual and policy quality;
- (b) Make a positive and timely contribution to the strategic and policy issues facing government;
- (c) Produce and publish work of a policy relevant nature on key strategic policy issues;
- (d) Make a substantial contribution to increasing the understanding of and debate of Defence and strategic issues in Defence, including in the wider public; and
- (e) Maintain a superior reputation in Australia and internationally as a pre-eminent voice on Defence and security issues.

Each year ASPI Limited will produce at least five major reports on key issues relevant to Australian strategic and defence priorities, and at least ten shorter papers on topical subjects that arise in public debate.

ASPI Limited will, as soon as practicable after publication, provide 30 copies of all ASPI printed publications to the Department of Defence, free of costs and charges. ASPI may also, at its own discretion, provide additional copies of its publications, free of charge, to officers within Defence.

ASPI Limited will also provide a copy of each publication, either hard copy or electronic, free of charge upon request to any Federal Member of Parliament.

Events

ASPI Limited will undertake a program of events, including seminars, workshops and 1.5 track dialogues each year. ASPI Limited will consult the Department in selecting countries for the dialogues, and on developing invitees/agendas.

ASPI Limited will make allowance for two Departmental officials to attend all ASPI seminars and conferences, free of registration/attendance fees, when attendance by officials is appropriate. Officials may be invited by ASPI Limited or nominated by the Department.

ASPI Limited will make its best efforts to ensure sufficient notice of such events is provided to the Department.

Defence Specific Projects (DSPs)

In addition to the above deliverables, the Commonwealth may direct that up to five per cent of total annual Commonwealth Funding is to be used for Defence Specific Projects agreed between ASPI and Defence. The Projects may be for the conduct of research and/or events.

Defence will advise ASPI Limited of the nature and scope of the Projects at least two months prior to the commencement of each financial year to facilitate their inclusion in ASPI budget and activity approval processes. This would not preclude discussing other projects over the course of the year if they were mutually agreed. Allocated funds for this program will remain available to ASPI under the conditions of this Funding Agreement and will not be required to be returned to the Commonwealth. ASPI Limited will provide the Department with a Project plan, including proposed timing and resources, within three months of the commencement of each funding period.

ASPI Limited will report to the Department on its performance in meeting the Projects within one month of the end of that financial year.

4. DEPARTMENT OF DEFENCE DELIVERABLES

The Commonwealth's investment through this Agreement is the principal deliverable by the Department.

The Department will also support ASPI's research program by:

- (a) Input into the topics of the publications program;
- (b) Input into topics of, and participation in, the events program;
- (c) Provision upon request and where practicable of background material from Departmental sources on topics in the approved publications program;¹
- (d) Within staffing constraints and workload priorities, review drafts of ASPI publications;
- (e) Distribution of relevant publications to appropriate officers (as established by Defence in consultation with ASPI) within the Defence organisation; and
- (f) Publicity for ASPI activities and publications to appropriate officers (as established by Defence in consultation with ASPI) within the Defence Organisation.

ASPI will make its best efforts to provide drafts for comment to the Department in a timely manner. While the Department may comment on facts or interpretation in ASPI drafts, ASPI Limited is under no obligation to accept these comments. ASPI Limited will have sole responsibility for the content of its publications. Any comment or feedback provided by Defence should not be for quotation or attribution to Defence.

Defence may, with agreement from ASPI on a case-by-case basis, provide secondments of appropriate Defence officials and ADF officers to ASPI for personal development purposes or to assist in DSP research for periods of up to six months. Such secondment would be subject to separate agreement.

¹ This provision may be satisfied by referring ASPI Limited staff to appropriate Defence publications. The Department is under no obligation to devote staff resources to supporting ASPI Limited research or requests for information.

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5. NOTICES

Commonwealth

Any notice or other communication relating to this Agreement must be sent to the Commonwealth at the following address (or to such other address as notified by the Commonwealth to ASPI Limited):

Director Strategic External Relations and Education
Strategic Policy Division, Department of Defence
Russell Offices, R1-01-A093
CANBERRA ACT 2600

Invoices should also be forwarded to:

invoices@defence.gov.au

or

Defence Accounts Payable
PO Box 800
SALISBURY SOUTH SA 5106

Invoices must include a Department of Defence Purchase Order Number. This will be provided post signing of this Agreement.

ASPI Limited

Any notice or other communication relating to this Agreement must be sent to ASPI Limited (or to such other address as notified by ASPI Limited to the Commonwealth) at the following:

Business Manager and Company Secretary
Australian Strategic Policy Institute
Level 2, Arts House
40 Macquarie Street
BARTON ACT 2600

6. SPECIAL CONDITIONS

Tasks outside the Core Research Program or the Defence Special Projects program

If the Commonwealth requests ASPI Limited to undertake specific research activities that are outside the ASPI Limited Deliverables approved under this Schedule, any additional payment for that research, if considered appropriate, will be negotiated case by case between the Commonwealth and ASPI Limited.

ASPI Limited may also undertake other research and commissioned work not covered by this Funding Agreement, e.g. research commissioned for clients including other Commonwealth or State Governments, or the private sector. Such additional work will not be undertaken to the detriment of completing the program of work agreed under this Schedule.



Australian Government
Department of Defence

Funding Deed

between

Commonwealth of Australia
as represented by the Department of
Defence ABN 68 706 814 312

and

THE KOKODA FOUNDATION LTD
2/10 Kennedy Street (PO BOX 4060),
Kingston ACT 2604 ABN 48 110 456 856

in relation to the provision of funding for

**Support of the 2013
Strategic Dialogue and the
Future Strategic Leaders'
Congress in 2013 and 2014**

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Funding Deed for support of the 2013 Strategic Dialogue and the Future Strategic Leaders' Congress in 2013 and 2014

Date This Deed is made on the 16 of August 20 13

Parties Commonwealth of Australia represented by and acting through the Department of Defence (ABN 68 706 814 312) (Commonwealth)
and
The Kokoda Foundation Ltd of 2/10 Kennedy Street KINGSTON ACT 2604 (ABN 48 110 456 856) (Recipient)

Recitals

- A. The Commonwealth has agreed to provide the Recipient with Funding for the following Events:
- (a) \$130,000 plus GST of \$13,000 in relation to the conduct of the Strategic Dialogue, *Managing the Indo Pacific Strategic System*, to be held on 31 October – 2 November 2013 (Strategic Dialogue); and
 - (b) \$30,000 plus GST of \$3,000 in relation to the conduct of the Future Strategic Leaders Congresses on 15-17 November 2013 and 23-25 May 2014 (date to be confirmed) (Future Strategic Leaders Congresses)
- B. The Commonwealth is required by law to ensure the accountability of the Funding provided for the purposes of the Events and, accordingly, the Recipient is required to be accountable for all Funding received under this Deed.
- C. This Deed sets out the terms on which the Commonwealth agrees to provide the Funding for the purposes of the Events, and the Recipient agrees to accept and use the Funding on the terms set out in this Agreement.

Operative Provisions

The Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, unless the contrary intention appears:

Asset	means any item of tangible property, purchased, leased, created or otherwise brought into existence either wholly or in part with use of the Funding, which has a value of over \$2,000 (exclusive of GST).
Australian Accounting Standards	means the standards of that name maintained by the Australian Accounting Standards Board created by section 334 of the <i>Corporations Act 2001</i> (Cth).

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Bank Account	means a bank account in the Recipient's name that is held with an authorised deposit-taking institution under the <i>Banking Act 1959</i> (Cth) to carry on banking business in Australia.
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.
Commencement Date	means the date both Parties sign this Deed, or if it is signed on separate days, the date on which the last Party to sign this Deed does so.
Commonwealth Grant Guidelines	means the Commonwealth Grant Guidelines published by the Commonwealth, as amended from time to time
Confidential Information	means information that is by its nature is confidential or the receiving Party knows or ought to know is confidential, but does not include information which: <ul style="list-style-type: none"> (a) is or becomes public knowledge other than by breach of this Deed; (b) is in the possession of a Party without restriction in relation to disclosure before the date of receipt; or (c) has been independently developed or acquired by the receiving Party.
Deed	means this document as signed and dated by the Commonwealth and the Recipient, and includes the Schedule and any annexures.
Defence Personnel	means representatives from the Department of Defence, and includes members of the Australian Defence Force.
Electronic Communication	has the same meaning as in the <i>Electronic Transactions Act 1999</i> (Cth).
Events	means the Strategic Dialogue described in Schedule 1 and the Future Strategic Leaders Congresses described in Schedule 2.
Funding or Funds	means the amount payable under this Deed by the Commonwealth to the Recipient for each individual Event of the Funding Purposes, and includes any money earned by the Recipient as interest on the Funding and Goods and Services Tax, as defined in the GST Act, where applicable.
Funding Purposes	means the Strategic Dialogue including the activities set out in Schedule 1 and the Future Strategic Leaders Congresses including the activities set out in Schedule 2.
GST Act	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and associated taxation legislation. The expressions "adjustment note", "taxable supply" and "tax invoice" have the meanings given to those expressions in the GST Act, and the terms "GST paid" and "GST payable" refer to the Imposition of Goods and Services Tax as required by the GST Act.
Information System	has the same meaning as in the <i>Electronic Transactions Act 1999</i> (Cth).

Intellectual Property or IP	means all copyright and all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered and unregistered designs, confidential information (including trade secrets and know-how), and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.
Law	means any applicable statute, regulation, rule, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and rules and doctrines of equity, in each case as applicable from time to time.
Material	includes documents, equipment, software (including source code and object code), goods, information and data stored by any means including all copies and extracts of the same.
Moral Rights	means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship as defined in the <i>Copyright Act 1968</i> (Cth).
Party	means a party to this Deed.
	The term Parties has a corresponding meaning.
Records	includes documents, information and data stored by any means, and all copies and extracts of the same.
Third Party IP	means that IP which is owned by a party other than the Commonwealth or the Recipient and is embodied in the Funding Purposes, or attaches to the Funding Purposes, or is otherwise necessarily related to the functioning or operation of the Funding Purposes, and is not limited to commercial off the shelf items.
Term	means the term of this Deed specified in clause 2.

1.2 Interpretation

In this Deed, unless the contrary intention appears:

- (a) headings are for the purpose of convenient reference only and do not form part of this Deed;
- (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 a partnership and a body whether corporate or otherwise;
- (e) where the last day of any period prescribed for the doing of an action falls on a day which is not a Business Day, the action shall be done no later than the end of the next Business Day;
- (f) a reference to a clause includes a reference to a subclause of that clause;
- (g) a reference to a "dollar", "\$", "\$A" or AUD means the Australian dollar unless otherwise stated;

- (h) a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
- (i) any 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;
- (j) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning; and
- (k) a reference to a Party includes that Party's administrators, successors, and permitted assigns.

1.3 Non business days

If the day on or by which a Party must do something under this Deed is not a Business Day, the Party must do it on or by the next Business Day.

1.4 Schedules etc form part of Deed

The Schedules (and annexures and documents incorporated by reference, if any) form part of this Deed.

1.5 Order of precedence

In the event of any conflict or inconsistency between any part of:

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

then the material mentioned in any one of clause 1.5(a) to (c) has precedence over material mentioned in a subsequent paragraph, to the extent of any conflict or inconsistency.

2. TERM

The term of this Deed commences on the Commencement Date and, unless terminated earlier, ends at the conclusion of the second Future Strategic Leaders Congress on 25 May 2014 unless otherwise agreed by the Parties.

3. FUNDING

3.1 Payment of Funding

The Commonwealth will pay the Funding for each Event to the Recipient at the times and in the manner set out in the Schedules, subject to:

- (a) there being sufficient funds available;
- (b) compliance by the Recipient with this Deed; and
- (c) the Recipient providing, and the Commonwealth receiving, a correctly rendered tax invoice for each event of the Funding Purposes.

For the avoidance of doubt, any money earned by the Recipient as interest on the Funds must be used and dealt with by the Recipient as if the money earned was part of the Funds.

Unless otherwise expressly agreed in writing by the Commonwealth, the Funding specified in the Schedules for each Event is the maximum amount that the Commonwealth is required to pay to the Recipient for the Funding Purposes.

3.2 Right to withhold or suspend Funding and direct Recipient to cease spending Funding

Without limiting the Commonwealth's rights, the Commonwealth may:

- (a) withhold or suspend payment of the Funding (whether in whole or in part); and/or
- (b) direct the Recipient to cease spending the Funding,

if the Recipient:

- (c) has not performed the Funding Purposes to the satisfaction of the Commonwealth, until the Recipient remedies its performance; or
- (d) is in breach of this Deed, until the breach is rectified.

3.3 Recipient's obligations if payment of Funding suspended

In the event that the Commonwealth withholds or suspends the payment of Funding under clause 3.2, the Recipient must continue to perform the obligations to which the withheld or suspended amount relates.

4. MANAGEMENT OF FUNDING

4.1 Use of Funding

- (a) The Recipient must spend the Funding:
 - (i) only for the Funding Purposes in accordance with the terms and conditions of this Deed; and
 - (ii) not transfer Funding between Funding Purposes, unless the Commonwealth has consented in writing.
- (b) The Recipient must not use the Funding or the existence of this Deed as any form of security for any purpose, unless the Commonwealth has given its prior written approval.
- (c) The Recipient must not use the Funding to acquire or create any Asset without obtaining the Commonwealth's prior written approval. Approval may be given subject to any conditions the Commonwealth may impose.

4.2 Payment of Funding into the Bank Account

- (a) Subject to this Deed, the Commonwealth will electronically transfer the Funding into the Recipient's Bank Account.
- (b) The Recipient must provide the Commonwealth with written details sufficient to identify this account prior to receipt of any Funds.
- (c) The Recipient must treat as Funding, and use for the Funding Purposes, any interest earned on the Funding.

- (d) The Recipient must provide the Commonwealth and the authorised deposit-taking institution with a written authority for the Commonwealth to obtain any details relating to any use of the Recipient's Bank Account.

4.3 Change of Bank Account

If the Recipient's Bank Account in clause 4.2 changes, the Recipient must notify the Commonwealth within 10 Days of the change occurring, provide the Commonwealth with the details of the new account, and comply with clause 4.2 above with respect to the Recipient's new Bank Account.

4.4 Repayment of Funding

- (a) If the Recipient fails to fulfil a term of this Deed, including spending the Funding otherwise than in accordance with this Deed, or the reason for the Funding being given to the Recipient ceases to exist, then the Recipient is liable on demand by the Commonwealth to repay to the Commonwealth the whole or part of the Funding already paid to the Recipient, including any interest earned on the Funding, and the Commonwealth may recover that money from the Recipient as a debt due to the Commonwealth.
- (b) If the Recipient fails to spend the Funding, or part of it, on the Funding Purposes then the Recipient is liable, subject to clause 4.4(c), on demand by the Commonwealth, to repay to the Commonwealth that whole or part of the Funding already paid to the Recipient, including any interest earned on the Funding, and the Commonwealth may recover that money from the Recipient as a debt due to the Commonwealth.
- (c) If at the end of the Term or upon earlier termination of this Deed, some of the Funding has not been spent or committed, then this amount must be:
 - (i) dealt with as directed in writing by the Commonwealth; or
 - (ii) refunded by the Recipient to the Commonwealth within 10 Days of a written notice being issued by the Commonwealth.

4.5 Records of Funding

- (a) The Recipient must keep Records in accordance with Australian Accounting Standards that identify receipt and expenditure of the Funding for the Events separately within the Recipient's accounting Records so that at all times the Funding for the Funding Purposes is identifiable and ascertainable.
- (b) The Recipient must permit the Commonwealth or its agent or representative to have access to the Recipient's Records relating to the Funding Purposes and must cooperate with any audit carried out by the Commonwealth.
- (c) The Recipient must keep financial Records relating to the receipt and expenditure of the Funding so as to enable the Recipient to comply with any reporting obligations under this Deed. The Recipient will, upon request, provide to the Commonwealth extracts or copies of any such records, financial statements and account books.

5. REPORTING AND LIAISON

5.1 Recipient's reporting obligations

Progress Reports

- (a) Where requested by the Commonwealth, the Recipient must submit progress reports for each Event, setting out:
 - (i) the Recipient's progress with the Event activities in achieving the Funding Purposes; and
 - (ii) a summary of the Recipient's expenditure of the Funding, including:
 - (A) the receipt and expenditure of all Funding for the period of reporting;
 - (B) the balance of the Funding, including any interest earned on the Funding; and
 - (C) if applicable, a statement of the Assets acquired, produced, written off or disposed of during the period of reporting.

Final Reports

- (b) The Recipient must submit final reports for each Event at the times detailed in the Schedules, setting out:
 - (i) the Recipient's completion of all of the Event activities;
 - (ii) a summary of the main outcomes and an evaluation of whether or not the Event achieved the Intended Funding Purposes; and
 - (iii) a detailed Financial Report acquitting all Funding, and including a financial report of the receipt, holding, expenditure and commitment of the Funding and a statement of the balance of the Funding held in the Recipient's Bank Account,

certified as being complete and accurate by the authorising officer (whether chairperson, chief executive, managing director or equivalent officer) of the Recipient.

5.2 Recipient's liaison obligations

- (a) The Recipient will:
 - (i) liaise with and provide information to the Commonwealth as reasonably required by the Commonwealth; and
 - (ii) comply with the Commonwealth's reasonable requests, directions, or monitoring requirements.
- (b) The Recipient must immediately inform the Commonwealth of any change in its status or circumstances that may affect its ability to comply with this Deed, including its ability to implement the Events.

6. TAXES, DUTIES AND GOVERNMENT CHARGES

6.1 Interpretation

Words or expressions used in this clause which are defined in the GST Act have the same meaning in this clause.

6.2 Registration for GST

Each party is GST registered, has quoted its ABN to the other and must inform the other immediately of any changes to either.

6.3 Funding is GST inclusive

The Funding payable under this Deed is GST inclusive.

6.4 Reimbursements or indemnities

If a payment to a Party under this Deed is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment must be inclusive of any GST payable and will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense. That party is assumed to be entitled to a full input tax credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.

6.5 Tax invoices

- (a) The Commonwealth need not make a payment for a taxable supply made under or in connection with this Deed until the Recipient has given the Commonwealth a tax invoice which complies with the GST Act for the supply to which the payment relates.
- (b) The Recipient must give the Commonwealth an adjustment note for an adjustment arising from an adjustment event relating to a taxable supply made under or in connection with this Deed within seven days after the date the Recipient becomes aware of the adjustment event.
- (c) For the avoidance of doubt, the Commonwealth can withhold payment of any amount payable until the Recipient provides a tax invoice or an adjustment note (as applicable).

7. CONFIDENTIAL INFORMATION AND PRIVACY

7.1 Use by either party of Confidential Information

Each party must not:

- (a) use Confidential Information for any purpose other than the performance of its obligations under this Deed; or
- (b) disclose (and must ensure that its officers, employees, agents and subcontractors do not disclose) Confidential Information to any third party, except in accordance with the procedures set out in this clause 7.

7.2 Disclosure to third parties of Confidential Information

A party may disclose the other party's Confidential Information to a third party if:

- (a) the party has obtained the prior written approval of the other party, which approval will not be unreasonably withheld if the party has procured a suitable confidentiality undertaking in respect of the information from the third party; or
- (b) disclosure is:
 - (i) necessary for a party to fulfil its obligations under this Deed (for example, to that party's personnel or to the Commonwealth's responsible minister);

- (ii) required by statutory or portfolio duties;
- (iii) required or compelled by an order of a court or by any law; or
- (iv) necessary for the conduct of any legal proceedings arising in relation to this Deed.

7.3 Protection of Personal Information

The Recipient agrees with respect to all activities related to or in connection with the performance of the Funding Purposes or in connection with this Deed to comply with the *Privacy Act 1988* (Cth) as if the Recipient were an agency under that Act.

7.4 Non-merger of this clause

This clause survives the expiration or termination of this Deed.

8. ACKNOWLEDGEMENT AND PUBLICITY

8.1 Acknowledgement by Recipient

The Recipient must, in all publications, promotional and advertising materials, public announcements and activities by the Recipient or on the Recipient's behalf in relation to the Funding Purposes, acknowledge the financial and other support the Recipient has received from the Commonwealth.

8.2 Copies of publications

Where the Recipient has been provided with Funding to produce any publication, unless the Commonwealth advises otherwise, the Recipient must provide the Commonwealth with a hardcopy and an electronic copy of the publication.

8.3 Right to publicise Funding

- (a) The Recipient acknowledges that the Commonwealth is required to publish on its website information about this Deed to fulfil its obligations under the Commonwealth Grant Guidelines.
- (b) The Commonwealth reserves the right to publicise, undertake promotional activities and report on the awarding of Funding to the Recipient. The Commonwealth may do (but is not limited to doing) this by including the Recipient's name, the amount of the Funding given to the Recipient, the title and a brief description of the Funding Purposes in media releases, general announcements about the Funding, annual reports or through any other means as determined by the Commonwealth.

8.4 Disclosure of information

- (a) The Recipient acknowledges that the Commonwealth may be required to provide information in relation to the Funding, the Events, the Funding Purposes, or this Deed, as required by the operation of any Law, judicial or parliamentary body or governmental agency and accordingly the Commonwealth can give no undertakings to treat any of the Recipient's information or this Deed as confidential information.
- (b) If the Recipient is required by Law or a regulatory body to make a public announcement in connection with this Deed or any transaction contemplated by this Deed, the Recipient must, to the extent practicable, first consult with and take into account the reasonable requirements of the Commonwealth.

9. INDEMNITY

9.1 General indemnity

The Recipient indemnifies (and agrees to keep indemnified) the Commonwealth against any:

- (a) cost or liability incurred by the Commonwealth or the Commonwealth's Personnel;
- (b) loss of or damage to property of the Commonwealth; or
- (c) loss or expense incurred by the Commonwealth in dealing with any claim against it, 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 from:

- (d) any act or omission by the Recipient or the Recipient's personnel, in connection with this Deed, where there was fault on the part of the person whose conduct gave rise to that cost, liability, loss, damage, or expense;
- (e) any breach by the Recipient of the Deed; or
- (f) the use by the Commonwealth of Third Party IP, including any claims by third parties about Moral Rights.

9.2 Reduction of scope

The Recipient's liability to indemnify the Commonwealth under this clause 9 will be reduced proportionally to the extent that any act or omission involving fault on the part of the Commonwealth or its personnel contributed to the relevant cost, liability, loss, damage or expense.

9.3 Preservation of other rights

The right of the Commonwealth to be indemnified under this clause 9 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 cost, liability, loss, damage or expense.

9.4 Meaning of 'fault'

In this clause 9:

fault means any negligent or wrongful act or omission or wilful misconduct.

10. DISPUTE RESOLUTION

10.1 Stay on legal proceedings

Subject to clause 10.3, the Parties agree not to commence any legal proceedings in respect of any dispute arising under this Deed, which cannot be resolved by informal discussion, until the procedure provided by this clause has been utilised.

10.2 Dispute resolution process

The Parties agree that any dispute arising during the course of this Deed is dealt with as follows:

- (a) the Party claiming that there is a dispute will send the other a written notice setting out the nature of the dispute;
- (b) the Parties will try to resolve the dispute through direct negotiation by persons who has authority to resolve the dispute;
- (c) if the Parties are unable to resolve the dispute within 10 Business Days from the receipt of the notice referred to in clause 10.2(a), the dispute is to be submitted to a higher level of management within each Party's organisation;
- (d) if the Parties are unable to resolve the dispute within 10 Business Days from referral of the dispute under clause 10.2(c), the dispute is to be submitted to mediation or some other alternative dispute resolution procedure agreed by the Parties; and
- (e) if:
 - (i) there is no resolution of the dispute;
 - (ii) there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
 - (iii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 Business Days of the submission, or such extended time as the parties may agree in writing before the expiration of the 15 Business Days,

then either Party may commence legal proceedings.

10.3 Exceptions

This clause 10 does not apply to the following circumstances:

- (a) either Party commences legal proceedings for urgent interlocutory relief;
- (b) action by the Commonwealth under or purportedly under clauses 3 [Funding], 11 [Termination or reduction in scope for convenience], 12 [Termination for fault] or 13.1 [Audit and access]; and
- (c) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the Law by the Recipient.

10.4 Parties must continue to perform

Despite the existence of a dispute, both Parties must, unless requested in writing by the other Party not to do so, continue to perform its obligations under this Deed.

11. TERMINATION OR REDUCTION IN SCOPE FOR CONVENIENCE

11.1 Termination or reduction in scope for convenience

The Commonwealth may by notice, at any time and in its absolute discretion, terminate or reduce the scope of this Deed for convenience.

11.2 Recipient's obligation upon termination or reduction in scope for convenience

On receipt of a notice of termination or reduction, the Recipient must:

- (a) stop or reduce the performance of the Recipient's obligations as specified in the notice;

- (b) take all available steps to minimise loss resulting from that termination or reduction;
- (c) continue work on any part of the Funding Purposes not affected by the notice; and
- (d) immediately return to the Commonwealth any Funding relating to the part of the Funding Purposes and/or Event affected by the notice and that has not in the Commonwealth's opinion:
 - (i) been spent in accordance with the Deed; or
 - (ii) been committed by the Recipient in accordance with the Deed and is payable as a current liability (written evidence of which will be required),
 or otherwise deal with any Funding held by the Recipient as directed by the Commonwealth.

11.3 Commonwealth's liability upon termination for convenience

In the event of termination under clause 11.1, the Commonwealth will only be liable to the Recipient for:

- (a) Funding payments due and owing to the Recipient; and
- (b) reasonable costs incurred by the Recipient that are directly attributable to the termination and that the Recipient substantiates to the Commonwealth's satisfaction,

but will not be liable for any amount that exceeds the Funding payable for each Event under this Deed.

11.4 Commonwealth's liability upon reduction of scope

In the event of a reduction in the scope under clause 11.1, the Commonwealth will only be liable to the Recipient for:

- (a) payment of the proportion of the Funding related to the part of the Funding Purposes and/or Event not affected by the reduction in scope, provided that the Recipient has complied with its obligations with respect to the payments; and
- (b) reasonable costs incurred by the Recipient that are directly attributable to the reduction in scope and that the Recipient substantiates to the Commonwealth's satisfaction,

but will not be liable for any amount that exceeds the Funding payable for each Event under this Deed.

12. TERMINATION FOR FAULT

12.1 Right to terminate for default

In addition to the right to terminate provided for elsewhere in this Deed, the Commonwealth may terminate this Deed with immediate effect by giving notice to the Recipient if:

- (a) the Recipient breaches any provision of this Deed and fails to remedy the breach within 14 days, or such longer period as the Commonwealth stipulates, after receiving notice requiring it to do so;
- (b) the Recipient breaches a material provision of this Deed and that breach is not, in the opinion of the Commonwealth, capable of remedy;

- (c) the Recipient uses the Funding or an Asset for a purpose inconsistent with the Funding Purposes;
- (d) the Recipient notifies the Commonwealth that the Funding Purposes are not to proceed; or
- (e) the Recipient becomes insolvent, bankrupt, subject to administration or is unable to meet its debts.

12.2 Commonwealth's liability upon termination for default

- (a) Where the Commonwealth terminates this Deed under clause 12.1, the Commonwealth:
 - (i) will be liable only for payments due and owing to the Recipient under the payment provisions of the Deed as at the date of the notice; and
 - (ii) will be entitled to recover from the Recipient any part of the Funding which:
 - (A) has not been legally committed for expenditure by the Recipient in accordance with the Deed (written evidence of which will be required) and is not payable by the Recipient as a current liability by the date that the notice of termination is received; or
 - (B) has not, in the Commonwealth's opinion, been spent or committed for expenditure by the Recipient in accordance with the Deed.
- (b) The Commonwealth will not be liable to pay compensation for loss for termination under this clause 12 or loss of any benefits that would have been conferred on the Recipient had the termination not occurred.

12.3 Preservation of other rights

This clause 12 does not limit or exclude any of the Commonwealth's other rights under this Deed.

13. GENERAL PROVISIONS

13.1 Audit and access

The Recipient agrees:

- (a) to give the Commonwealth, or any persons authorised in writing by the Commonwealth, access to premises where obligations under this Deed are being carried out; and
- (b) to permit those persons to inspect and take copies of any Material relevant to this Deed.

For the avoidance of doubt, the rights of the Commonwealth under this clause 13.1 apply equally to the Auditor-General or a delegate of the Auditor-General, the Ombudsman or a delegate of the Ombudsman, or the Privacy Commissioner or a delegate of the Privacy Commissioner, or the Information Commissioner or a delegate of the Information Commissioner, for the purpose of performing the Auditor-General's, Ombudsman's, Privacy Commissioner's or Information Commissioner's statutory functions or powers.

13.2 Insurance

- (a) The Recipient agrees:

- (i) to effect and maintain the insurance specified in the Schedules; and
- (ii) on request, to provide proof of insurance acceptable to the Commonwealth.
- (b) The Recipient shall maintain the insurance or registration required under this clause 13.2 for the duration of this Deed and, for the obligations that survive expiry or termination of this Deed, shall ensure that cover is maintained for the period that those obligations survive expiry or termination or for a period as otherwise specified by the Commonwealth.
- (c) The insurance cover should contain no exclusions that relate to Territory, State or Commonwealth Governments.
- (d) In the event that the Recipient fails to maintain any of the relevant insurances for the duration of the Term, the Commonwealth may suspend or terminate this Deed. The suspension will continue until the Commonwealth receives satisfactory evidence from the Recipient that the relevant insurance has been obtained.
- (e) Where an insurance policy expires during the Term, the Recipient will provide the Commonwealth with evidence that the insurance has been renewed and a copy of the certificate of currency or other document that provides details of the insurance cover.
- (f) For the avoidance of doubt, the provisions of this clause 13.2 are not to be read so as to reduce a Party's liability under any other provision of this Deed and compliance by the Recipient with the provisions of this clause 13.2 does not limit the Recipient's liability under any other provision of this Deed.
- (g) This clause 13.2 continues in operation for so long as any obligations remain in connection with this Deed.

13.3 Compliance with Law and Commonwealth Policies

The Recipient must, in carrying out its obligations under this Deed, comply with all relevant Law and Commonwealth and other policies.

13.4 Conflict of Interest

- (a) The Recipient warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Deed, no conflict of interest exists or is likely to arise in the performance of its obligations under this Deed.
- (b) If, during the Term a conflict of interest arises, or appears likely to arise, the Recipient must:
 - (i) notify the Commonwealth immediately in writing;
 - (ii) make full disclosure of all relevant information relating to the conflict; and
 - (iii) take such steps as the Commonwealth requires to resolve or otherwise deal with the conflict.

13.5 Assignment

The Recipient must not assign the Recipient's rights under this Deed without prior written approval from the Commonwealth.

13.6 Notices

- (a) A Party giving notice or notifying under this Deed must do so in writing:

- (i) directed to the Party's address, as varied by any written notice; and
 - (ii) hand delivered or sent by pre-paid post or Electronic Communication to that address.
- (b) The Parties' address details are as specified in the Schedules.
- (c) A notice given in accordance with clause 13.6(a) is taken to be received:
 - (i) if hand delivered, on delivery;
 - (ii) if sent by pre-paid post, five Business Days after the date of posting unless it has been received earlier; or
 - (iii) if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth) if a notice was being given under a law of the Commonwealth, which is currently when the Electronic Communication enters the addressee's Information System.

13.7 Applicable law and jurisdiction

- (a) This Deed is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory.
- (b) The parties submit to the jurisdiction of the courts of that Territory.

13.8 Survival

- (a) The operation of clauses 4.4 [Repayment of Funding], 5 [Reporting and Liaison], 7 [Confidential Information and Privacy], 9 [Indemnity], 13.2 [Insurance] and any other provision which expressly or by implication from its nature is intended to survive the expiration or earlier termination of this Deed.
- (b) Clauses 4.5 [Records of Funding], 0 [
- (c) Acknowledgement and publicity] and 13.1 [Audit and access] apply for the Term and for a period of 7 years from the date of expiration or earlier termination of the Deed.

13.9 Entire agreement

This Deed records the entire agreement and undertaking between the Parties in relation to the Funding, and supersedes, in relation to these matters, any previous deeds, agreements, arrangements, and undertakings between them.

13.10 Variation

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 to this Deed.

13.11 Counterparts

This Deed may be executed in counterparts.

13.12 Waiver

- (a) If either Party does not exercise (or delays in exercising) any of its rights under this Deed, that failure or delay does not operate as a waiver of those rights.
- (b) A single or partial exercise by either Party of any of its rights under this Deed does not prevent the further exercise of any right.

- (c) Waiver of any provision of, or right under this Deed:
 - (i) must be in writing signed by the Party entitled to the benefit of that provision or right; and
 - (ii) is effective only to the extent set out in the written waiver.
- (d) In this clause 13.12:
rights means rights or remedies provided by this Deed or at Law.

13.13 Capacity

- (a) Each of the Parties warrants and declares that it has full capacity to enter into and execute this Deed and that by doing so the terms, conditions, covenants and agreement herein contained shall be binding on each of them.
- (b) The Recipient is aware that the Commonwealth is relying on the warranties in this clause 13.13 in executing this Deed.

13.14 Illegality, invalidity or unenforceability

The illegality, invalidity or unenforceability of any provision of this Deed or any part of a provision of this Deed shall not effect the legality, validity or enforceability of any other provision of this Deed. Any provision which is illegal, invalid or unenforceable shall be severed from the remainder of this Deed.

13.15 Relationship of parties

- (a) The Recipient is not by virtue of this Deed an officer, employee, partner or agent of the Commonwealth, nor does the Recipient have any power or authority to bind or represent the Commonwealth.
- (b) The Recipient agrees:
 - (i) not to misrepresent its relationship with the Commonwealth; and
 - (ii) not to engage in any misleading or deceptive conduct in relation to the Funding Purposes.

13.16 False and misleading information

The Recipient acknowledges that giving the Commonwealth false and misleading information is a serious offence under the *Criminal Code Act 1995* (Cth).

EXECUTION CLAUSES

Executed by the parties as an Agreement.

SIGNED for and on behalf of the
COMMONWEALTH OF
AUSTRALIA represented by and
acting through the Department of
Defence (ABN 68 706 814 312) by its
authorized delegate:

print name of witness

SIGNED by CFO Delegate:

SIGNED for and on behalf of The
Kokoda Foundation Ltd (ABN 48 110
456 856) by its authorized officer Nicole
Quinn, General Manager:

in the presence of:

7
sign here

Schedule 1

FUNDING DEED DETAILS FOR THE CONDUCT OF THE STRATEGIC DIALOGUE

1. FUNDING PURPOSES

1.1 Event description

The Funding Purposes include the provision of \$130,000 plus GST of \$13,000 Funding to the Recipient for the conduct of the Strategic Dialogue *Managing the Indo Pacific Strategic System* to be held on 31 October - 2 November 2013.

The Funding for the Strategic Dialogue is to be only used for the following purposes:

- i) venue hire;
- ii) insurance premiums for the Strategic Dialogue;
- iii) assisting in accommodation, food, local transport for the Recipient's-invited delegates to the Strategic Dialogue; and
- iv) travel costs for the Recipient's-sponsored visiting US (up to 15) and Japanese participants (up to 5) attending the Strategic Dialogue.

The Funding for the Strategic Dialogue is not to be used to cover a spouse program.

1.2 Complementary Passes for Defence Personnel

The Recipient is to provide 50 complimentary places for Commonwealth Personnel at the Strategic Dialogue as detailed below:

- i) Kokoda Professional Development Workshop 30 October 2013: a minimum of 15 complimentary invitations extended to Commonwealth personnel;
- ii) Kokoda Welcome Function: Wednesday 30 October 2013: a minimum of 10 complimentary invitations extended to Commonwealth personnel
- iii) Kokoda Trilateral Strategic Dialogue Thursday 31 October 2013 a minimum of 10 complimentary invitations extended to Commonwealth personnel;
- iv) The Annual Dinner on 31 October, 2013: a minimum of 15 complimentary invitations extended to Commonwealth personnel; and
- v) Kokoda Strategic Dialogue on Friday 1 - 2 November 2013: a minimum of 10 complimentary invitations extended to Commonwealth personnel.

Selection of candidates will be organised by the Recipient and be subject to approval by the Commonwealth.

2. FUNDING AND PAYMENT

2.1 Funding

The total Funding for the Strategic Dialogue Event is: \$143,000 (inclusive of any GST).

2.2 Payment structure

Subject to the terms of this Deed, the Commonwealth will pay the Funding upon the Recipient issuing a tax invoice that complies with the Deed and GST Act for the amounts.

The Commonwealth shall make payment within 30 days of approval of the tax invoice.

3. REPORTS

The Recipient is required to provide reports in accordance with this Deed at the following times:

Report type	Frequency
Progress report	On request of the Commonwealth. The Recipient will keep the Commonwealth informed of the Event and its respective agenda.
Final report	Within 90 days of the end of the Strategic Dialogue (15 February 2014) or, if this Deed is terminated early, then within 90 days of this earlier termination

4. INSURANCE

The insurances required to be maintained by the Recipient are set out in the table below.

Policy Type	Value
Workers Compensation	As required by Law where the Recipient carries out the Events
Public Liability Insurance	At a minimum, \$10 million per claim or occurrence
Event Cancellation Insurance	For an amount and on terms that are consistent with the Event Insurance

5. ADDRESSES FOR NOTICES

5.1 Commonwealth:

(a) Notices and communications

Any notice or other communication relating to this Deed must be sent to the Commonwealth at the following address (or to such other address as notified by the Commonwealth to the Recipient):

Attention: Matt Ramage
Acting Assistant Secretary Strategic Policy
Strategic Policy Division Department of Defence
R1-1-A061
PO BOX 7901
Canberra BC
ACT 2610]

Telephone: (02) 6265-2848
Email: matt.ramage@defence.gov.au

(b) Invoices

Invoices should be forwarded to invoices@defence.gov.au

or

Defence Accounts Payable
PO Box 800
Salisbury South SA 5108

Invoices must quote a Purchase Order Number. This will be advised post signing of this Deed.

5.2 Recipient

Any notice or other communication relating to this Deed must be sent to the Recipient (or to such other address as notified by the Recipient to the Commonwealth) at the following address:

Attention: Nicole Quinn
General Manager
The Kokoda Foundation
PO BOX 4080
KINGSTON ACT 2604

Telephone: 0468033327
Email:

Schedule 2

FUNDING DEED DETAILS FOR THE CONDUCT OF THE FUTURE STRATEGIC LEADERS CONGRESSES

1. FUNDING PURPOSES

1.1 Event description

The Funding Purposes include the provision of \$33,000 plus GST of \$3,000 Funding to the Recipient for the conduct of the Future Strategic Leaders Congress for 2013 and 2014 to be held at the ANU Campus at Kioloa, NSW on 15-17th November 2013 and 23-25 May 2014 (date TBC) respectively.

The Funding for the Strategic Dialogue is to be only used for the following purposes:

- iv) venue hire;
- v) insurance premiums for the Future Strategic Leaders Congresses;
- vi) assisting in accommodation, food, local transport for the Recipients-invited delegates to the Strategic Dialogue; and
- ii) travel costs for the Recipients-sponsored visiting US participants attending the Future Strategic Leaders Congresses.

The Funding for the Future Strategic Leaders Congresses is not to be used to cover a spouse program.

1.2 Complementary Passes for Defence Personnel

The Kokoda Foundation is to provide 10 complimentary places for Commonwealth Personnel across the two Congress as detailed below:

- i) Future Strategic Leaders Congress on 15-17 Nov 2013: a minimum of 5 complimentary places for Commonwealth Personnel; and
- ii) Future Strategic Leaders Congress on 23-25 May 2014 (date TBC): a minimum of 5 complimentary places for Commonwealth Personnel.

Selection of candidates will be done by the Commonwealth and names provided to the Recipient a minimum of 14 days prior to each Congress.

2. FUNDING AND PAYMENT

2.1 Funding

The total Funding for Future Strategic Leaders Congresses is AUD\$33,000 (inclusive of any GST)

2.2 Payment structure

Subject to the terms of this Deed, the Commonwealth will pay the Funding upon the Recipient issuing a tax invoice that complies with the Deed and GST Act for the amounts.

The Commonwealth shall make payment within 30 days of approval of the tax invoice.

3. REPORTS

The Recipient is required to provide reports in accordance with the Deed at the following times:

Report type	Frequency
Progress report	On request of the Commonwealth. The Recipient will keep the Commonwealth informed of the Event and its respective agenda.
Final report	Within 90 days of the end of the second Future Strategic Leaders Congress on 23-25 May 2014 (date TBC) or, if this Deed is terminated early, then within 90 days of this earlier termination

4. INSURANCE

The insurances required to be maintained by the Recipient are set out in the table below.

Policy Type	Value
Workers Compensation	As required by Law where the Recipient carries out the Events
Public Liability Insurance	\$10 million per claim or occurrence
Event Cancellation insurance	For an amount and on terms that are consistent with the Event

5. ADDRESSES FOR NOTICES

5.1 Commonwealth:

(a) Notices and communications

Any notice or other communication relating to this Deed must be sent to the Commonwealth at the following address (or to such other address as notified by the Commonwealth to the Recipient):

Matt Ramage
Acting Assistant Secretary Strategic Policy
R1-1-A061
Department of Defence
CANBERRA ACT 2600

Telephone:
Email: Matt.Ramage@defence.gov.au

(b) Invoices

Invoices should be forwarded to invoices@defence.gov.au

or

Defence Accounts Payable
PO Box 800
Salisbury South SA 5106

Invoices must quote a Purchase Order Number. This will be advised post signing of this Deed.

5.2 Recipient

Any notice or other communication relating to this Deed must be sent to the Recipient (or to such other address as notified by the Recipient to the Commonwealth) at the following address:

Attention: Nicole Quinn
General Manager
The Kokoda Foundation
PO BOX 4060
KINGSTON ACT 2604

Telephone: 0488033327
Email:

