

Form B

Commonwealth of Australia

Competition and Consumer Act 2010 — subsections 88 (1A) and (1)

AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88(1)/(1A) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

(Strike out whichever is not applicable)

PLEASE FOLLOW DIRECTIONS ON THE BACK OF THIS FORM

1. Applicant

- (a) Name of Applicant:
(Refer to direction 2)

A91348 eRx Script Exchange Pty Ltd (ACN 132 844 658) (“eRx”)

- (b) Short description of businesses carried on by applicant:
(Refer to direction 3)

The applicant operates an electronic pharmaceutical prescription exchange system, the development of which has been partly funded by the Commonwealth of Australia under the Fifth Community Pharmacy Agreement.

- (c) Address in Australia for service of documents on the applicant:
20 Trenerry Crescent, Abbotsford, Victoria, 3067

2. Contract, arrangement or understanding

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:
(Refer to direction 4)

Authorisation is sought to enter into a contract (Commercial Interchange Agreement) which has the purpose of enabling eRx to make its prescription exchange system (PES) interoperable with MediSecure Pty Ltd's (MDS) PES and vice-versa. Clause 14 of the proposed contract, which is the subject of this application, is attached and marked as **annexure A**.

- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:
(Refer to direction 4)

Clause 14 provides that, following the introduction of interoperability, eRx and MDS will share equally in the fee which is charged to a pharmacy user and the Commonwealth by the PES to which the pharmacy is connected in respect of each prescription that has originated on the PES of the other party.

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

The provision by eRx and MDS of the services of their respective PESs for use by pharmaceutical prescribers (usually doctors) and dispensers (usually pharmacists), which are capable of carrying electronic messages between doctors and pharmacists to facilitate the dispensing of pharmaceutical prescriptions safely, accurately, quickly and securely, and associated computerised record keeping and other information systems and processes.

- (d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

Authorisation is requested until such time as the contract made between the applicant and MDS referred to in paragraph 2(a) above has terminated, expired or otherwise been brought to an end. An interim authorisation is sought to allow the applicant and MDS to commence the interoperability of their respective PESs with effect from 3 December 2012.

3. Parties to the proposed arrangement

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

Name: MediSecure Pty Ltd (ACN 132 172 957)

Address: 127 Erskine Street, Middle Park, Victoria, 3206

Business: MDS operates an electronic pharmaceutical prescription exchange system.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:
(Refer to direction 5)

Not applicable.

4. Public benefit claims

- (a) Arguments in support of authorisation:
(Refer to direction 6)

The Commonwealth of Australia (as represented by the Department of Health and Ageing (DOHA)) in the Standard Funding Agreement signed on 29 June 2012 (a true copy of which is attached to this application and marked as **annexure B**) states that:

"The Department wants to significantly improve the uptake and use of electronic prescriptions¹. Currently, if a prescriber lodges an electronic prescription for a patient with a PES, patients may be able to have their prescription downloaded by a pharmacy through the pharmacy accessing the PES. However, this occurs only where the pharmacy software connects to the PES where the prescription was lodged by the prescriber. There is currently no connection between the two PESs to enable a pharmacy connected to one PES to access electronic prescriptions held by the other.

Supporting the uptake and use of electronic prescriptions is a significant policy component of the Fifth Community Pharmacy Agreement. It aims to improve the quality use of medicines through supporting the use of electronic transfer of prescriptions. The expected outcome is that the prescriber provides an electronic prescription that is accessible by pharmacies so that they do not have to re-key the information, leading to a reduction in transcription errors. The policy is forecast to have broad improvements to healthcare, in particular medication management which will reduce unnecessary burden on the health system, as well as providing for a general workload reduction for both prescribers and dispensers (pharmacies).

¹ The Fifth Community Pharmacy Agreement definition of an electronic prescription applies: "An 'electronic prescription' means an electronic prescription which is generated in accordance with a process by which a prescription is electronically generated by a prescriber, authenticated (electronically signed), securely transmitted (either directly or indirectly) for dispensing and supply, seamlessly integrated into the pharmacy dispensing software and, in the case of Pharmaceutical Benefits Scheme (PBS) prescriptions, is available to be electronically sent to Medicare Australia for claiming purposes. This definition does not preclude the use of paper-based processes to support ePrescribing activity."

A key component of this policy is the payment of an “Electronic Prescription Fee” (EPF) which is being used in the early years to defray part of the costs to pharmacy associated with accessing or downloading and electronic prescription. The value of the EPF is set through consultation with the Pharmacy Guild of Australia (which is a signatory to the Fifth Community Pharmacy Agreement with the Australian Government).

The success of the policy is measured by the uptake and use of electronic prescriptions, with all eligible electronic prescriptions² attracting a payment of the EPF to the pharmacy. A PES vendor charges pharmacies based on the number of electronic prescriptions and repeats transferred through its service. Currently this charge is 15 cents, the same as the EPF. This charge is currently paid to the relevant PES and a proportion is subsequently paid onto partner vendors of pharmacy and general practitioner desktop software by the PES based on agreements between the PES and the other vendors involved in the electronic prescription supply chain.

The number of eligible electronic prescriptions for 2011-12 is less than expected. Early analysis has revealed that there are large numbers of electronic prescriptions being lodged to the PES by prescribers, but the number being downloaded by dispensers is quite low. The main cause identified is that the patient presents to a pharmacy which is not connected to the PES containing the electronic prescription.

The purpose of this Project is to allow electronic prescriptions to be accessed by all pharmacies regardless of which PES the electronic prescription was lodged with. To achieve this outcome, the Participant and MediSecure must work together, and share all information necessary, to create interoperability between their systems to achieve interim interoperability³ by no later than 24 December 2012 in advance of conformance with Australian Technical Specifications for the Electronic Transfer of Prescriptions (ETP).

Full PES interoperability, conformant with Australian Technical Specifications for the Electronic Transfer of Prescriptions, and subsequent Australian Standards, will follow the completion of this Project.

² An ‘eligible electronic prescription’ means:

- (a) it is a PBS or RPBS prescription (including prescriptions for Items priced below the maximum general patient contribution as defined in the *National Health Act 1953*) dispensed by an approved supplier that is generated electronically in accordance with the process described in the definition of ‘electronic prescription’ contained in this Schedule and with the National eHealth Transition Authority specification for the Electronic Transfer of Prescriptions, or
 - (b) a repeat authorisation and/or a deferred supply authorisation:
 - (i) downloaded from a PES; and
 - (ii) related to an original electronic prescription satisfying (a)
- and
- (c) the electronic prescription is processed through a Prescription Exchange Service; and
 - (d) if the electronic prescription relates to an Item priced below the maximum General patient contribution as defined in the *National Health Act 1953*, the following information in the electronic prescription has been validated and, if necessary, corrected by the approved supplier:
 - (i) the patient’s name;
 - (ii) the patient’s Medicare number;
 - (iii) information about the prescription (including the date of prescribing and supply, the PBS code number, the drug name and form, the quantity dispensed and the number of repeats);
 - (iv) the prescriber approval number; and
 - (v) the approved supplier number.

³ Interim interoperability is defined in clause 1 of the Agreement: It means that PESs are able to exchange electronic prescriptions by no later than 24 December 2012. This is prior to conformance with Australian Technical Specifications for Electronic Transfer of Prescriptions Interoperability provisions.

This Agreement facilitates this work by providing for:

- a capital investment contribution; and
- direct per eligible electronic prescription payments (the “PES Electronic Prescription Fee” (PEPF)) to PESs.

Under an interoperable environment PESs will be able to share prescriptions and repeats. The EPF is currently paid to the pharmacy which then pays the PES which held the downloaded prescription. The Participant must negotiate with MediSecure an acceptable “Inter-PES Transaction Fee” to ensure that the PEPF is appropriately apportioned in circumstances where different PESs hold the original electronic prescription and connect to the pharmacy that dispenses the prescription.”

Under clause 14 of the proposed contract the parties will share equally in the Commercial Fee so as to eliminate any incentive which might otherwise exist for either of them to seek to ensure that prescriptions which have originated on their system (i.e. at the point of original prescribing) remain on their system at the point of dispensing (i.e. in the pharmacy). Interoperability is best promoted if neither party has any economic or commercial incentive to seek to capture or retain prescriptions down to the point of dispensing (at which point payments are made and received for the pharmaceuticals, including the costs associated with their supply).

Additional submissions in support of the public benefits of the Interoperability Project, and the need to ensure that the applicant’s interests in respect of the success of the project remain aligned through the equal sharing of the Commonwealth’s fees, are contained in **annexure C**.

- (b) Facts and evidence relied upon in support of these claims:

The Commonwealth Funding Agreement dated 29 June 2012, a true copy of which is attached to this application and marked as **annexure B**.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):
(Refer to direction 7)

See **annexure C**

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:
(Refer to direction 8)

There are submitted to be no public detriments arising out of the contract, for the reasons identified in **annexure C**

- (b) Facts and evidence relevant to these detriments:
N/A

7. Contract, arrangements or understandings in similar terms

This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.

- (a) Is this application to be so expressed?
No.

- (b) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:
(Refer to direction 9)

N/A

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

N/A

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

N/A

8. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

No.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

N/A

- (c) If so, by whom or on whose behalf are those other applications being made?

N/A

9. Further information

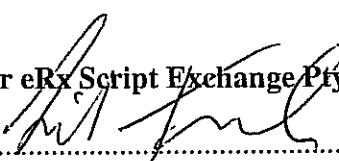
- (a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Mr David Freemantle, General Manager Enterprise Solutions, eRx Script Exchange Pty Ltd, 20 Trenerry Crescent, Abbotsford, Victoria, 3067

Dated..... 9/11/12

Signed by/on behalf of the applicant

For eRx Script Exchange Pty Ltd:


.....

(Signature)

DAVID FREEMANTLE
.....

(Full Name)

GENERAL MANAGER ENTERPRISE SOLUTIONS.
.....

(Position in Organisation)

DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing the application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions. Provide details of those provisions of the contract, arrangement or understanding that do, or would or might, substantially lessen competition.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
 - (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
 6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
 7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.
 8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.

9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

Annexure A

- 14 eRx and MDS (*MediSecure*) agree that before a technical solution for interoperability can be found, a commercial interchange agreement must be struck between the parties. eRx and MDS agree that where a QP (*Qualifying Prescription*) is collected by one PES and dispensed by any other PES, the interchange fee will be:
- a. the Originating PES will receive 50% of the Commercial Fee; and
 - b. the Dispensing PES will receive 50% of the Commercial Fee.”



Australian Government

Department of Health and Ageing

STANDARD FUNDING AGREEMENT

between the

COMMONWEALTH OF AUSTRALIA

as represented by the

Department of Health and Ageing
ABN 83 605 426 759

and

FRED IT Group Pty Ltd
ABN 68 109 546 901

Annexure B

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Attachment 1 ETP Interoperability Solution Package V1.01- 26/04/2012

THIS Agreement is made

between the

COMMONWEALTH OF AUSTRALIA ('the Commonwealth'), as represented by the Department of Health and Ageing ('the Department') ABN 83 605 426 759

and

FRED IT Group Pty Ltd as represented by eRx Script Exchange Pty Ltd, 20 Trenerry Crescent, Abbotsford Victoria 3067 ('the Participant') ABN 68 109 546 901

RECITALS:

- A. The Commonwealth has developed the Electronic Transfer of Prescription (ETP) Prescription Exchange Service Interoperability Initiative.
- B. The objectives and outcomes of the Initiative are to achieve interim interoperability between the Participant and MediSecure Pty Ltd to increase the uptake and use of electronic prescriptions.
- C. The Participant has fully informed itself of all aspects of the work required to be performed for the purposes of the Project and has submitted a joint proposal entitled *ETP Interoperability Solution Package V1.01- 26/04/2012* dated 26 April 2012 at Attachment 1 noting that milestone dates are to be updated in the Project Plan to reflect a later commencement date.
- D. The Participant is committed to helping to achieve the objectives and outcomes of the Initiative through the conduct of the Project.
- E. The Commonwealth has agreed to contribute funding to the Participant to perform the Project in support of the Initiative on the following terms and conditions.

THE PARTIES AGREE as follows:

1. INTERPRETATION

1.1 In this Agreement, unless the contrary intention appears:

'Agreement' means this document and includes the Schedule and any Attachments or Annexures;

'Agreement Period' means the period described in clause 2.1;

'Aim of the Project' means the Project's objectives and outcomes described in Item A;

'Approved Auditor' means a person who is:

- (a) registered as a company auditor under the *Corporations Act 2001* or an appropriately qualified member of the Institute of Chartered Accountants in Australia, or of CPA Australia or the National Institute of Accountants; and
- (b) not a principal, member, shareholder, office holder or employee of the Participant;

'Asset' means:

- (a) items identified in Item I; or
- (b) an item of tangible property purchased or leased either wholly or in part with the use of the Funds, with a value at the time of acquisition of \$5,000 or more, inclusive of GST,

but does not include Project Material;

'Auditor-General' means the office established under the *Auditor-General Act 1997* and includes any other person that may, from time to time, perform the functions of that office;

'Australian Accounting Standard' means the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the *Australian Securities and Investments Commission Act 2001*;

'Australian Auditing Standard' refers to the standards made by the Auditing and Assurance Standards Board created by section 227A of the *Australian Securities and Investments Commission Act 2001* (Cth);

'Budget' means the budget as specified in Item B for expenditure of the Funds and such Other Contributions as have been identified as at the Date of this Agreement, for the purposes of conducting the Project or performing obligations under this Agreement;

'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;

'Committed' at a particular date means Funds that the Participant is contractually obliged to pay to a third party in respect of any part of the activities making up the Project or the Final Report and that can be identified in a written contractual arrangement with that third party;

'Commonwealth' means the Commonwealth of Australia as represented by any department or agency of the Commonwealth which is from time to time responsible for the administration of this Agreement;

'Commonwealth Material' means any Material:

- (a) provided by the Commonwealth to the Participant for the purposes of this Agreement; or
- (b) copied or derived at any time from the Material referred to in paragraph (a);

'Completion Date' means the date that is 60 Business Days after the Commonwealth has received the Final Report and all deliverables required under this Agreement;

'Confidential Information' means information that:

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

but does not include information that:

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

'Conflict' means any conflict of interest, any risk of a conflict of interest and any apparent conflict of interest arising through the Participant (or the Participant Personnel) engaging in any activity or obtaining any interest that is likely to conflict with or restrict the Participant in performing the Project fairly and independently;

'Date of this Agreement' means the date on which this Agreement is signed by the last Party to do so;

'Depreciated' means the amount representing the same reduced value of an Asset as calculated for income tax purposes under, and in accordance with, the *Income Tax Assessment Act 1997*;

'End of Financial Year Report' means the Report to be provided to the Commonwealth in accordance with clause 11.5;

'Existing Material' means all Material in existence prior to the commencement of this Agreement that is:

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

the Project Material and includes Material identified as Existing Material in Item F but excludes Commonwealth Material;

'Final Report' means the Report to be provided to the Commonwealth in accordance with clause 11.4;

'Freedom of Information Commissioner' means any of the information officers appointed under the *Australian Information Commissioner Act 2010* (Cth) when performing the 'freedom of information functions' as defined in that Act;

'Funds' means the amount or part thereof payable by the Commonwealth as specified in Item E;

'Government Agency' means:

- (a) a body corporate or an unincorporated body established or constituted for a public purpose by Commonwealth legislation, or an instrument made under that legislation;
- (b) a body established by the Governor-General or by a Minister of State of the Commonwealth, including departments; or
- (c) an incorporated company over which the Commonwealth exercises control;

'Guidelines' means the guidelines for the Initiative, if any, as described in Item L;

'Information Commissioner' means any of the information officers appointed under the *Australian Information Commissioner Act 2010* (Cth) when performing the 'information commissioner functions' as defined in that Act;

'Information Privacy Principle' has the same meaning as in the *Privacy Act 1988* (Cth);

'Intellectual Property' means all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks (including service marks), registered and unregistered designs, circuit layouts, know-how and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

'Interest' means interest calculated at the 90 day bank-accepted bill rate (available from the Reserve Bank of Australia) less 10 basis points;

'Interim interoperability' means the ability for all PESs to exchange electronic prescriptions regardless of which PES the prescription was uploaded to by the prescriber and which PES the dispenser is downloading the prescription from, by no later than 24 December 2012.

'Law' means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time anywhere in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law as applicable from time to time;

'Liaison Officers' means the persons or position holders specified in Item G or any substitute notified in writing to the other Party;

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

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

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

'National Privacy Principle' has the same meaning as in the *Privacy Act 1988* (Cth);

'Ombudsman' means the office established under the *Ombudsman Act 1976* and includes any other person that may, from time to time, perform the functions of that office;

'Other Contributions' means financial or in-kind resources (with in-kind resources valued at market rates) from third parties or the Participant for the Project, other than the Funds;

'Participant Personnel' means:

- (a) officers, employees, agents or subcontractors of the Participant; and
- (b) officers, employees, agents or subcontractors of the Participant's subcontractors;

engaged in the performance of the Project, and includes:

- (c) Specified Personnel; and
- (d) those individuals (if any) engaged in the performance of the Project on a voluntary basis by the Participant or its subcontractors;

'Party' means a party to this Agreement;

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

'Privacy Commissioner' any of the information appointed under the *Australian Information Commissioner Act 2010* (Cth) when performing the 'privacy functions' as defined in the Act;

'Program' means that part of the operations of the Commonwealth identified in the Recitals under which Funds are provided to the Participant;

'Progress Report' means a Report of the Participant's progress in undertaking the Project to be provided to the Commonwealth in accordance with clause 11.3;

'Project' means the activities described in Item A and the provision of all Project Material, excluding the Final Report;

'Project Material' means all Material, excluding Commonwealth Material that is:

- (a) brought into existence for the purpose of this Agreement; or
- (b) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a); and

including the Project Material described at Item F;

'Project Period' means the period specified in Item C during which the Project must be completed;

'Report' means Material provided to the Commonwealth in accordance with clause 11 including any Progress Reports, End of Financial Year Reports and the Final Report;

'Specified Personnel' means Participant Personnel specified in Item M;

'Standards' means the standards for performance of the Project as specified in Item L; and

'Unspent' at a particular date means Funds that have not been spent or Committed by the Participant.

1.2 In this Agreement, unless the contrary intention appears:

- (a) words in the singular include the plural and words in the plural 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) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
 - (e) all references to dollars are to Australian dollars;
 - (f) where any word or phrase is given a defined meaning, any other form of that word or phrase has a corresponding meaning;
 - (g) 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;
 - (h) a reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth as amended from time to time;
 - (i) a reference to the word 'including' in any form is not to be construed or interpreted as a word of limitation; and
 - (j) a reference to a 'Recital' is to the Recitals of this Agreement, a reference to a 'clause' is to a clause in this Agreement, a reference to 'Item' is to an Item in the Schedule to this Agreement, a reference to 'Schedule' is to the Schedule to this Agreement and a reference to 'Annexures' or 'Attachments' is a references to documents attached to this Agreement.
- 1.3 If there is any conflict or inconsistency between:
- (a) the terms and conditions contained in the clauses of this Agreement and any part of the Schedule, then the terms and conditions of the clauses will prevail to the extent of the conflict or inconsistency;
 - (b) the terms and conditions contained in the clauses of this Agreement and any part of the Annexures or Attachments (if any), then the terms and conditions of the clauses will prevail to the extent of the conflict or inconsistency; and
 - (c) any part of the Schedule and any part of the Annexures or Attachments (if any), then the Schedule will prevail to the extent of the conflict or inconsistency.
- 1.4 The laws of the Australian Capital Territory apply to this Agreement. The Parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of any dispute under this Agreement.
- 1.5 This Agreement records the entire agreement between the Parties in relation to its subject matter.
- 1.6 Subject to clauses 3 and 18, no variation of this Agreement is binding unless agreed in writing between the Parties.
- 1.7 Any reading down or severance of a particular provision does not affect the other provisions of this Agreement.
- 1.8 A waiver of any provision of this Agreement must be in writing.

- 1.9 No waiver of a term or condition of this Agreement will operate as a waiver of another breach of the same or of any other term or condition contained in this Agreement.
- 1.10 If a Party does not exercise, or delays in exercising, any of its rights under this Agreement or at Law, that failure or delay does not operate as a waiver of those rights.
- 1.11 A single or partial exercise by a Party of any of its rights under this Agreement or at Law does not prevent the further exercise of any right.
- 1.12 The Participant must not assign its rights under this Agreement without prior approval in writing from the Commonwealth.

2. AGREEMENT PERIOD

- 2.1 This Agreement commences on the Date of this Agreement and, unless terminated earlier, expires on the Completion Date.

3. FUNDING FOR THE PROJECT

- 3.1 Subject to Parliamentary appropriation and to the provisions of this Agreement, the Commonwealth agrees to pay the Funds to the Participant in accordance with the payment schedule specified in Item E.
- 3.2 The funding to be contributed by the Commonwealth for the performance of this Agreement by the Participant will not exceed the amount of Funds specified in Item E.
- 3.3 The Commonwealth may at its discretion:
 - (a) defer,
 - (b) reduce; or
 - (c) not makea payment of Funds where it forms the reasonable opinion that the full payment is not properly required by the Participant because of Project surpluses or underspends or if interim interoperability is not achieved.
- 3.4 Without limiting its rights, the Commonwealth may at its discretion:
 - (a) defer;
 - (b) reduce; or
 - (c) not makea payment of Funds until the Participant has performed all of its obligations that are required to be performed up to the date of that payment under this Agreement.
- 3.5 The Participant agrees to submit invoices for payment of the Funds in the manner specified in Item E. The amount of the invoice will not exceed the amount of Funds properly required by the Participant for its use in relation to the performance of this Agreement up to the date of the next invoice.

4. OTHER CONTRIBUTIONS

- 4.1 The Participant must notify the Commonwealth in writing within 10 Business Days of receipt, or allocation to the Project by the Participant, of the amount, source and proposed use of any Other Contribution not already identified in the Budget.

5. TAXES, DUTIES AND GOVERNMENT CHARGES

- 5.1 Subject to this clause, all taxes, duties and government charges ('Taxes') imposed or levied in Australia or overseas in connection with this Agreement must be paid by the Participant, or as the Participant might arrange.
- 5.2 Without limiting clause 5.1, the Participant must pay Goods and Services Tax ('GST') on the goods, services and other supplies made under this Agreement ('the supplies') to the extent that they are taxable supplies within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* ('the GST Act').
- 5.3 In relation to any GST payable under clause 5.2, the Participant must issue the Commonwealth with a tax invoice in accordance with the GST Act.
- 5.4 The Participant warrants it is registered in accordance with the GST Act and agrees to remain registered during the Agreement Period.

6. CONDUCT OF THE PROJECT

- 6.1 In consideration of the provision of the Funds, the Participant must:
- (a) use the Funds only for the performance of this Agreement;
 - (b) perform the Project according to the Budget, within the Project Period and according to the terms and conditions specified in this Agreement (including any applicable Guidelines and Standards);
 - (c) perform all aspects of the Project (including achieving the Aim of the Project- interim interoperability by no later than 24 December 2012) as specified in Item A of the Schedule to this Agreement and Attachment 1 to the Schedule;
 - (d) deliver the Final Report in accordance with clause 11.4; and
 - (e) endeavour in good faith to ensure that all work undertaken under this Agreement is in support of the objectives and outcomes of the Program described in Recital B.

7. SUBCONTRACTING

- 7.1 The Participant agrees that:
- (a) it will not subcontract the performance of any part of the Project without the prior approval in writing of the Commonwealth; and
 - (b) the subcontractors, if any, specified in Item A will perform work in relation to the Project in accordance with this Agreement and are approved by the Commonwealth to do so.
- 7.2 The Commonwealth may impose any reasonable terms and conditions it considers appropriate when giving its approval under clause 7.1(a).

- 7.3 Where a subcontractor specified in Item A or approved by the Commonwealth under clause 7.1(a) is unable to perform the work, the Participant agrees to notify the Commonwealth immediately.
- 7.4 Where clause 7.3 applies, the Commonwealth may request the Participant to secure a replacement subcontractor acceptable to the Commonwealth at no additional cost and at the earliest opportunity.
- 7.5 If the Participant does not comply with any request made under clause 7.4 the Commonwealth may terminate this Agreement in accordance with clause 18.1(a).
- 7.6 In respect of subcontractors listed in Item A or approved by the Commonwealth under this clause, the Participant must ensure that:
- (a) the subcontract facilitates compliance by the Participant with its obligations under this Agreement;
 - (b) the subcontract will not conflict with or detract from the rights and entitlements of the Commonwealth under this Agreement;
 - (c) the other party to the subcontract has the necessary relevant expertise and the appropriate types and amounts of insurance to perform work in relation to the Project;
 - (d) the subcontract contains all the relevant terms of this Agreement including those relating to the Law, subcontracting, intellectual property, audit and access, privacy, confidentiality, warranties and indemnities, disclosure and termination and in particular that the Participant has a right to terminate the subcontract on terms no less favourable than those accorded the Commonwealth by clause 18, in the event of this Agreement being terminated;
 - (e) the other party to the subcontract acknowledges that it may be considered a 'Commonwealth service provider' for the purposes of the *Ombudsman Act 1976* and subject to investigation by the Ombudsman under that Act and that the Commonwealth will not be liable for the cost of any such investigation by the Ombudsman in connection with the subject matter of the subcontract or the subject matter of this Agreement;
 - (f) the other party to the subcontract is prohibited from further subcontracting the Project without the prior written approval of the Commonwealth; and
 - (g) if requested, the Participant will promptly provide a copy of the relevant subcontract to the Commonwealth.

8. SPECIFIED PERSONNEL AND PARTICIPANT PERSONNEL

- 8.1 The Participant agrees that the Specified Personnel will perform the activities specified in Item M.
- 8.2 Where Specified Personnel are unable to perform the activities, the Participant must notify the Commonwealth immediately.

- 8.3 The Commonwealth may, at its absolute discretion, request the Participant to remove Participant Personnel (including Specified Personnel) from activities in relation to this Agreement.
- 8.4 Where clauses 8.2 or 8.3 apply, the Commonwealth may direct the Participant to provide replacement personnel acceptable to the Commonwealth at no additional cost and at the earliest opportunity.
- 8.5 If the Participant does not comply with any request made under clause 8.4, the Commonwealth may terminate this Agreement in accordance with clause 18.1(a).

9. RESPONSIBILITY OF PARTICIPANT

- 9.1 The Participant agrees to be fully responsible for the performance of the Project and for ensuring compliance with the requirements of this Agreement, and will not be relieved of that responsibility because of any:
- (a) involvement by the Commonwealth in the performance of the Project;
 - (b) payment made to the Participant on account of the Project;
 - (c) subcontracting of the Project; or
 - (d) acceptance by the Commonwealth of replacement personnel.

10. MANAGEMENT OF FUNDS AND BANK ACCOUNT

- 10.1 The Participant must have a separate bank account controlled solely by the Participant to solely hold the Funds and immediately deposit all Funds received into that account.
- 10.2 The Participant must notify the Commonwealth of the identifying details of the bank account.
- 10.3 The Participant must use and deal with any interest earned on the Funds as if the money earned were part of the Funds.
- 10.4 The Participant must not Commit any part of the Funds for expenditure that is likely to occur after the end of the Agreement Period.

11. RECORDS AND REPORTS

- 11.1 The Participant must keep comprehensive written records of the conduct of the Project including:
- (a) performance against Guidelines and Standards,
 - (b) progress against the Aim of the Project and the objectives and outcomes of the Initiative described in Recital B;
 - (c) the creation of Project Material; and
 - (d) the acquisition and disposal of Assets.
- 11.2 The Participant must keep financial records relating to the Project so as to enable:
- (a) all income and expenditure related to the Project to be identified in the Participant's accounts;

- (b) the preparation of financial statements in accordance with Australian Accounting Standards; and
- (c) the audit of these records in accordance with Australian Auditing Standards.

Progress Reports

- 11.3 In accordance with the timetable specified in Item D, the Participant must provide to the Commonwealth written Progress Reports which must include:
- (a) a description of actual performance against the Guidelines and Standards and the Aim of the Project;
 - (b) information on whether the Aim of the Project is being achieved and if not, why not;
 - (c) a version of the Project Material produced to the date of the Progress Report, if requested by the Commonwealth;
 - (d) a statement of the balance of the Funds in the bank account referred to in clause 10.1; and
 - (e)
 - (f) any other requirements specified in Item D.

Final Report

- 11.4 On the date specified in Item D or within 20 Business Days of the date of any early termination of this Agreement, the Participant must provide to the Commonwealth a written Final Report which must include:
- (a) a comprehensive report on actual performance against the Guidelines and Standards and the Aim of the Project and whether the Aim of the Project was achieved and, if not, why not;
 - (b) an audited detailed statement of receipts and expenditure in respect of the Funds prepared by an Approved Auditor in compliance with the Australian Auditing Standards which must include a definitive statement as to whether the financial accounts are complete and accurate, and a statement of the balance of the Funds in the bank account referred to in clause 10.1;
 - (c) a statement of how much (if any) the Participant needs from the final payment to meet current liabilities under legal commitments entered into by the Participant solely for the performance of this Agreement;
 - (d) a certificate provided by the Chief Executive Officer or Chief Financial Officer of the Participant, or a person authorised by the Participant to execute documents and legally bind it by their execution, confirming that:
 - (i) the Funds and Other Contributions received were spent for the purpose of the Project and in accordance with this Agreement and that the Participant has complied with this Agreement;

- (ii) salaries and allowances paid to persons involved in the Project are in accordance with any applicable award or agreement in force under any relevant Law on industrial or workplace relations; and
- (iii) at the time the Final Report is provided to the Commonwealth, the Participant is able to pay all its debts as and when they fall due.

In preparing the certificate required under this paragraph (d), the Participant should have regard to clause 26.2 of this Agreement; and

- (e) any other requirements specified in Item D.

End of Financial Year Report

11.5 If specified in Item D, the Participant must, in addition to the Reports required under clauses 11.3 and 11.4, provide to the Commonwealth a written End of Financial Year Report by the date specified in Item D which must include:

- (a) an audited detailed statement of receipts and expenditure in respect of the Funds prepared by an Approved Auditor in compliance with the Australian Auditing Standards which must include a definitive statement as to whether the financial accounts are complete and accurate, and a statement of the balance of the Funds in the bank account referred to in clause 10.1;
- (b) a description of actual performance against the Guidelines and Standards and the Aim of the Project;
- (c) information on whether the Aim of the Project is being achieved and if not, why not;
- (d) a version of the Project Material produced to the date of the End of Financial Year Report, if requested by the Commonwealth;
- (e) a statement of how much the Participant needs to meet current liabilities under legal commitments entered into by the Participant for the performance of this Agreement; and
- (f) any other requirements specified in Item D.

Other Reports

11.6 The Participant must provide any other Reports or documents specified in Item D by the date specified.

12. LIAISON

12.1 The Participant must liaise with and report to the Commonwealth as reasonably required by the Commonwealth for the purposes of this Agreement.

12.2 Upon receipt of written notice, the Participant must within the time-frame specified in the notice, or within a reasonable time-frame if no time-frame is specified in the notice, provide any information in relation to the Project requested by the Commonwealth for the purposes of this Agreement, including monitoring and evaluation.

13. ACCESS TO PREMISES AND MATERIALS

13.1 The Participant must give:

- (a) the Commonwealth;
- (b) the Auditor-General;
- (c) the Freedom of Information Commissioner, Information Commissioner and the Privacy Commissioner;
- (d) the Ombudsman; and

any person authorised by a person described in clauses 13.1(a) to 13.1(d) (referred to in this clause collectively as 'those permitted') access to premises at which records and Materials associated with this Agreement are stored or work under the Project is undertaken.

13.2 The Participant must give to those permitted access in order to be able to inspect and copy Materials, in the Participant's possession or control, for the purposes associated with this Agreement or any review of performance under this Agreement. The Participant must also give those permitted access to any Assets, wherever they may be located, and reasonable access to the Participant Personnel for the same purpose.

13.3 The rights referred to in clause 13.1 are, wherever practicable, subject to:

- (a) the provision of reasonable prior notice by the Commonwealth (except where the Commonwealth believes that there is an actual or apprehended breach of the Law);
- (b) access being sought during reasonable times (except where the Commonwealth believes that there is an actual or apprehended breach of the Law); and
- (c) the Participant's reasonable security procedures.

13.4 The Participant agrees to provide all assistance reasonably requested by the Commonwealth in respect of any inquiry into or concerning the Project or this Agreement.

13.5 The Participant must ensure that any subcontract entered into for the purposes of this Agreement contains an equivalent clause allowing those permitted to have access as specified in this clause.

13.6 Nothing in this Agreement limits or restricts in any way any duly authorised function, power, right or entitlement of the Auditor-General, the Freedom of Information Commissioner, the Information Commissioner, the Privacy Commissioner and the Ombudsman or their respective delegates. The rights of the Commonwealth under this Agreement are in addition to any other duly authorised power, right or entitlement of the Auditor-General the Freedom of Information Commissioner, the Information Commissioner, the Privacy Commissioner and the Ombudsman or their respective delegates.

13.7 This clause survives the expiration or early termination of this Agreement for a period of seven years.

14. PROJECT MATERIAL AND INTELLECTUAL PROPERTY

- 14.1 Any Intellectual Property rights and title to, or in relation to, the Project Material will vest, upon creation, in the Participant.
- 14.2 The Participant grants to the Commonwealth a perpetual, irrevocable, royalty-free and licence fee-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, modify, adapt, publish, perform, broadcast, communicate, commercialise and exploit the Intellectual Property in the Progress Reports and Final Report but excluding all other Project Material.
- 14.3 The Participant warrants that anything done by the Participant in the course of the Project, including in developing the Reports, will not infringe the Intellectual Property rights of any person.
- 14.4 For this clause, the 'Specified Acts' relating to Moral Rights means any of the following classes or types of acts or omissions by or on behalf of the Commonwealth:
- (a) using, reproducing, modifying, adapting, publishing, performing, broadcasting, communicating, commercialising or exploiting all or any part of the Project Material, with or without attribution of authorship;
 - (b) supplementing the Project Material with any other Material; and
 - (c) using the Project Material in a different context to that originally envisaged,
- but does not include false attribution of authorship.
- 14.5 The Participant must use its best endeavours to ensure that:
- (a) where there is no consent already in place, a written consent will be given by the author of any Project Material to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly to the performance of the Specified Acts by the Commonwealth or any person claiming under or through the Commonwealth; and
 - (b) where there is no consent already in place, a written consent will be given by the author of any Existing Material to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for the Commonwealth's benefit in relation to the Commonwealth's licensed use of the Existing Material.
- 14.6 Intellectual Property rights and title to, or in relation to, Commonwealth Material remains vested at all times in the Commonwealth.
- 14.7 As part of the Final Report if specified in Item D, or on the early termination of this Agreement, the Participant must deliver a complete copy of the Project Material and all of the Commonwealth Material to the Commonwealth, or deal with it as otherwise directed by the Commonwealth.
- 14.8 This clause survives expiration or early termination of this Agreement.

15. ACKNOWLEDGMENT AND PUBLICATIONS

- 15.1 The Participant must acknowledge the financial and other support it has received from the Commonwealth:
- (a) in all publications, promotional and advertising materials, public announcements and activities by it or on its behalf in relation to the Project or any products, processes or inventions developed as a result of the Project; and
 - (b) in the form specified in Item H or, if not specified in Item H, then in a form approved by the Commonwealth prior to its use.
- 15.2 Where the Participant has been provided with Funds to produce any publication, the Participant must, on completion of the Project Period, provide the Commonwealth with the number of copies of the publication specified in Item F.
- 15.3 This clause survives the expiration or early termination of this Agreement for a period of seven years.

16. ASSETS

- 16.1 During the Agreement Period the Participant must use Assets only for performance of this Agreement.
- 16.2 The Participant must:
- (a) not encumber or dispose of any Asset, or deal with or use any Asset other than in accordance with this clause, without the prior written approval of the Commonwealth;
 - (b) hold all Assets securely and safeguard them against theft, loss, damage or unauthorised use;
 - (c) maintain all Assets in good working order;
 - (d) maintain all appropriate insurances in respect of any Assets;
 - (e) be fully responsible for, and bear all risks arising in relation to, the use or disposal of any Asset;
 - (f) maintain a register of all Assets recording the date of purchase or lease, the purchase or lease price, Asset description including serial number, Asset location, the proportion of the Funds used to create or acquire the Asset, the Depreciated value of the Asset and (where relevant) details of Asset disposal including the sale price; and
 - (g) as and when requested, provide copies of the register of Assets to the Commonwealth.
- 16.3 The Participant must obtain prior agreement in writing from the Commonwealth before selling or otherwise disposing of an Asset during the Agreement Period. If, at the time of the sale or disposal, the Asset has not been fully Depreciated the Participant must, at the option of the Commonwealth:
- (a) pay to the Commonwealth within 20 Business Days of the date of the sale or disposal, an amount equal to the proportion of the value of the Asset

following Depreciation that is equivalent to the proportion of the purchase price of the Asset that was funded from the Funds;

- (b) pay to the Commonwealth within 20 Business Days of the date of the sale or disposal, the proceeds of the sale or disposal, less an amount equal to the sum of the Participant's proportionate contribution to the purchase price of the Asset and the Participant's reasonable costs of sale or disposal of the Asset; or
 - (c) use the amount specified in (a) or (b) above for a purpose approved in writing by the Commonwealth.
- 16.4 If, on the expiration or early termination of this Agreement, an Asset has not been fully Depreciated the Participant must, at the option of the Commonwealth:
- (a) pay to the Commonwealth within 20 Business Days after expiry or early termination of this Agreement, an amount equal to the proportion of the value of the Asset following Depreciation that is equivalent to the proportion of the purchase price of the Asset that was funded from the Funds;
 - (b) sell the Asset for the best price reasonably obtainable and pay to the Commonwealth within 20 Business Days of the date of sale the proceeds of sale, less an amount equal to the sum of the Participant's proportionate contribution to the purchase price of the Asset and the Participant's reasonable costs of disposal of the Asset; or
 - (c) use the Asset on such terms and conditions as may be approved in writing by the Commonwealth.
- 16.5 If the Participant fails to make payment as required by either clause 16.3 or 16.4:
- (a) the Participant must pay the Commonwealth Interest on the relevant amount from the date it was due, for the period it remains unpaid; and
 - (b) the relevant amount, and Interest owed under this clause will be recoverable by the Commonwealth as a debt due to the Commonwealth by the Participant.

16.6 This clause survives the expiration or early termination of this Agreement.

17. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY

17.1 The Participant is not by virtue of this Agreement, or for any purpose, an employee, partner or agent of the Commonwealth, or invested with any power or authority to bind or represent the Commonwealth.

17.2 The Participant must not represent itself, and must use its best endeavours to ensure that the Participant Personnel do not represent themselves, as being an officer, employee, partner or agent of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.

18. SUSPENSION AND TERMINATION

18.1 If:

- (a) the Commonwealth is satisfied on reasonable grounds that the terms and

conditions of this Agreement have not been complied with by the Participant;

- (b) the Commonwealth is satisfied on reasonable grounds that the Participant is unable or unwilling to satisfy the terms of this Agreement;
 - (c) the Commonwealth, by notice in writing, requests the Participant to take action to meet a timeframe or perform an activity in accordance with this Agreement and, after 10 Business Days from the date of the notice (or such longer period as is specified in the notice), the Participant has failed to take such action;
 - (d) the Commonwealth is satisfied on reasonable grounds that any statement made by the Participant is incorrect or incomplete in a way which would have affected the original decision to approve the Funds for the Project;
 - (e) the Commonwealth is not satisfied on reasonable grounds that the purposes and activities of the Participant remain compatible with:
 - (i) the Aim of the Project; or
 - (ii) the objectives and outcomes of the Initiative as specified in Recital B;
 - (f) the Commonwealth is satisfied on reasonable grounds that a Report given by the Participant is not complete or accurate;
 - (g) the Participant:
 - (i) becomes bankrupt or insolvent or is wound-up;
 - (ii) makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or has a receiver, manager or administrator appointed on behalf of debenture holders or creditors; or
 - (iii) goes into liquidation or passes a resolution to go into liquidation or becomes subject to any petition or proceedings in a court for its compulsory winding-up or becomes subject to the supervision of a court either voluntarily or otherwise; or
 - (iv) suffers any execution against its assets having adverse effect on its ability to perform the Agreement; or
 - (v) anything analogous to, or of a similar effect to anything described above under the Law occurs in respect of the Participant; or
 - (h) the Participant, by notice in writing given to the Commonwealth, withdraws from this Agreement; or
 - (i) the Commonwealth considers it appropriate for any other reason,
- the Commonwealth may, by written notice to the Participant, terminate this Agreement or require the Participant to immediately suspend dealings with the Funds.

18.2 For the avoidance of doubt, the Commonwealth has an unfettered discretion to terminate this Agreement in accordance with clause 18.1(i).

- 18.3 If this Agreement is terminated in accordance with clause 18.1(i), the Commonwealth will only be liable for any reasonable costs (excluding, without limitation, loss of prospective income or profits) unavoidably incurred by the Participant, which are directly attributable to the termination. The Commonwealth will not be liable to pay any amount in excess of the amount of Funds remaining unpaid under this Agreement at the date of termination.
- 18.4 On termination of this Agreement, or for the duration of any suspension of dealings with the Funds, the Participant must hold the Funds in utmost good faith for use only in accordance with the directions of the Commonwealth and will cease all other dealings with the Funds.
- 18.5 The Commonwealth may end the suspension of dealings with the Funds by written notice to the Participant, subject to such preconditions (including variations to this Agreement) which the Commonwealth may require.
- 18.6 Subject to clause 18.3, the Commonwealth will not be obliged to pay any part of the Funds to the Participant after the termination of this Agreement or during any period of suspension of dealings with the Funds.
- 18.7 Except as provided in this clause, the Commonwealth will not come under any liability to the Participant for termination of this Agreement in accordance with clause 18.1.
- 18.8 If a purported termination for cause by the Commonwealth under any of clauses 18.1(a) to (h) is determined by a competent authority not to be properly a termination for cause, then that termination by the Commonwealth will be deemed to be a termination for convenience under clause 18.1(i) which termination has effect from the date of the notice of termination referred to in clause 18.1.

19. REPAYMENT OF FUNDS

- 19.1 If:
- (a) on the expiry or any early termination of this Agreement, any Funds:
 - (i) remain Unspent; or
 - (ii) cannot, by reconciliation between the accounts and records maintained by the Participant (as reported to the Commonwealth by the Participant in any of the financial statements referred to in clause 11) and the Budget, be shown to the reasonable satisfaction of the Commonwealth to have been spent or Committed in accordance with this Agreement; or
 - (b) at any time the Commonwealth forms the reasonable opinion that any Funds have been used, spent or Committed by the Participant other than in accordance with this Agreement,

the Commonwealth may by written notice to the Participant require the Participant to repay that part of the Funds, and the Participant must repay to the Commonwealth the amount specified in the notice, within 20 Business Days of the date of the notice.

- 19.2 If the Participant fails to repay the Funds in accordance with a notice issued under clause 19.1:
- (a) the Participant must pay the Commonwealth Interest on the amount specified in the notice from the date it was due, for the period it remains unpaid; and
 - (b) the amount specified in the notice, and Interest owed under this clause will be recoverable by the Commonwealth as a debt due to the Commonwealth by the Participant.
- 19.3 The Participant acknowledges that Interest payable under clause 19.2(a) represents a reasonable pre-estimate of the loss incurred by the Commonwealth as a result of the loss of investment opportunity for, or the reasonable cost of borrowing other money in place of, the amount which should have been repaid.
- 19.4 This clause survives the expiration or early termination of this Agreement.

20. INDEMNITY

- 20.1 To the extent permitted by Law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Participant under or in connection with this Agreement.
- 20.2 The Participant agrees to indemnify the Commonwealth, its officers, employees and agents from and against any:
- (a) loss or liability incurred by the Commonwealth;
 - (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 Participant or the Participant Personnel in connection with this Agreement, where there was fault (including, any negligent or otherwise tortious act or omission) on the part of the person whose conduct gave rise to that liability, loss, damage or expense; or
 - (e) any breach by the Participant of its obligations or warranties under this Agreement.
- 20.3 The Participant's liability to indemnify the Commonwealth under clause 20.2 will be reduced proportionately to the extent that any negligent or other tortious act or omission of the Commonwealth contributed to the relevant liability, loss, damage, or expense.
- 20.4 The right of the Commonwealth to be indemnified under this clause:
- (a) is in addition to, and not exclusive of, any other right, power or remedy provided by Law; and
 - (b) does not entitle the Commonwealth to be compensated in excess of the amount of the relevant liability, loss, damage, or expense.

20.5 The Participant agrees that the Commonwealth will be taken to be acting as agent or trustee for and on behalf of its officers, employees and agents from time to time.

20.6 This clause survives the expiration or early termination of this Agreement.

21. INSURANCE

21.1 The Participant warrants that it has taken out or will take out, and will maintain for the period specified in clause 21.2 or 21.3 as applicable, all appropriate types and amounts of insurance to cover the Participant's obligations under this Agreement, including those which survive its expiration or early termination, which insurance must include the types and corresponding amounts of insurance specified in Item J.

21.2 If the Participant takes out a 'claims made policy', which requires all claims and any fact situation or circumstance that might result in a claim to be notified within the period of insurance, the Participant must maintain the policy during the term of this Agreement and a policy in like terms for 7 years after the expiry or early termination of this Agreement.

21.3 If the Participant takes out an 'occurrence' policy, which requires the circumstances to which a claim relates to occur during the period of insurance whilst the notification of event can occur at any time subsequently, the Participant must maintain the policy during the term of this Agreement.

21.4 The Participant must, on request, promptly provide to the Commonwealth any relevant insurance policies or certificates of currency for inspection.

21.5 This clause survives the expiration or early termination of this Agreement.

22. CONFIDENTIALITY

22.1 The Participant agrees not to disclose to any person other than the Commonwealth any Confidential Information relating to this Agreement or the Project without prior approval in writing from the Commonwealth.

22.2 The Commonwealth may impose any conditions it considers appropriate when giving its approval under clause 22.1 and the Participant agrees to comply with those conditions.

22.3 The Commonwealth may at any time by notice in writing to the Participant, require the Participant to give, and to arrange for the Participant Personnel to give, written undertakings, in a form required by the Commonwealth, relating to the non-disclosure of Confidential Information.

22.4 If the Participant receives a request under clause 22.3, it agrees to promptly arrange for all such undertakings to be given.

22.5 The obligations on the Participant under this clause will not be taken to have been breached where the information referred to is required by Law to be disclosed.

22.6 The Commonwealth gives no undertaking to treat Participant information, or this Agreement, as confidential. The Participant acknowledges that the Commonwealth may disclose information relevant to this Agreement, or this Agreement itself, to any person:

- (a) to the extent required by Law or by a lawful requirement of any government or governmental body, authority or agency;
- (b) if required in connection with legal proceedings;
- (c) for public accountability reasons, including disclosure on request to other Government Agencies, and a request for information by Parliament or a Parliamentary Committee or a Commonwealth Minister; or
- (d) for any other requirement of the Commonwealth.

22.7 The obligations contained in this clause are in addition to those specified in clause 24 and will survive the expiration or early termination of this Agreement.

23. ACCESS TO DOCUMENTS

23.1 In this clause, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982*.

23.2 This clause only applies if this is a contract which complies with the description of 'Commonwealth contract' in the *Freedom of Information Act 1982*.

23.3 Where the Commonwealth has received a request for access to a document created by or in the possession of, the Participant or any subcontractor that relates to the performance of this Agreement (and not to the entry into the Agreement), the Commonwealth may at any time by written notice require the Participant to provide the document to the Commonwealth and the Participant must, at no additional cost to the Commonwealth, promptly comply with the notice.

23.4 The Participant must include in any subcontract relating to the performance of this Agreement provisions that will enable the Participant to comply with its obligations under this clause.

24. PROTECTION OF PERSONAL INFORMATION

23.1 The Participant must, in conducting the Project:

- (a) not do any act or engage in any practice which if done or engaged in by the Commonwealth, would be a breach of an Information Privacy Principle;
- (b) not use or disclose Personal Information collected for direct marketing purposes that would be a breach of section 16F of the *Privacy Act 1988* (Cth);
- (c) comply with any directions, guidelines, determinations or recommendations of the Commonwealth to the extent that they are consistent with the Information Privacy Principles; and
- (d) comply with the obligations in the National Privacy Principles 7 to 10 (to the extent they apply to the Participant).

23.2 The Participant must notify the Commonwealth immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause.

23.3 If the Participant provides a health, or health-related, service to an individual, the Participant must:

- (a) comply with the National Privacy Principles in relation to the use and disclosure of health, health-related information or other 'sensitive information' (as defined in the *Privacy Act 1988* (Cth)) about the individual;
- (b) transfer health or health-related information to another health or health-related service provider when the Commonwealth directs the Participant to do so ; and
- (c) inform the individual:
 - (i) in the form required by the *Privacy Act 1988* (Cth); and
 - (ii) at the time the information is collected,

that the information may be disclosed to a new health or health-related service provider if required by the Commonwealth.

25. CONFLICT OF INTEREST

- 25.1 The Participant warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Agreement no Conflict exists or is likely to arise in the performance of obligations under this Agreement by the Participant, or by the Participant Personnel.
- 25.2 If during the Agreement Period, a Conflict arises, or appears likely to arise, in respect of the Participant or any of the Participant Personnel, the Participant must:
 - (a) immediately notify the Commonwealth in writing of the Conflict making a full disclosure of all relevant information relating to the Conflict and setting out the steps the Participant proposes to take to resolve or otherwise deal with the Conflict; and
 - (b) take such steps as have been proposed by the Participant, or at the discretion of the Commonwealth, take such steps as the Commonwealth may reasonably require to resolve or otherwise deal with the Conflict.
- 25.3 If the Participant fails to notify the Commonwealth under this clause, or is unable or unwilling to resolve or deal with the Conflict as required, the Commonwealth may terminate this Agreement in accordance with clause 18.1(a), (b) or (d).
- 25.4 The Participant agrees that it will not, and will use its best endeavours to ensure that any Participant Personnel do not, engage in any activity or obtain any interest during the course of this Agreement that is likely to conflict with or restrict the Participant in performing the Project fairly and independently.

26. COMPLIANCE WITH LAW AND POLICIES

- 26.1 The Participant must, in carrying out this Agreement, comply with:
 - (a) the provisions of any Law including the *Crimes Act 1914*, *Criminal Code Act 1995*, *Racial Discrimination Act 1975*, *Sex Discrimination Act 1984*, *Disability Discrimination Act 1992*, *Equal Opportunity for Women in the Workplace Act 1999*, *Age Discrimination Act 2004*, *Ombudsman Act 1976* and *Auditor-General Act 1997*;
 - (b) any policies notified to the Participant in writing, or listed in Item K.

- 26.2 The Participant acknowledges that under section 137.1 of the Schedule to the *Criminal Code Act 1995*, giving false or misleading information to the Commonwealth is a serious offence.
- 26.3 Without limiting the effect of clause 17, the Participant must comply with, and require Participant Personnel to comply with, the behaviours specified in the Code of Conduct in section 13 of the *Public Service Act 1999*.
- 26.4 Subject to clauses 22 and 24, no right or obligation in this Agreement is to be read or understood as limiting the Participant's rights to enter into public debate or criticism of the Commonwealth, its agencies, officers, employees or agents.

27. DISPUTE RESOLUTION

- 27.1 Subject to clause 27.3, the Parties agree not to commence any legal proceedings in respect of any dispute arising under this Agreement which has not been resolved by informal discussion, until the procedure provided by this clause has been followed.
- 27.2 The Parties agree that any dispute arising during the course of this Agreement will be 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, including by referring the matter to persons who have authority to intervene and direct some form of resolution;
 - (c) the Parties have 10 Business Days from the date of the notice to reach a resolution or to agree that the dispute is to be submitted to mediation or some alternative dispute resolution procedure; and
 - (d) if:
 - (i) there is no resolution of the dispute;
 - (ii) there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
 - (iii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 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.
- 27.3 This clause does not apply to the following circumstances, where:
- (a) either Party commences legal proceedings for urgent interlocutory relief;
 - (b) action is taken by the Commonwealth under, or purportedly under, clauses 3, 13, 18 or 19; or
 - (c) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the Law by the Participant.

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

28. PARTICIPANT WARRANTIES AND UNDERTAKINGS

28.1 The Participant represents, warrants and undertakes to the Commonwealth that:

- (a) within five business days it will notify and fully disclose to the Commonwealth in writing any event or occurrence actual or threatened arising during the Agreement Period which could have an adverse effect on the Participant's ability to perform any of its obligations under this Agreement;
- (b) it has full power and authority to enter into, perform and observe its obligations under this Agreement;
- (c) the execution, delivery and performance of this Agreement has been duly and validly authorised by the Participant;
- (d) it will within five business days notify and fully disclose to the Commonwealth in writing if
 - (i) it becomes insolvent or is wound up;
 - (ii) it makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or has a receiver, manager or administrator appointed on behalf of creditors;
 - (iii) it goes into liquidation or passes a resolution to go into liquidation, or becomes subject to any petition or proceedings in a court for its compulsory winding up or becomes subject to the supervision of a court or regulatory authority, either voluntarily or otherwise;
 - (iv) it suffers any execution against its assets;
 - (v) anything analogous to, or of a similar effect to anything described above under the Law occurs in respect of the Participant;
- (e) the unconditional execution and delivery of, and compliance with its obligations by it under this Agreement do not:
 - (i) contravene any Law to which it or any of its property is subject or any order or directive from a Government Agency binding on it or any of its property;
 - (ii) contravene its constituent documents;
 - (iii) contravene any agreement or instrument to which it is a party;
 - (iv) contravene any obligation of it to any other person; or
 - (v) require it to make any payment or delivery in respect of any financial indebtedness before the scheduled date for that payment or delivery;

- (f) no litigation, arbitration, mediation, conciliation or proceedings including any investigations, are taking place, pending, or are threatened against the Participant which could have an adverse effect upon either the Participant's capacity to perform its obligations under this Agreement or the Participant's reputation;
 - (g) unless otherwise disclosed in this Agreement, it is not entering into this Agreement as trustee of any trust or settlement;
 - (h) it has not made any false declaration in respect of any current or past dealings with the Commonwealth or any Government Agency, including in any tender or application process or in any agreement;
 - (i) it has had no significant deficiency in the performance of any substantive requirement or obligation under any prior agreement with the Commonwealth or any Government Agency;
 - (j) it has, and will continue to have and to use, the skills, qualifications and experience, to perform the Project in an efficient and controlled manner with a high degree of quality and responsiveness and to a standard that complies with this Agreement;
 - (k) it has and will continue to have the necessary resources, including financial resources, to perform the Project and will use those resources to perform the Project.
- 28.2 The Participant acknowledges that the Commonwealth in entering into this Agreement is relying on the warranties and representations contained in this Agreement.
- 28.3 Each representation and warranty survives the execution of this Agreement.

29. NOTICES

- 29.1 A Party giving notice under this Agreement must do so in writing that is:
- (a) directed to the Party's address specified in Item G marked for the attention of the Liaison Officer; and
 - (b) hand delivered or sent by pre-paid post or facsimile to that address.
- 29.2 A notice given in accordance with clause 29.1 is received:
- (a) if hand delivered, on delivery;
 - (b) if sent by pre-paid post, on the third Business Day after the date of posting;
 - (c) if sent by facsimile, at the time the sender receives notification that the notice has been transmitted satisfactorily.

SCHEDULE

A. PROJECT, AIM OF THE PROJECT and SUBCONTRACTORS

The Participant operates one of two Prescription Exchange Services (PES) in Australia. The other is operated by MediSecure Pty Ltd.

The Department wants to significantly improve the uptake and use of electronic prescriptions¹. Currently, if a prescriber lodges an electronic prescription for a patient with a PES, patients may be able to have their prescription downloaded by a pharmacy through the pharmacy accessing the PES. However, this occurs only where the pharmacy software connects to the PES where the prescription was lodged by the prescriber. There is currently no connection between the two PESs to enable a pharmacy connected to one PES to access electronic prescriptions held by the other.

Supporting the uptake and use of electronic prescriptions is a significant policy component of the Fifth Community Pharmacy Agreement. It aims to improve the quality use of medicines through supporting the use of electronic transfer of prescriptions. The expected outcome is that the prescriber provides an electronic prescription that is accessible by pharmacies so that they do not have to re-key the information, leading to a reduction in transcription errors. The policy is forecast to have broad improvements to healthcare, in particular medication management which will reduce unnecessary burden on the health system, as well as providing for a general workload reduction for both prescribers and dispensers (pharmacies).

A key component of this policy is the payment of an "Electronic Prescription Fee" (EPF) which is being used in the early years to defray part of the costs to pharmacy associated with accessing or downloading and electronic prescription. The value of the EPF is set through consultation with the Pharmacy Guild of Australia (which is a signatory to the Fifth Community Pharmacy Agreement with the Australian Government).

¹ The Fifth Community Pharmacy Agreement definition of an electronic prescription applies: "An 'electronic prescription' means an electronic prescription which is generated in accordance with a process by which a prescription is electronically generated by a prescriber, authenticated (electronically signed), securely transmitted (either directly or indirectly) for dispensing and supply, seamlessly integrated into the pharmacy dispensing software and, in the case of Pharmaceutical Benefits Scheme (PBS) prescriptions, is available to be electronically sent to Medicare Australia for claiming purposes. This definition does not preclude the use of paper-based processes to support ePrescribing activity."

The success of the policy is measured by the uptake and use of electronic prescriptions, with all eligible electronic prescriptions² attracting a payment of the EPF to the pharmacy. A PES vendor charges pharmacies based on the number of electronic prescriptions and repeats transferred through its service. Currently this charge is 15 cents, the same as the EPF. This charge is currently paid to the relevant PES and a proportion is subsequently paid onto partner vendors of pharmacy and general practitioner desktop software by the PES based on agreements between the PES and the other vendors involved in the electronic prescription supply chain.

The number of eligible electronic prescriptions for 2011-12 is less than expected. Early analysis has revealed that there are large numbers of electronic prescriptions being lodged to the PES by prescribers, but the number being downloaded by dispensers is quite low. The main cause identified is that the patient presents to a pharmacy which is not connected to the PES containing the electronic prescription.

The purpose of this Project is to allow electronic prescriptions to be accessed by all pharmacies regardless of which PES the electronic prescription was lodged with. To achieve this outcome, the Participant and MediSecure Pty Ltd must work together, and share all information necessary, to create interoperability between their systems to achieve interim interoperability³ by no later than 24 December 2012 in advance of conformance with Australian Technical Specifications for the Electronic Transfer of Prescriptions (ETP).

Full PES interoperability, conformant with Australian Technical Specifications for the Electronic Transfer of Prescriptions, and subsequent Australian Standards, will follow the completion of this Project.

This Agreement facilitates this work by providing for:

- a capital investment contribution; and

² An 'eligible electronic prescription' means:

- it is a PBS or RPBS prescription (including prescriptions for items priced below the maximum general patient contribution as defined in the *National Health Act 1953*) dispensed by an approved supplier that is generated electronically in accordance with the process described in the definition of 'electronic prescription' contained in this Schedule and with the National eHealth Transition Authority specification for the Electronic Transfer of Prescriptions, or
 - a repeat authorisation and/or a deferred supply authorisation:
 - downloaded from a PES; and
 - related to an original electronic prescription satisfying (a)
- and
- the electronic prescription is processed through a Prescription Exchange Service; and
 - if the electronic prescription relates to an item priced below the maximum General patient contribution as defined in the *National Health Act 1953*, the following information in the electronic prescription has been validated and, if necessary, corrected by the approved supplier:
 - the patient's name;
 - the patient's Medicare number;
 - information about the prescription (including the date of prescribing and supply, the PBS code number, the drug name and form, the quantity dispensed and the number of repeats);
 - the prescriber approval number; and
 - the approved supplier number.

³ Interim interoperability is defined in clause 1 of the Agreement: it means that PESs are able to exchange electronic prescriptions by no later than 24 December 2012. This is prior to conformance with Australian Technical Specifications for Electronic Transfer of Prescriptions interoperability provisions.

- direct per eligible electronic prescription payments (the “PES Electronic Prescription Fee” (PEPF)) to PESs.

Under an interoperable environment PESs will be able to share prescriptions and repeats. The EPF is currently paid to the pharmacy which then pays the PES which held the downloaded prescription. The Participant must negotiate with MediSecure Pty Ltd an acceptable “Inter-PES Transaction Fee” to ensure that the PEPF is appropriately apportioned in circumstances where different PESs hold the original electronic prescription and connect to the pharmacy that dispenses the prescription.

The Participant warrants that no personal data will be used for any purpose other than the transmission of the electronic prescription in accordance with the *Commonwealth Privacy Act 1998* and associated *National Privacy principles*.

A Project Steering Committee will be established by the Department to monitor the progress of this Project. The Participant must attend and provide progress reports to each of these meetings. The Committee will convene monthly commencing July 2012.

B. BUDGET

The total Budget available for this Project is \$9,681,460 (GST inclusive for capital investment contribution) as follows:

B1. Capital investment contribution

An amount of \$1,320,000 (GST inclusive⁴) is payable to the Participant and MediSecure Pty Ltd (\$660,000 each (GST inclusive)) as a capital investment to achieve interim interoperability with each other in accordance with the Project Plan. This includes the standardisation of the format and positioning of the barcodes on the original prescriptions and a mechanism for facilitating the Inter-PES Transaction Fee.

The Participant is accountable for the use of this funding and must provide budget information as part of the Project Plan including, but not limited to the following categories: Salaries, Administration, Solution Testing and Vendor desktop development.

B2. PES Electronic Prescription Fee (PEPF)

An amount of \$8,361,460 (GST exclusive⁵) (the Amount) in total is available to both the Participant and MediSecure Pty Ltd as a PEPF. The Department will make payments to the Participant (and MediSecure Pty Ltd) for eligible electronic prescriptions until this Amount is fully expended.

⁴ GST is payable for the capital investment contribution as the participant (PES) is providing a service to the Commonwealth.

⁵ GST is not payable for PES Electronic Prescription Fee as it is an incentive payment and no service is provided to the Commonwealth.

The PEPF⁶ will be paid to the Participant on the following basis:

- 85 cents (GST exclusive) per eligible electronic prescription downloaded from eRx and dispensed from 1 July 2012 to 31 December 2012 and 35 cents (GST exclusive) per eligible electronic prescription downloaded from eRx dispensed from 1 January 2013 to 30 June 2013; or
- until the Amount of \$8,361,460 (GST exclusive) is fully expended (whichever is the earlier).

Payments will be made for prescriptions which have been assessed and completed for claiming by DHS Medicare. There is a delay of up to three months to complete this. This lag will be addressed by the payment in arrears process continuing at the relevant rate until all eligible electronic prescriptions dispensed have reached Status 14 (or 31 March 2013 for those paid the 85 cent PEPF, and 30 September 2013 for those paid the 35 cent PEPF).

This global amount of \$8,361,460 (GST exclusive) is available for access by both PESs and cannot be exceeded. Therefore, if this Amount is reached, no further payment of the PEPF will be made to either PES. The Participant is still required to meet all requirements and obligations specified within this Funding Agreement.

C. PROJECT PERIOD

The Project Period commences from the date of this Agreement and will end on 30 September 2013⁷.

D. REPORTS

The reporting requirements are detailed in the following table:

Due Date	Period covered by Report	Deliverables	Payment attached to acceptance of deliverable
By 30 June 2012	n/a	This Funding Agreement signed and executed	\$220,000 (GST inclusive initial capital investment contribution)
By 20 July 2012	n/a	Project Plan	\$0
7 August 2012	1 July 2012 to 31 July 2012	Script Volume Report	Volume of eligible electronic prescriptions multiplied by \$0.85 (GST exclusive) per script
7 September 2012	1 August 2012 to 31 August 2012	Script Volume Report	Volume of eligible electronic prescriptions multiplied by \$0.85 (GST exclusive) per script

⁶ The 85 cent/35 cent PEPF will be paid to the PES that downloads the electronic prescription and if one PES accesses the other PES then the appointment of the fee between the two is to be agreed between the PESs (ie. the Government does not pay 85 cents/35 cents to each PES, it only pays to one which would be shared with the other).

⁷ The Project Period of 30 September 2013 extends beyond the PEPF qualifying period of 30 June 2013 because, for the purpose of this Agreement, there is a three month lag between the date of dispense and availability of DHS Status 14 completed prescription data. The Department will therefore make PEPF payments for electronic prescriptions which are eligible for the PEPF until 30 September 2013.

Due Date	Period covered by Report	Deliverables	Payment attached to acceptance of deliverable
7 October 2012	1 September 2012 to 30 September 2012	Script Volume Report	Volume of eligible electronic prescriptions multiplied by \$0.85 (GST exclusive) per script
7 October 2012	1 July 2012 to 30 September 2012	First Progress Report and evidence that interim interoperability build and delivery is on track with the agreed plan. (Provision of evidence that interoperability specifications have been developed and evidence of PES solution testing will satisfy this requirement).	\$220,000 (GST Inclusive capital investment contribution)
7 November 2012	1 October 2012 to 31 October 2012	Script Volume Report	Volume of eligible electronic prescriptions multiplied by \$0.85 (GST exclusive) per script
7 December 2012	1 November 2012 to 30 November 2012	Script Volume Report	Volume of eligible electronic prescriptions multiplied by \$0.85 (GST exclusive) per script
7 January 2013	1 December 2012 to 31 December 2012	Script Volume Report	Volume of eligible electronic prescriptions multiplied by \$0.85 (GST exclusive) per script
7 January 2013	1 October 2012 to 24 December 2012	Second Progress Report including evidence that the Participant has achieved interim interoperability with MediSecure Pty Ltd. This Report will include: <ul style="list-style-type: none"> • a certificate of testing; • a statement of assurance that the Participant has proven in production that the system interoperates as required by the Agreement; and • certification that 	\$220,000 (GST inclusive capital investment contribution)

Due Date	Period covered by Report	Deliverables	Payment attached to acceptance of deliverable
		interoperability has been achieved with MediSecure Pty Ltd.	
7 February 2013	1 January 2013 to 31 January 2013	Script Volume and Inter-PES Transaction Log Reports	Volume of eligible electronic prescriptions multiplied by \$0.35 (GST exclusive) per script
7 March 2013	1 February 2013 to 28 February 2013	Script Volume and Inter-PES Transaction Log Reports	Volume of eligible electronic prescriptions multiplied by \$0.35 per script
7 April 2013	1 March 2013 to 31 March 2013	Script Volume and Inter-PES Transaction Log Reports	Volume of eligible electronic prescriptions multiplied by \$0.35 (GST exclusive) per script
7 April 2013	1 January 2013 to 31 March 2013	Third Progress Report	\$0
7 May 2013	1 April 2013 to 30 April 2013	Script Volume and Inter-PES Transaction Log Reports	Volume of eligible electronic prescriptions multiplied by \$0.35 (GST exclusive) per script
7 June 2013	1 May 2013 to 31 May 2013	Script Volume and Inter-PES Transaction Log Reports	Volume of eligible electronic prescriptions multiplied by \$0.35 (GST exclusive) per script
22 June 2013	1 June 2013 to 15 June 2013	Script Volume and Inter-PES Transaction Log Reports	Volume of eligible electronic prescriptions multiplied by \$0.35 (GST exclusive) per script
7 July 2013	1 April 2013 to 30 June 2013	Fourth Progress Report	\$0
31 August 2013	Date of this Funding Agreement to 30 June 2013	Draft Final Report	\$0
30 September 2013	Date of this Funding Agreement to 30 June 2013	Final Report	\$0

Project Plan

The Project Plan describes the work that will be undertaken to achieve interim interoperability between the Participant and MediSecure Pty Ltd. It is to be based on Attachment 1 to the Schedule to this Agreement, the *ETP Interoperability Solution Package V1.01- 26/04/2012* dated 26 April 2012 and must contain:

- project objectives including:
 - the activity and timeframe to achieve interim system interoperability;
 - a process for documenting compliance with Fifth Community Pharmacy Agreement privacy and security requirements;

- development of an Inter-PES Transaction Log to report on the number of electronic prescriptions and electronic repeats (PEPF eligible and total in each case) accessed from MediSecure Pty Ltd; and
- development of an Inter-PES Transaction Fee process;
- a description of the work required to specifically address the following:
 - the Scope statements at pages 8 and 9 and associated process flows included in the Supported Business Processes on pages 12 to 15 and the Technology View on pages 16 to 18;
 - the Participant taking on accountability for the dependencies listed on pages 9 and 10; and
 - the Technology View on pages 16 to 18;
- a process to enable the Participant, MediSecure Pty Ltd and the Department to develop and agree a process to achieve and demonstrate interim interoperability, within 28 days of commencement of the Project, upon which the second payment milestone will be agreed;
- project schedule including timeframes and key technical and operational milestones;
- estimated cost to achieve each milestone;
- the Participant's financial contribution to the project (including size and timing);
- management and governance arrangements (including type and frequency);
- scope for testing and verifying interoperability;
- clear protocols as to how the Participant will share information with MediSecure Pty Ltd;
- how the Participant plans to establish an Inter-PES Transaction Log and implement a mechanism for facilitating the Inter-PES Transfer Fee with MediSecure Pty Ltd; and
- a risk plan, which specifies each identified risk, the likelihood of the risk occurring, the consequence if the risk occurs and suitable remedies to address the risk if it occurs.

The Project Plan must be provided in hard copy and electronically in Microsoft Word and/or Excel.

Script Volume and Inter-PES Transaction Log Reports

Script volume reports provide a detailed list of electronic prescriptions that the Participant has processed for the relevant month. They must include:

- the number of electronic prescriptions lodged by prescribers to eRx disaggregated by PBS/RPBS and private;
- the number of electronic prescriptions downloaded by suppliers disaggregated by PBS/RPBS and private; and
- the number of electronic prescriptions that were downloaded from MediSecure Pty Ltd and dispensed, disaggregated by PBS/RPBS and private.

Script Volume Reports and Inter-PES Transaction Log Reports must be provided in hard copy and electronically in Microsoft Word and/or Excel.

These reports will be used by the Department to compare with Department of Human Services – Medicare (DHS) data and to monitor interoperability incidence.

The Department will make monthly in arrears PEPF payments for eligible electronic prescriptions that have been assessed as complete (Status 14) by DHS and only on the basis of data obtained from DHS.

Progress Reports

In addition to the requirements under Clause 11.3, Progress Reports must contain:

- detailed information against each element of the Project Plan and its current status;
- an explanation for any delays or changes to the Project Plan and a description of the steps taken to remedy any delays or problems;
- a report against the Budget, including a detailed breakdown of Funds against each line item in the Budget (Item B of this Schedule);
- a statement confirming the total amount of Funds received, the total spent and committed at the date of the Progress Report, and the current balance of Funds; and
- any other information as required from time to time by the Department.

Progress Reports must be provided in hard copy and electronically in Microsoft Word and/or Excel.

Draft Final Report

The Draft Final Report provides the Department with an opportunity to comment on the Final Report prior to it being finalised. In addition to the requirements under Clause 11.4, the Draft Final Report must also have regard to the Final Report requirements as detailed under Item D of this Schedule.

The Draft Final Report must be provided in hard copy and electronically in Microsoft Word and/or Excel.

Final Report

In addition to the requirements under Clause 11.4, the Final Report must take into account any comments made by the Department on the Draft Final Report. It must also contain:

- a testing completion certificate and certification from MediSecure Pty Ltd that the Participant has achieved interim interoperability with MediSecure Pty Ltd;
- detailed information against all elements of the Project Plan and other activities undertaken to meet Project objectives;
- an explanation for any delays or changes to the Project Plan and a description of the steps taken to remedy any delays or problems;
- detailed financial expenditure reporting against each Budget item as outlined at Item B of this Schedule; and
- any other information as requested by the Department.

The Final Report must be provided in hard copy and electronically in Microsoft Word and/or Excel.

E. FUNDS AND INVOICE REQUIREMENTS

The total Budget for this Agreement is up to \$9,021,460 (GST inclusive for capital investment contribution) and is payable as follows:

- up to \$660,000 (GST inclusive) for capital investment contribution; and
- up to \$8,361,460 (GST exclusive) for PEPF payments based on the volume of eligible electronic prescriptions completed by DHS (subject to funding parameters explained in Item B).

Capital investment contribution

The capital investment contribution payments will be payable as follows:

When	Amount (GST inclusive)
Upon signing and executing this Funding Agreement	\$220,000
Acceptance by the Department of the First Progress Report and evidence that interim interoperability build and delivery is on track in accordance with the Agreement (evidence of PES solution testing will satisfy this requirement).	\$220,000
Acceptance by the Department of the Second Progress Report including evidence and certification from MediSecure Pty Ltd that the Participant has achieved interim interoperability with MediSecure Pty Ltd.	\$220,000

PES Electronic Prescription Fee (PEPF)

The PEPF payments will be made monthly, in arrears, for the 12 month period July 2012 to June 2013.

The total monthly payment for each month will be calculated by the Department as follows:

(the rate of payment per eligible prescription) x (the number of eligible electronic prescriptions dispensed by a supplier and subsequently completed by DHS for the month in question⁸).

DHS Medicare will advise the Department of the number of eligible electronic prescriptions that it completed for the Participant for the month in question.

The payment rates per eligible prescription are as follows:

- for six months from 1 July 2012 to 31 December 2012 the rate per eligible electronic prescription will be \$0.85; and
- for six months from 1 January 2013 to 30 June 2013 the rates per eligible electronic prescription will be \$0.35.

PEPF payments will be made in line with the reporting requirements detailed in Item D of this Schedule. A payment will only be made when the corresponding deliverable (and its related report) has been accepted by the Department.

In addition, the Department may at any time conduct a review of the Participant's financial viability. If the report on the Participant's financial viability indicates that the

⁸ As noted in Footnote 3, there is a processing lag in finalising pharmacy claims. For purposes of this Agreement there is a three month lag between date of dispense and availability of DHS Status 14 completed prescription data. The Department will continue to make PEPF payments for electronic prescriptions which are eligible for the PEPF until 31 September 2013 to ensure a PEPF is paid for all eligible electronic prescriptions dispensed in each month and subsequently finalised by DHS.

Participant is not financially viable, then the Department may, at its sole discretion, withhold any or all further payments under this Funding Agreement.

An invoice must be issued to the Department by the Participant once the Department advises the Participant in writing that it accepts the deliverable. The due date for payment is 14 days after receipt of a correctly rendered invoice by the Department.

A correctly rendered invoice is one that contains:

- the name of the Project;
- the name of the Commonwealth Liaison Officer;
- a claim for the amount of the Funds properly required; and
- a tax invoice showing the GST amount.

F. PROJECT MATERIAL and EXISTING MATERIAL

Project Plan
Script Volume Reports
Inter-PES Transaction Logs
Progress Reports
Draft Final Report
Final Report

G. LIAISON OFFICERS

Commonwealth's Liaison Officer

The Commonwealth's Liaison Officer is the person holding, occupying or performing the duties of Director, eHealth and Quality Use of Medicines. This position is currently occupied by David Reddy available at the following address:

Physical Address:

Department of Health and Ageing
Level 9, Sirius Building
23 Furzer Street
WODEN ACT 2606

Postal Address:

Department of Health and Ageing
Mail Drop Point 953
GPO Box 9848
CANBERRA ACT 2601

Phone: 02 6289 2341

Email: David.Reddy@health.gov.au

The Participant's Liaison Officer is Paul Naismith, available at the following address:

Physical Address:

20 Trenerry Crescent
Abbotsford Victoria 3067

Phone: 03 9418 1876

Email: paul.naismith@fred.com.au

H. ACKNOWLEDGEMENT

The Participant must acknowledge the Commonwealth Government as the source of funds for this project.

Unless otherwise agreed, all materials, reports, etc for this project must contain the following acknowledgement:

This project is funded by the Australian Government Department of Health and Ageing.

The logo of the Australian Government Department of Health and Ageing must:

- appear prominently on
 - all project material and reports; and
 - any other materials, products, processes or inventions to which clause 15.1 applies.
- be prominently displayed at any public announcements or activities to which clause 15.1 applies, or as otherwise directed by the Department.

Use of the logo must be in accordance with the Australian Government Branding Design Guidelines which are available on the website:

www.dpmc.gov.au/guidelines/index.cfm

I. ASSETS

Nil.

J. INSURANCE

The Participant must effect and maintain all appropriate types of insurance including but not limited to:

- professional indemnity insurance to a minimum value of \$10 million per claim;
- public liability insurance to a minimum of \$10 million per claim;
- workers compensation insurance to the value set by the relevant legislation; and
- insurance over the Assets required pursuant to this Funding Agreement for their full replacement value.

K. COMPLIANCE WITH LAWS AND POLICIES

The Participant must comply with the requirements outlined in clause 26.

L. GUIDELINES AND STANDARDS

Nil.

This Funding Agreement is **SIGNED** as an agreement.

SIGNED for and on behalf of the **COMMONWEALTH OF AUSTRALIA** acting through the Department of Health and Ageing ABN 83 605 426 759 on:

29 June 2012
Date

by:

B. JANZ
Printed name of signatory

Bj
Signature

As Pharmaceutical Programs Support Act.
Position of signatory

in the presence of:

Jennifer Steer
Printed name of witness

JMS
Signature of witness

SIGNED by

FRED IT Group Pty Ltd as represented by **eRx Script Exchange Pty Ltd**
ABN 68 109 546 901 on:

29/06/2012
Date

by:

PAUL NAISMITH
Printed name of Director

Paul Naismith
Signature of Director

and:

ANTHONY JOHNSTON
Printed name of Director/Secretary

Anthony Johnston
Signature of Director/Secretary

eRx Script Exchange Pty Ltd Authorisation Application

ANNEXURE C

A. DESCRIPTION OF RELEVANT MARKET AND PARTICIPANTS

eRx Script Exchange Pty Ltd (the applicant for authorization) and MediSecure Pty Ltd operate the two Prescription Exchange Services (**PESs**) which exist today in Australia. The market in which they operate is best described as the market for the provision of electronic (i.e. computerized) services for the communication of prescription information between prescribers (usually doctors), their patients and the pharmacies where the overwhelming majority of pharmaceutical prescriptions are dispensed. These services consist of sophisticated computer systems, programs and equipment which is designed to ensure seamless, reliable and private communication of prescription information, which is naturally of great importance to the patients concerned (effectively all Australians, since everyone has prescriptions).

B. PUBLIC BENEFITS OF THE PROPOSED ARRANGEMENTS

The Commonwealth Department of Health and Ageing has announced that it is an important priority to significantly improve the uptake and use of electronic prescriptions in Australia¹. Currently, if a prescriber (usually a doctor) lodges an electronic prescription for a patient with a PES, the patient may be able to have their prescription downloaded by a pharmacy through the pharmacy accessing the PES. However, this occurs only where the pharmacy software connects to the particular PES where the prescription was lodged by the prescriber. There is currently no interconnection between the computer systems operated by the two PESs to enable a pharmacy connected to one PES to access electronic prescriptions which are held by the other (if the pharmacy is not also connected to the other PES, which is the usual case).

¹ The Fifth Community Pharmacy Agreement definition of an electronic prescription states: "An 'electronic prescription' means an electronic prescription which is generated in accordance with a process by which a prescription is electronically generated by a prescriber, authenticated (electronically signed), securely transmitted (either directly or indirectly) for dispensing and supply, seamlessly integrated into the pharmacy dispensing software and, in the case of Pharmaceutical Benefits Scheme (PBS) prescriptions, is available to be electronically sent to Medicare Australia for claiming purposes. This definition does not preclude the use of paper based processes to support ePrescribing activity."

Supporting the uptake and use of electronic prescriptions is a significant policy priority of the Commonwealth's Fifth Community Pharmacy Agreement². The Commonwealth aims to improve the quality use of medicines through supporting the use of electronic transfer of prescriptions via the PESs. The expected outcome is that prescribers will provide an electronic prescription that is accessible by all pharmacies so that they do not have to re-key the information, leading to a reduction in transcription errors. The policy is expected to result in broad improvements to healthcare in Australia, in particular medication management, which will reduce unnecessary burdens on the Australian health system caused by errors in prescription dispensing, as well as eliminating pharmaceutical wastage and providing for a general workload reduction for both prescribers and dispensers (pharmacies).

A key component of the implementation of the Commonwealth's policy is the payment of an "Electronic Prescription Fee" (EPF) which will be used in the early years to defray part of the costs to pharmacies associated with accessing or downloading electronic prescriptions. The amount of the EPF is set by the Commonwealth following consultation with the Pharmacy Guild of Australia (which is a signatory to the Fifth Community Pharmacy Agreement with the Australian Government).

The success of the policy is measured by the uptake and use of electronic prescriptions, with all eligible electronic prescriptions³ attracting a payment of the EPF to the pharmacy. A PES vendor charges pharmacies based on the number of electronic prescriptions and repeats

²See

[http://www.health.gov.au/internet/main/publishing.nsf/Content/CF66BFC540B84BBBCA2578AA007DDC84/\\$File/5CPA%20Agreement%2005%20August%202010.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/CF66BFC540B84BBBCA2578AA007DDC84/$File/5CPA%20Agreement%2005%20August%202010.pdf)

³

An 'eligible electronic prescription' means:

- (a) it is in PBS or RPBS prescription (including prescriptions for items priced below the maximum general patient contribution as defined in the *National Health Act 1953*) dispensed by an approved supplier that is generated electronically in accordance with the process described in the definition of 'electronic prescription' contained in this Schedule and with the National eHealth Transition Authority specification for the Electronic Transfer of Prescriptions, or
 - (b) in repeat authorisation and/or a deferred supply authorisation:
 - (i) downloaded from a PES; and
 - (ii) related to an original electronic prescription satisfying (a)
- and
- (c) the electronic prescription is processed through a Prescription Exchange Service; and
 - (d) if the electronic prescription relates to an item priced below the maximum General patient contribution as defined in the *National Health Act 1953*, the following information in the electronic prescription has been validated and, if necessary, corrected by the approved supplier:
 - (i) the patient's name;
 - (ii) the patient's Medicare number;
 - (iii) information about the prescription (including the date of prescribing and supply, the PBS code number, the drug name and form, the quantity dispensed and the number of repeats);
 - (iv) the prescriber approval number; and
 - (v) the approved supplier number.

transferred through its service. Currently this charge is 15 cents, the same as the EPF. This charge is currently paid to the relevant PES and a proportion is subsequently paid by the PES onto partner vendors of pharmacy and general practitioner desktop software, based on agreements between the PES and the other vendors involved in the electronic prescription supply chain.

The number of eligible electronic prescriptions for 2011-12 was less than expected. Early analysis has revealed that there are large numbers of electronic prescriptions being lodged to the PES by prescribers (doctors), but the number being downloaded by dispensers (pharmacies) is quite low. The main cause identified is that the patient presents to a pharmacy which is not connected to the particular PES containing the relevant electronic prescription.

C. The Commonwealth's PES interoperability Project

The purpose of the Commonwealth's PES Interoperability Project is to allow electronic prescriptions to be accessed by all pharmacies, no matter which PES the electronic prescription was originally lodged with. To achieve this outcome, the PESs must work together and share all information necessary to create interoperability between their systems to achieve interim interoperability⁴ by no later than 24 December 2012 in advance of conformance with Australian Technical Specifications for the Electronic Transfer of Prescriptions (ETP).

Full PES interoperability, conforming with Australian Technical Specifications for the Electronic Transfer of Prescriptions, and subsequent Australian Standards, will follow the completion of the Project.

A Project Steering Committee has been established by the Commonwealth Department of Health to monitor the progress of the Project. Both PESs are obliged to attend and provide progress reports to regular meetings of the Steering Committee, which commence in July 2012.

⁴ Interim interoperability is defined in clause 1 of the Agreement: it means that PESs are able to exchange electronic prescriptions by no later than 24 December 2012. This is prior to conformance with Australian Technical Specifications for Electronic Transfer of Prescriptions interoperability provisions.

The Interoperability Agreement which is the subject of the present authorization application facilitates this work by providing for:

- a capital investment contribution by the Commonwealth; and
- direct per eligible electronic prescription payments (the "PES Electronic Prescription Fee" (PEPF)) by the Commonwealth to the PESs.

Under an interoperable environment, the PESs will be able to share all prescriptions and repeats. The EPF is currently paid to the pharmacy, which then pays the PES which held the downloaded prescription. The PESs must negotiate between themselves an acceptable "Inter-PES Transaction Fee" to ensure that the PEPF is appropriately apportioned in circumstances where different PESs hold the original electronic prescription and connect to the pharmacy that dispenses the prescription. In order to eliminate any incentives for one PES to profit at the expense of the other (which would subvert the intended outcome of maximum interoperability), the PESs have agreed (subject to authorization) to divide the PEPF equally between them when a prescription that originates with one of them is dispensed at a pharmacy connected to the other of them.

The public benefits which will derive from interoperability of the PESs, as described above, are submitted to clearly outweigh any anti-competitive effect which might arguably arise from the agreement between the PESs to share equally the PEPFs that are payable where interoperability is utilised (i.e. a prescription originating on one PES is completed on the other). Equal sharing is fair, equitable and eliminates any economic incentive for either PES to 'hoard' prescriptions or in any other way hinder interoperability.

D. BUDGET

The total Budget made available by the Commonwealth for the Project is \$9,681,460, as follows:

B1. Capital investment contribution

An amount of \$1,320,000 (GST inclusive⁵) is payable to the PESs (\$660,000 each, GST inclusive) as a capital investment to achieve interim interoperability with each other in accordance with the Project Plan. This includes the standardisation of the format and positioning of the barcodes on the original prescriptions and a mechanism for facilitating the Inter-PES Transaction Fee.

The PESs are accountable for the use of this funding and must provide budget information as part of the Project Plan including, but not limited to the following categories: Salaries, Administration, Solution Testing and Vendor desktop development.

PES Electronic Prescription Fee (PEPF)

An amount of \$8,361,460 (GST exclusive⁶) in total is available to the PESs as a PEPF. The Department will make payments to the PESs for eligible electronic prescriptions until this Amount is fully expended.

The PEPF⁷ will be paid to the PESs on the following basis:

- 85 cents (GST exclusive) per eligible electronic prescription downloaded from a PES and dispensed from 1 July 2012 to 31 December 2012 and 35 cents (GST exclusive) per eligible electronic prescription downloaded from a PES and dispensed from 1 January 2013 to 30 June 2013; or
- until the Amount of \$8,361,460 (GST exclusive) is fully expended, whichever is the earlier.

Payments will be made for prescriptions which have been assessed and completed for claiming by DHS Medicare. There is a delay of up to three months to complete this. This lag will be addressed by the payment in arrears process continuing at the relevant rate until all

⁵ GST is payable for the capital investment contribution as the PES is providing a service to the Commonwealth.

⁶ GST is not payable for PES Electronic Prescription Fee as it is an incentive payment and no service is provided to the Commonwealth.

⁷ The 85 cent/35 cent PEPF will be paid to the PES that downloads the electronic prescription and if one PES accesses the other PES then the appointment of the fee between the two is to be agreed between the PESs (ie. the Government does not pay 85 cents/35 cents to each PES, it only pays to one which would be shared with the other).

eligible electronic prescriptions dispensed have reached Status 14 (or 31 March 2013 for those paid at the 85 cent PEPF, and 30 September 2013 for those paid at the 35 cent PEPF).

This global amount of \$8,361,460 (GST exclusive) is available for access by both PESs and cannot be exceeded. Therefore, if this Amount is reached, no further payment of the PEPF will be made to either PES. The PESs are still required to meet all requirements and obligations specified within this Funding Agreement.

The Project Period will end on 30 September 2013⁸.

⁸ The Project Period of 30 September 2013 extends beyond the PEPF qualifying period of 30 June 2013 because, for the purpose of this Agreement, there is a three month lag between the date of dispense and availability of DHS Status 14 completed prescription data. The Department will therefore make PEPF payments for electronic prescriptions which are eligible for the PEPF until 30 September 2013.