



Australian Government

**Department of Broadband,
Communications and the Digital Economy**

DEED OF AGREEMENT

IN RELATION TO A

ISP INTERNET LEVEL CONTENT FILTERING PILOT

**COMMONWEALTH OF AUSTRALIA as represented by the
Department of Broadband, Communications, and the Digital
Economy**

ABN 51 491 646 726

AND

[insert ISP's name and ABN]

**With funding [Delete when not applicable]

CCR No: [insert CCR number]

Red text is instructions for completion, and parts which are applicable to the 'funded stream' only, to be deleted if not applicable.

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PARTIES

This Deed is made between and binds the following parties:

COMMONWEALTH OF AUSTRALIA (Commonwealth), represented by and acting through the **Department of Broadband, Communications, and the Digital Economy**, ABN 51 491 646 726 ('DBCDE', or 'We')

AND

[Insert the full name and address of the Internet Service Provider (ISP) and any related entities participating in the Pilot, in accordance with the following:

(1) if the ISP is a **COMPANY**, insert the company's full name (including any trading name), its State or Territory of incorporation, registered office and Australian Company Number in the form - "XYZ Pty Limited, a company incorporated in the State /Territory of {*: **insert jurisdiction**}, having its registered office at {*: **insert street address**} and the Australian Business Number NN NNN NNN NNN";

(2) if the ISP is a **PARTNERSHIP**, include the name of the partnership and full names and addresses of all partners;

(3) if the ISP operates under a **BUSINESS NAME**, insert the name and address of the company, partners or individual and add "trading as [insert business name]"; or

(4) if the ISP is: an **INCORPORATED ASSOCIATION**, insert XYZ Inc., an association incorporated in accordance with the [enabling legislation], with its registered office at [details], ABN NN NNN NNN NNN;

('ISP', or 'You')

BACKGROUND

- A. We are conducting the ISP Internet Level Content Filtering Pilot (the Pilot) to assess ISP filtering technologies in a live real world environment. The Pilot will involve ISPs and their end users and will inform the Government's approach on ISP filtering.
- B. You are an ISP operating in Australia.
- C. You agree to participate in the Pilot study.
- D. We have agreed to support your participation by providing Funding to You, subject to the terms and conditions of this Deed. [Delete when not applicable]
- E. We are required by law to ensure accountability for public money, and to be accountable for all Funds provided by Us. [Delete when not applicable]

- F. You agree to accept the Funding for the purposes, and subject to the terms and conditions, set out in this Deed. [Delete when not applicable]
- G. The Parties now wish to record the terms of their agreement.

OPERATIVE PROVISIONS

The Parties to this Deed covenant agree and undertake as follows:

1. MUTUAL AGREEMENT

- 1.1 The ISP agrees to participate in good faith in the Pilot - **Funded Stream** and co-operate with DBCDE and the Consultant to carry out the Activity in accordance with this Deed.
- 1.2 DBCDE agrees to provide the ISP with information obtained from their participation in the Pilot.

2. THE PILOT AND ACTIVITY

- 2.1 The Pilot aims to test and assess a range of different internet content filtering technologies at the ISP level on both fixed and mobile internet access devices. Tests will be undertaken in live real world environments involving ISPs and their end users.
- 2.2 The Activity is to:
- 2.2.1 establish baseline data for your network in consultation with Our Consultant;
- 2.2.2 procure or have already installed at the ISP level the internet content filtering technology ('the Technology') specified at Schedule 2 Item E;
- 2.2.3 implement the Technology in your network or the agreed segment of your network;
- 2.2.4 maintain the Technology in operation during the Pilot Period defined at Item 1 of Schedule 1;
- 2.2.5 provide or permit Our Consultant to obtain from You or Your network data and information on the performance of the Technology, and otherwise co-operate in meeting the objectives of the Pilot; and
- 2.2.6 co-operate with Us and Our Consultant to facilitate the undertaking of an agreed to set of end user surveys as detailed in Schedule 2 to this Deed.

3. RECORDS AND REPORTS

- 3.1 You must make full and accurate Records of the conduct of the Activity and retain them for a period of no less than 5 years after the end of the Term of this Deed.
- 3.2 You must provide to Us Reports at the times and in the manner stated in Schedule 1.

4. COMMONWEALTH MATERIAL AND ACMA MATERIAL

- 4.1 Ownership of all Commonwealth Material, including Intellectual Property Rights in that Material, remains vested at all times in Us but We grant You a licence to use, copy and reproduce Commonwealth Material only for the purposes of this Deed and in accordance with any conditions or restrictions specified in Schedule 1.
- 4.2 You will obtain access to ACMA Material for the purposes of the Pilot, and meet such conditions as ACMA may impose for access to such material. Ownership of ACMA Material will be governed by the terms of the arrangements between You and ACMA.

5. INTELLECTUAL PROPERTY

- 5.1 Subject to this clause 5, as between Us and You (but without affecting the position between You and a third party) Intellectual Property Rights in Activity Material vest immediately in You.
- 5.2 You grant to Us a permanent, irrevocable, free, world wide, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit the Intellectual Property Rights in the Activity Material and Reports and any Existing Material, for any Commonwealth purpose.
- 5.3 For the purposes of this clause 5:

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

- (a) incorporated in;
- (b) supplied with, or as part of; or
- (c) required to be supplied with, or as part of; the Activity Material or Reports.

6. MORAL RIGHTS

6.1 For this clause, the 'Specified Acts' means the following classes or types of acts or omissions by or on behalf of Us:

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

but does not include:

- (b) those which would infringe the author's right not to have authorship falsely attributed.

6.2 You warrant or undertake that:

- (a) the author of any Activity Material, other than Existing Material, has given or will give a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for Our benefit; and
- (b) the author of any Existing Material has given or will give a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for Our benefit in relation to such material used, reproduced, adapted and exploited in conjunction with the other Activity Material.

7. DISCLOSURE OF INFORMATION

7.1 You acknowledge that We may be required to provide information in relation to this Deed, as required by the operation of any law, judicial or parliamentary body or governmental agency and accordingly We can give no absolute undertakings to treat any of Your information or this Deed as confidential information.

7.2 You are permitted to disclose Commonwealth Material, except to the extent, if any, specified in Schedule 1. If We require You to keep any Commonwealth Material confidential We may permit You to disclose it subject to compliance with any conditions on that disclosure that We may impose.

7.3 We may prepare an evaluation report in relation to the Pilot. The report may include information You (and other third parties, as applicable) have provided to Us in relation to this Pilot and You agree that we may publish a copy of this report.

7.4 Subject to Clause 7.1, We agree to treat as confidential the information, if any, specified in Schedule 1.

8. PROTECTION OF PERSONAL INFORMATION¹

8.1 This clause applies only where You deal with Personal Information when, and for the purpose of, conducting the Activity under this Deed.

8.2 You agree to be treated as a Contracted Service Provider and agree in respect to the conduct of the Activity under this Deed:

- (a) to use or disclose Personal Information obtained in the course of conducting the Activity under this Deed, only for the purposes of this Deed;
- (b) not to do any act or engage in any practice which if done or engaged in by an agency, would be a breach of an Information Privacy Principle (IPP);
- (c) to carry out and discharge the obligations contained in the IPPs as if You were an agency;
- (d) to notify individuals whose Personal Information You hold, that complaints about Your acts or practices may be investigated by the Privacy Commissioner who has power to award compensation against You in appropriate circumstances;
- (e) not to use or disclose Personal Information or engage in an act or practice that would breach section 16F of the *Privacy Act 1988* (direct marketing), a National Privacy Principle (NPP) (particularly NPPs 7 to 10) or an Approved Privacy Code (APC), unless:
 - i. in the case of section 16F - the use or disclosure is explicitly required under this Deed; or
 - ii. in the case of an NPP or an APC - where the act or practice is explicitly required under this Deed;

¹ Note: Further information on the obligations of Contracted Service Providers under the Privacy Act can be found at <http://www.privacy.gov.au>. This clause applies only to personal information obtained or generated in the course of the Pilot and does not apply to personal information already in the possession of the ISP, or normally obtained from end users by the ISP.

- (f) to comply with any request under section 95C of the *Privacy Act 1988* (relating to disclosure of any provisions of this Deed (if any) that are inconsistent with an NPP or an APC binding on a Party);
- (g) to immediately notify Us if You become aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 8, whether by You or any subcontractor;
- (h) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner to the extent that they are consistent with the requirements of this clause 8; and
- (i) to ensure that any of Your employees, agents, officers or volunteers who are required to deal with Personal Information for the purposes of this Deed are made aware of Your obligations set out in this clause 8.

8.3 In this clause 8, the terms 'agency', 'Approved Privacy Code' (APC), 'Contracted Service Provider', 'Information Privacy Principles' (IPPs), and 'National Privacy Principles' (NPPs) have the same meaning as they have in section 6 of the *Privacy Act 1988*.

9. LIABILITY AND INSURANCE

- 9.1 We do not accept liability for any interruption to or degradation of service, or other loss or damage incurred in any way by You or Your end users resulting from the operation of the Technology.
- 9.2 You must have insurance as specified in Schedule 1.
- 9.3 Whenever requested, You must provide Us, within 10 Business Days of the request, with evidence satisfactory to Us that You have complied with Your obligation to insure.

10. ACCESS TO PREMISES, NETWORK AND RECORDS

- 10.1 Clause 10.2 does not apply where arrangements alternative to it for the provision of information and data required for reports are set out in Schedule 1.

- 10.2 You must give Us and Our Consultants:
- (a) baseline data before the commencement of filtering;
 - (b) a live sample service during the Pilot Period; and
 - (c) such other information as is necessary or reasonable for carrying out the Pilot.
- 10.3 You must give the Auditor-General, the Privacy Commissioner and any persons authorised by Us (referred to in this clause 10 collectively as ‘those permitted’) access to premises at which Material and Records associated with the Deed are stored, or work under the Activity is undertaken at all reasonable times and the right to inspect and copy Material and Records, in Your possession or control, for purposes associated with this Deed or any review of performance under this Deed.
- 10.4 You must provide all reasonable assistance requested by those permitted when they exercise the rights under clauses 10.2, and 10.3.
- 10.5 The rights referred to in clause 10.2 are exercisable by Our Consultant during the Pilot Period on 24 hours’ notice, subject to Your reasonable security procedures.
- 10.6 Except as provided in clause 10.5, the rights referred to in clauses 10.2 and 10.3 are subject to:
- (a) the provision of reasonable prior notice by those permitted (except where they believe that there is an actual or apprehended breach of the law); and
 - (b) Your reasonable security procedures.
- 10.7 You must ensure that any subcontract entered into for the purpose of this Deed contains an equivalent clause permitting Us, and other persons authorised by Us, to have access as specified in this clause 10.

11 END USER CHARGES

11.1 During the Pilot Period the ISP

11.1.1 Will not impose any additional charge upon end users who receive a filtered internet service which filters only access to sites on the Australian Communications and Media Authority (ACMA) blacklist;

11.1.2 May charge end users who receive a filtered internet service which filters other internet content in addition to filtering the ACMA blacklist;

12. DISPUTE RESOLUTION

The Parties agree that a dispute arising under this Deed will be dealt with as follows:

- (a) the Party claiming that there is a dispute will give the other Party a notice setting out the nature of the dispute;
- (b) the Parties will nominate their representatives to each other within 2 Business Days, and in default of specific nomination will be represented by the officers mentioned at Item 9 of Schedule 1;
- (c) the representatives will co-operate and try in good faith to settle the dispute by direct negotiation between them within a further 2 Business Days;
- (d) failing settlement within that period, the Parties will be represented in Our case by Our First Assistant Secretary or other officer nominated in Schedule 1 (or by notice) and in Your case by Your Chief Executive Officer (however described) or other person nominated in Schedule 1 (or by notice) who must confer within a further 2 business days;
- (e) failing settlement within that period, the Parties must refer the dispute to an independent third person with power either:
 - (i) to intervene and direct some form of resolution in which case the Parties will be bound by that resolution; or
 - (ii) to mediate and recommend some form of non-binding resolution;
- (f) the Parties will cooperate fully with any process instigated under clause 12(e);
- (g) if a resolution is not reached within a further 20 Business Days of referring the dispute to an independent third person, either Party may commence legal proceedings.

13. TERMINATION

Suspension and termination by ISP

- 13.1 Where during the Pilot Period technical issues make it impracticable to continue the operation of the filtering Technology referred to in clause 2.2, You may:
- 13.1.1 suspend the Pilot Period and resume it when technical considerations so permit; or
 - 13.1.2 terminate the Pilot Period; or
 - 13.1.3 terminate the Term of this Deed.
- 13.2 You must give Us notice when you exercise any of your rights under clause 13.1. The notice should be given within 2 Business Days.

Termination by Commonwealth

13.3 If:

- (a) You fail to fulfil, or are in breach of any of Your obligations under this Deed, and do not rectify the omission or breach after receiving 10 Business Days notice in writing from Us to do so;
- (b) You have applied to come under, received a notice requiring You to show cause why You should not come under, or have otherwise come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth), or equivalent provisions in Incorporated Associations legislation of the States and Territories or Parts IV and V of the *Aboriginal Councils and Associations Act 1976* (Cth), or an order has been made for the purpose of placing You under external administration;
- (c) We are satisfied that any statement made in Your Application Form is incorrect, incomplete, false or misleading in a way which would have affected the original decision to enter into this Deed;
- (d) We consider it appropriate in the circumstances to do so; or
- (e) being an individual, You become bankrupt or enter into a scheme of arrangement with creditors;

then, in the case of any one or more of these events, We may immediately terminate the Term of this Deed by giving notice to You of the termination. You must comply with any requirements in Our notice of termination.

13.4 Where You or We terminate the Term of this Deed under this clause 13, or where You terminate the Pilot Period or suspend the Pilot Period and fail to resume it before the date on which it is scheduled to end under this Deed, under this clause 13, We:

- (a) will not be obliged to pay to You any outstanding amount of the Funds except to the extent that those monies have been legally committed for expenditure by You in accordance with this Deed and payable by You as a current liability (written evidence of which will be required) by the date notice of termination given under clause 13.3 is deemed to be received in accordance with clause 18.2; and
- (b) will be entitled to recover from You any part of the Funds which:
 - (i) has not been legally committed for expenditure by You in accordance with this Deed and payable by You as a current liability (written evidence of which will be required) by the date the notice of termination given under clause 13.3 is deemed to be received in accordance with clause 18.2; or
 - (ii) has not, in Our opinion, been expended by You in accordance with this Deed;

and all such Funds will be regarded as a debt due to Us capable of being recovered as such in any court of competent jurisdiction.

13.5 Clause 13.4 does not limit or exclude any of Our other rights, including the right to recover any other amounts from You on termination of the Term of the Deed.

13.6 Where We terminate the Term of this Deed under clause 13.3(d) You will be entitled to any reasonable costs incurred by You and directly attributable to the termination of the Term of this Deed subject to:

- (a) Your strict compliance with this clause 13; and

(b) Your substantiation of any amount claimed under this clause 13.6.

13.7 We will not be liable to pay damages or compensation for loss of prospective profits for termination under this clause 13 or loss of any benefits that would have been conferred on You had the termination not occurred.

14. ACKNOWLEDGMENT AND PUBLICITY

14.1 You must, in any publicity in relation to the Activity, acknowledge the financial and other support You have received from Us, in the manner, if not set out in Schedule 1, then to be approved by Us prior to its use.

15. COMPLIANCE WITH LAWS AND OUR POLICIES

15.1 You must, in carrying out Your obligations under this Deed, comply with all relevant legislation and Government requirements, including those notified in Schedule 1. You should note that under the *Criminal Code Act 1995* (Cth) section 137.1, giving false or misleading information is a serious offence.

16. ASSIGNMENT

16.1 You must not assign Your rights under this Deed without prior written approval from Us.

17. APPLICABLE LAW AND JURISDICTION

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

18. NOTICES

18.1 Giving of notices

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

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

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

18.2 Receipt of notice

A notice given in accordance with clause 18.1 will be taken to have been received:

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

19. SURVIVAL

19.1 The operation of clauses 3 (records and reports), 5 and 6 (intellectual property and moral rights), 8 (protection of personal information), 10 (access to premises and records) and **22 (management of funding)** inclusive survive the expiration or earlier termination of the Term of this Deed.

20. INTERPRETATION

20.1 In this Deed, unless the contrary intention appears:

'ABN' has the same meaning as it has in section 40 of the *A New Tax System (Australian Business Number) Act 1999* (Cth);

'ACMA' means the Australian Communications and Media Authority;

'ACMA blacklist' means the compilation of URLs maintained by ACMA under Schedules 5 and 7 of the *Broadcasting Services Act 1992*, relating to prohibited content and potential prohibited content which is hosted outside of Australia;

'ACMA Material' means the ACMA blacklist and any information not publicly available pertaining to the ACMA blacklist which ACMA requires to be kept confidential;

‘Activity’ means the activity described in clause 2, which aims to fulfil one or more of the goals of the Pilot, and includes the provision of Activity Material;

‘Activity Material’ means all Material:

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

‘Activity Period’ means the period commencing on the execution of this Deed during which the Activity described in Clause 2 must be completed;

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

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

‘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;

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

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

‘Conflict’ refers to a conflict of interest, or risk of a conflict of interest, or an apparent conflict of interest arising through You engaging in any activity or obtaining any interest that is likely to conflict with or restrict You in performing the Activity fairly and independently;

‘Consultant’ means Enex Pty Ltd and any person or body notified to You by Us;

'Date of this Deed' means the date written by Us above the execution clause after signature by You, and if no date is written there, then the date on which the execution clause is signed by Us;

'Deed' means this Deed including any schedules and attachments.

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

'End user' means customer or subscriber however described to whom an internet service is supplied by the ISP;

'Funding' or 'Funds' means the amount or amounts in cash payable under this Deed, including interest earned on that amount;

'GST' has the meaning as given in section 195-1 of the GST Act;

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

'Guidelines' refers to the guidelines for the Pilot, if any, as described in Schedule 1;

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

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

'Item' means an Item in a Schedule;

'Letter of Offer' refers to the letter We sent You offering You the Funding;

'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 Deed;

'Personal Information' has the same meaning as under the *Privacy Act 1988* (Cth), which currently is information or an opinion (including information or an opinion forming part of a data base), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

'Principles' refers to the principles of the Pilot, if any, as described in Schedule 1;

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

'Pilot' means the part of Our operations specified in clause 2.1 under which We are able to give the Funding to You;

'Pilot Period' means the period during which the Technology is in operation and specified in Schedule 1;

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

'Reports' means the reports You must give Us under Item 2 of Schedule 1;

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

'Term of this Deed' refers to the period between the Date of this Deed and the Completion Date, unless the Term of this Deed is terminated prior to the Completion Date, in which case it is the period between the Date of this Deed and the date of termination;

'Technology' means the hardware, software, solution, procedures and other matters relating to the ISP's operations specified at Schedule 2 Item E;

'Pilot Period' means the period specified in Schedule 1;

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

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

20.2 As far as possible, clauses 21 to 26 inclusive are to operate together with clauses 1 to 20 inclusive. Where there is any incompatibility the terms of clauses 21 to 26 will prevail.

PROVISIONS APPLICABLE WHERE FUNDING IS PROVIDED

[Delete this section for the non-funded stream]

21. FUNDING AND PAYMENT

- 21.1 Funding will be provided up to the maximum specified below and on a reimbursement basis to cover costs directly attributable to participation in the Pilot.
- 21.2 The total Funding for the Activity is **[\$insert amount]** which represents **[\$insert amount]**, the amount of Funding to be provided by Us for the Activity, and **[\$insert amount]**, being the total GST payable in accordance with clause 23.
- 21.3 Funding will be paid as follows:
- (a) Funding will be payable to cover Your costs of purchasing Technologies for the purposes of the Pilot, costs of installation and configuration of the Technology, and costs of modifications to Your network infrastructure required for the proper operation of the Technology in conjunction with your network.
 - (b) For outgoings, You will produce itemised invoices or receipts for your purchases to Us together with your tax invoice to Us in accordance with clause 24.5;
 - (c) For other amounts, you should provide to Us a statutory declaration verifying that the claim is true and that the work or expense was incurred. The statutory declaration should have attached to it a statement showing the basis of calculation, with time sheets, project costings or other substantiating material;
 - (d) Our Consultant will be asked to certify that the expenses claimed against 21.3(a) are reasonably required for the Pilot and may in its discretion on Our behalf require you to provide information about the things purchased (including technical information) or other evidence of their existence and deployment;
 - (e) We will pay the amounts certified by our Consultant up to the maximum amount of Funding in clause 22.2.

21.4 The funds will be paid directly to your bank account. You must advise Us of your bank account details for payment purposes.

21.5 Without limiting Our rights, We may withhold or suspend any payment in whole or in part until You have performed Your obligations under this Deed.

22. MANAGEMENT OF FUNDING

22.1 You must carry out the Activity within the Activity Period and in accordance with this Deed (including any applicable Principles and Guidelines), diligently, effectively and to a high professional standard.

22.2 The Funding must be expended by You only for the Activity in accordance with this Deed.

22.3 You must identify the receipt and expenditure of the Funds separately within Your accounting Records so that at all times the Funds are identifiable and ascertainable.

22.4 You must keep financial Records relating to the Activity and receipt and expenditure of the Funding so as to enable You to comply with Your obligations under clause 23.

22.5 If, at any time during the Term of this Deed, there remains an amount of Funding that has not been expended in accordance with this Deed or not acquitted to Our satisfaction, then this amount must be refunded by You to Us within 20 Business Days of a written notice from Us or dealt with as directed in writing by Us.

23. TAXES, DUTIES AND GOVERNMENT CHARGES

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

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

23.3 We are registered in accordance with the GST Act and will notify You of any change in Our GST registration status.

23.4 The Funds paid by Us under this Deed include GST for supplies provided by You to Us in accordance with this Deed and which are Taxable Supplies within the meaning of the GST Act.

- 23.5 You must give Us a tax invoice in accordance with the GST Act in relation to any Taxable Supply by You to Us in connection with this Deed prior to payment of Funds by Us.
- 23.6 The Funding payable by Us to You under this Deed must not include any amount which represents GST paid by You on Your own inputs and for which an input tax credit is available to You.
- 23.7 If a payment to satisfy a claim or a right to claim under or in connection with this Deed (for example, a claim for damages for breach of the Deed) gives rise to a liability to pay GST, the payer must also pay, and indemnify the payee against, the amount of that GST (except any GST for which that payee is entitled to an input tax credit).
- 23.8 If a Party has a claim under or in connection with this Deed for a cost on which that Party must pay GST, the claim is for the cost plus all GST on that cost (except any GST for which that Party is entitled to an input tax credit).
- 23.9 Any refund under clause 23.6 must be inclusive of GST and must be accompanied by an Adjustment Note under the GST Act relating to Taxable Supplies for which you previously issued to Us a tax invoice.
- 23.10 You should be aware that, generally:
- (a) Funding received by You is included in Your assessable income if it is received in relation to the carrying on of a business, unless You are specifically exempt from income tax;
 - (b) any capital gain on disposal of an Asset must be included in Your assessable income, unless You are specifically exempt from income tax;
 - (c) You may be required, in respect of an employee, to pay fringe benefits tax and make superannuation contributions to a complying superannuation fund or pay the superannuation guarantee charge to the Australian Taxation Office.

24. ASSETS

- 24.1 Any asset that you acquire with the Funds will be vested in You.

SCHEDULE 1

1. ACTIVITY PERIOD AND PILOT PERIOD

The Activity Period commences on the Date of this Deed and ends on 2009.

The Pilot Period is the period commencing on 2008 (or 'a date to be agreed by the Parties in consultation with Our Consultant') and ending at the conclusion of N days / weeks after the commencement date unless terminated earlier by agreement.

2. REPORTS

- 2.1 The Consultant will obtain data from you and prepare a report on the findings of the Pilot. You agree to do all things reasonably required to facilitate the preparation of the reports.

3. COMMONWEALTH MATERIAL

- 3.1 Not applicable

4. INTELLECTUAL PROPERTY

- 4.1 [describe any Existing Material, i.e. Material existing prior to Date of this Deed in which Intellectual Property Rights are either owned by the ISP, or owned by a third party but which ISP has a licence to use. If this does not apply, insert "Nil".]

5. DISCLOSURE OF INFORMATION

- 5.1 We agree to treat as confidential commercial information:
- 5.1.1 the information contained in items A, B and C of Schedule 2;
 - 5.1.2 your identity, in any way which would enable You to be connected with the results of the Technology used by You in the Pilot, or results of end user surveys, but not otherwise;
 - 5.1.3 [insert other ISP's information agreed to be confidential].

6. INSURANCE

- 6.1 You must, for as long as any obligations remain under this Deed, maintain:

- (a) workers compensation insurance as required by the law of the place where You are carrying out the Activities under this Deed;
- (b) Public liability up to \$10 million per event.
- (c) [Other insurance if relevant]

7. ACKNOWLEDGMENT AND PUBLICITY

- 7.1 You must acknowledge the support of the Australian Government in publicity and marketing material relating to the Pilot.

8. COMPLIANCE WITH LAWS AND POLICIES

- 8.1 You must comply with all relevant laws in carrying out the Activity, including:
 - *Broadcasting Services Act 1992.*
 - *Telecommunications Act 1997*
 - The Workers' Compensation legislation applicable to your place of business.
 - *Equal Opportunity for Women in the Workplace Act 1999;*
 - *Racial Discrimination Act 1975;*
 - *Sex Discrimination Act 1984;*
 - *Disability Discrimination Act 1992;*
 - *Crimes Act 1914;*
 - *Criminal Code Act 1995;*
 - *Age Discrimination Act 2004 and the Age Discrimination (Consequential Provisions) Act 2004;* and
 - *Privacy Act 1988*

9. NOTICES AND DISPUTE RESOLUTION

9.1 Our details are as follows:

Department of Broadband, Communications and the Digital Economy
GPO Box 2154
CANBERRA ACT 2601

Attention:

Telephone:

Facsimile:

Email:

9.2 Your details are as follows:

Attention:

Telephone:

Facsimile:

Email:

9.3 Our representative for dispute resolution is:

Name:

Telephone:

Facsimile:

Email:

9.4 Your representative for dispute resolution is:

Name:

Telephone:

Facsimile:

Email:

[specify name, position, address, telephone, fax and e-mail]

9.5 Our officer for dispute resolution is

Name:

Telephone:

Facsimile:

Email:

9.6 Your CEO or other officer for dispute resolution is:

Name:

Telephone:

Facsimile:

Email:

10. AGREED ACCESS ARRANGEMENTS

[Specify arrangements for ensuring that data and information required to complete the reports and end user surveys will be obtained by Our Consultant.]

SCHEDULE 2 – ISP’S INFORMATION

[see Schedule 1 item 1 and clause 3.4]

- A. ISP’S NETWORK INFRASTRUCTURE**

- B. ISP’S TECHNICAL PLATFORMS**

- C. ISP’S MARKET**

- D. ISP’S END USER BASE FOR FILTERING PILOT**

- E. DETAILS OF TECHNOLOGY/SOLUTIONS TO BE PILOTED**

- F. HOW THE TECHNOLOGY/SOLUTIONS WILL BE DEPLOYED IN THE ISP’S NETWORK**

- G. WHAT CONTENT THE TECHNOLOGY/SOLUTION WILL ADDRESS**

- H. END USER SURVEYS**

DATE

Dated this _____ day of _____ 2008

EXECUTION

SIGNED for and on behalf of the
COMMONWEALTH OF AUSTRALIA
represented by and acting through
the Department of Broadband,
Communications and the Digital
Economy, ABN 51 491 646 726 by

.....
Signature

.....
Name of delegate

on [insert date]

in the presence of:

.....
Print name of witness

.....
Signature of witness

[REMOVE INAPPLICABLE CLAUSES]

[For an incorporated association not using Common Seal:]

Executed for and on behalf of
[insert name of Funding ISP] ABN
[insert] by [insert name of
Signatory] who by signing
warrants that they have the
authority to bind [insert name of
ISP used previously] in the
presence of:

Signatory
sign here

Witness
sign here

Name and occupation of Witness
please print

[For an incorporated association using Common Seal]

The Common Seal of
[name of ISP], ABN *[insert]*, was
affixed to this document in
accordance with its Constitution
or Rules in the presence of:

Affix common seal

.....
Signature

.....
Name - please print

.....
Signature

.....
Name - please print

[A company no longer needs to affix its Common Seal, but may execute the deed through two of its directors or a director and company secretary signing the deed on behalf of the company.]

Use this if company is NOT using its Common Seal:

SIGNED, SEALED AND DELIVERED
by *[name of ISP]*, ABN *[insert]*,
pursuant to section 127(1) of the
Corporations Act 2001 (Cth) by:

Director
Signature

Name of Director
Print name

Director/Secretary

.....
Signature

Name of Director/Secretary

.....
Print name

OR USE OTHER MODE OF ATTESTATION REQUIRED BY COMPANY
CONSTITUTION