

Funding and Access Agreement

Commonwealth of Australia represented by the Department of
Defence

DEFENCE

Australian Nuclear Science and Technology Organisation
Operator

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Parties **Commonwealth of Australia represented by the Department of Defence**
ABN 68 706 814 312 (Defence)

Australian Nuclear Science and Technology Organisation
ABN 47956969590 (ANSTO)

Background

- A. The Commonwealth of Australia represented by the Department of Defence has agreed to provide \$2 million funding for the Australian Synchrotron for a one year period commencing 1 July 2016 and finishing on 30 June 2017.
- B. ANSTO is obtaining a controlling Interest in Australian Synchrotron Holding Company Pty Limited (ASHCo) as and from 1 July 2016 in place of the State of Victoria. ASHCo owns the Australian Synchrotron.
- C. ANSTO has agreed to assume all obligations to operate the Australian Synchrotron as and from 1 July 2016 and will receive other funding from the New Zealand Synchrotron Group, the Commonwealth and Victorian Governments to enable it to do so.
- D. It is the intention of all other ASHCo shareholders that they will transfer all their shares to ANSTO on or about the same time as the State of Victoria, making ANSTO the sole ASHCo shareholder.
- E. Following the necessary constitutional changes, all of ASHCo's assets will be transferred to ANSTO. ANSTO will then own as well as operate the Australian Synchrotron directly.
- F. The Department of Defence has agreed to provide funding (the Funding) to ANSTO to enable it to operate the Australian Synchrotron under this funding agreement for the period 1 July 2016 to 30 June 2017.
- G. The Department of Defence will make the funding available to ANSTO and ANSTO will use the Funds for the Program in accordance with and subject to the terms of this Agreement

Operative provisions

1. Definitions & Interpretation

1.1 Definitions

In this Agreement:

Access Regime means the merit based system for access to the Australian Synchrotron described at Schedule 2.

Accounting Standards mean the standards of that name maintained by the Australian Accounting Standards Board or other accounting standards which are generally accepted and consistently applied in Australia.

Agreement means this agreement and any schedules, annexures and attachments to it.

Australian Synchrotron means the synchrotron facility located at Clayton, Victoria.

Commonwealth means the Commonwealth of Australia.

Confidential Information of a party ("disclosing party") means the terms of this Agreement and any information (in any form) that is disclosed to or learnt by another party ("receiving party") under or in connection with this Agreement or the Program, other than information that is or becomes (i) publicly available otherwise than as a result of a breach of confidence, (ii) rightfully known by the receiving party before disclosure, or (iii) independently created by the receiving party without access to the disclosing party's confidential information.

Conflict of Interest means any conflict of interest, any risk of a conflict of interest and any apparent conflict of interest arising through a party engaging in any activity, participating in any association, holding any membership or obtaining any interest that is likely to conflict with or restrict that party participating in the Program.

DEDJTR Funding Agreement means the agreement between the State of Victoria, acting through its Department of Economic Development, Jobs, Transport and Resources, and ANSTO concerning the provision of \$8 million of funding for the operation of the Australian Synchrotron for the period 1 July 2016 to 30 June 2017.

Defence means the **Commonwealth of Australia** represented by the Government Department of Defence.

Funders Committee means a committee comprised of a representative from the Commonwealth, the Department of Economic Development, Jobs, Transport and Resources, representing the State of Victoria and NZSG.

Funding or Funds means the cash funding provided to ANSTO by Defence.

Funding Period means 1 July 2016 to 30 June 2017.

GST has the meaning given by the GST law.

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

GST Group has the meaning given to that term in the GST Act;

GST law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)).

Intellectual Property or IP means all Intellectual Property rights, including:

- (a) patents, plant breeder's rights, copyright, rights in circuit layouts, registered designs, trademarks, and know how; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a);

but excludes moral rights and similar non-assignable personal rights of any person.

Key Program Attributes means the attributes set out in Schedule 5.

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

NZSG means the New Zealand Synchrotron Group Limited

Program means the operation and use of the Australian Synchrotron by Australian researchers..

Program User means any person who, in accordance with Access Regime, accesses the Australian Synchrotron under the Program to conduct Research.

Reports mean any reports to be provided by ANSTO to Defence including without limitation, all information necessary for Defence to comply with its regulatory or audit requirements.

Representative of a party includes an employee, agent, officer, director, auditor, advisor, partner, consultant, joint venturer, contractor or sub-contractor of that party.

Research means activity in the fields of natural or applied science for the extension of knowledge, including such activity in the practical application of such knowledge.

Synchrotron Funding Parties means the Commonwealth (including Defence) and the State Government of Victoria acting through the Department of Economic Development, Jobs, Transport and Resources Business and Innovation, and NZSG.

Tax Invoice has the meaning given by the GST law.

1.2 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) words in 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 (including those in brackets at the beginning of paragraphs) and words capitalised or in bold or italic format are inserted for convenience only, and have no effect in limiting or extending the language or provisions, except for the purpose of rectifying any erroneous cross-reference;
- (e) all references to clauses are to clauses in this Agreement and all references to a Schedule refer to a Schedule to this Agreement;
- (f) all references to dollars are to Australian dollars and this Agreement uses Australian currency;

- (g) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth and, if it has been or is amended, replaced or supplemented, is a reference to that statute or other legislation as amended, replaced or supplemented; and
- (h) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

2. Entire Agreement and Variations by Defence

- (a) This Agreement, including Schedules, constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the parties with respect to subject matter of this Agreement.

3. Terms of Agreement and Funding Period

- (a) This Agreement takes effect on the date that the last party executes this Agreement and continues to operate until both parties have fulfilled all of their obligations under this Agreement, unless terminated earlier in accordance with this Agreement.
- (b) The period of Funding is the Funding Period, unless the Funding is terminated earlier in accordance with this Agreement.

4. Grant of Funds

Defence agrees to make the Funds available to ANSTO in accordance with this Agreement for the Program. Defence will pay the Funds to ANSTO in accordance with Schedule 1, subject to the conditions for payment in this clause 4 and clauses 5 and 6.

4.1 Conditions on Funding

The payment of Funds by Defence to ANSTO under this Agreement is subject to the following conditions:

- (a)
- (b) ANSTO spends all Funds paid to it under this Agreement for the Program in accordance with the requirements of this Agreement.
- (c) ANSTO conducts itself with utmost propriety in connection with the Program and its use of the Funds;
- (d) ANSTO submits on time all Reports required under this Agreement, in the form and with content satisfactory to Defence.

4.2 Further specific conditions

Without limiting the generality of clause 4.1, ANSTO must at all times comply with the following specific conditions:

- (a) ANSTO must implement such arrangements as are necessary to achieve the Key Program Attributes;
- (b) ANSTO must comply with the record-keeping, confidentiality and auditing requirements set out in clause 12, 15 and 16;
- (c) ANSTO must comply with the dispute resolution requirements set out in Schedule 3;
- (d) ANSTO must ensure that projects carried out under the Program are conducted in accordance with the laws, standards and principles set out in clause 22;
- (e) ANSTO must at all times during the Funding Period comply with any other funding agreements relevant to that period;
- (f) ANSTO must ensure that the Australian Synchrotron continues to operate the International Synchrotron Access Program, which provides funding to allow Australian researchers to access overseas synchrotron facilities, for the period of this Agreement; and
- (g) ANSTO must comply with the financial management requirements set out in Schedule 4.

4.3 Use of Funding

- (a) ANSTO will ensure that the Program is carried out in accordance with this Agreement in a diligent and competent manner.
- (b) ANSTO shall not use the Funding for any purposes specifically excluded in this Agreement.

5. Variations to Funding

5.1 Suspension or reduction of Funding

- (a) Defence may suspend or reduce any instalment payment of the Funds (in whole or in part) due in accordance with Schedule 1 if:
 - (i) one or more of the conditions listed in clauses 4.1, 4.2 or 10(c) in respect of the Program are not met;
 - (ii) Defence reasonably considers that ANSTO has used any of the Funds for any purpose other than the Program or otherwise in breach of this Agreement;

- (iii) Defence reasonably considers ANSTO has breached a term of this Agreement; or
 - (iv) Defence reasonably considers at any time before or during the Funding Period that the governance and management of the Australian Synchrotron by ANSTO is not appropriate to ensure that the Funds have been or will be applied efficiently and effectively and in a manner consistent with the Access Regime and the Program; or
- (b) If Defence elects to suspend any payment or instalment payment or the provision of any in-kind contribution (or part thereof) under clause 5.1, Defence will not be required to pay any further amount of Funds or provide the in-kind contribution until Defence is satisfied (as applicable) that:
- (i) where Defence has suspended or reduced instalment payments in relation to circumstances described in clause 5.1(a)(ii), or(ii), ANSTO's breach has been remedied and ANSTO has put in place procedures to ensure that further such breaches of the Agreement do not occur in the future; and
 - (ii) where Defence has suspended or reduced payments or instalment payments in relation to circumstances described in clause 5.1(a)(iv), all unspent Funds have been spent or committed for expenditure by ANSTO, or disbursed by ANSTO, in accordance with this Agreement.

5.2 Continued performance

Despite any suspension of, or reduction in, or recovery of, any amount of Funds under this clause 5, ANSTO must continue to perform its obligations under this Agreement where it has not complied with clauses 4.1(d)-(f), 4.2, 5.1(a)(v) and 10(c).

5.3 Defence Rights in the event of dispute

Defence may, at its sole and absolute discretion, exercise the rights under this clause 5, despite the existence of a dispute. Defence does not have to comply with the process set out in clause 18 in order to exercise the rights under this clause 5. Defence agrees however that it will take all reasonable steps to elevate the relevant issue to the other Synchrotron Funding Parties in the Funders Committee before exercising these rights to ensure the ongoing efficient operation of the Australian Synchrotron.

6. Unspent Funds or Overpayments

- (a) Defence may recover from ANSTO any amount of Funding paid which exceeds the amount of Funding properly payable under this Agreement as set out in Schedule 1.
- (b) The parties agree that ANSTO may otherwise retain any unspent but not yet committed Funds at the end of the Funding Period to be applied against future operating and facility upgrade expenses.

7. Over expenditure

Any expenditure incurred by ANSTO for the Program additional to the approved Funding for the Program specified in Schedule 1 or as otherwise varied by Defence, is the responsibility of ANSTO. Defence will not reimburse ANSTO for such costs under any circumstances.

8. Negation of Employment, Partnership and Agency

- (a) Neither ANSTO nor any of its employees shall represent themselves as being employees, partners or agents of, or as otherwise able to bind or represent Defence.
- (b) Neither ANSTO nor any of its employees will, by virtue of either this Agreement be or for any purpose be deemed to be employees, partners or agents of Defence.

9. Conduct of Research

ANSTO must operate the Australian Synchrotron so as to enable the Program to be conducted in accordance with the requirements of this Agreement.

10. Conflict of Interest

- (a) ANSTO must disclose to Defence any actual or potential Conflict of Interest which has the potential to influence, or appear to influence, the research and activities, publications and media reports, or requests for funding related to the Program.
- (b) If ANSTO becomes aware of any such actual or potential Conflict of Interest relating to any party involved in the Program, ANSTO must:
 - (i) notify Defence immediately of the nature and details of the Conflict of Interest; and
 - (ii) have established processes in place for managing the actual or potential conflict of interest for the duration of the Program. Such processes must comply with the Australian Code for the Responsible Conduct of Research (2007).
- (c) If ANSTO fails to disclose a Conflict of Interest, Defence may suspend the Funding under clause 5.1.

11. Access Regime

ANSTO must facilitate Australian user access to the Australian Synchrotron in accordance with the Access Regime described in Schedule 2.

12. Reporting

12.1 ANSTO's Reporting Obligations

- (a) Defence may request from ANSTO, and ANSTO shall provide in writing any reports or other information relating to the Program, the overall operations of the Australian Synchrotron or to the performance of this Agreement, including but not limited to reports or information in relation to any significant developments concerning the Program, any significant delays or difficulties encountered in undertaking the Program or operating the Australian Synchrotron and the expenditure of the Funds, including any finance reports or statements prepared for or by ANSTO.
- (b) ANSTO warrants to the best of its knowledge and belief that any reports or information provided by ANSTO in connection with the Program will not be false or misleading in any respect, and that such reports and information may be supplied by Defence to third parties after prior consultation with ANSTO.

12.2 Use of reports and information by Defence

- (a) Subject to the confidentiality obligations in clause 15, ANSTO agrees that Defence may disclose, reproduce, modify and adapt all or part of the contents of any reports or information provided by ANSTO under this Agreement for any purpose in any format or media, and to the extent necessary, ANSTO grants Defence an irrevocable, worldwide, non-exclusive, sub-licensable and royalty-free licence to do any of the acts contemplated by this clause 12.2. ANSTO warrants to the best of its knowledge and belief that any third party material contained in any report provided to Defence may be used by Defence on the same terms.
- (b) ANSTO indemnifies Defence for any loss, damage, cost or expense (including legal costs) incurred by Defence arising out of a breach of this warranty by ANSTO.

13. Intellectual Property

- (a) ANSTO acknowledges that any Intellectual Property rights created as a result of the conduct of the Program shall belong to the creator's institution in accordance with the institution's IP policies, unless otherwise provided in an individual user access agreement entered into with ANSTO.
- (b) ANSTO indemnifies Defence, its officers, employees and agents against any liability, loss, damage, cost and expense arising from any claim, suit, demand, action or proceeding by any person in respect of any infringement (or alleged infringement) of Intellectual Property rights by ANSTO, its employees, agents or subcontractors in the course of the use by Defence of any reports or information provided by ANSTO under this Agreement.

14. Protection of Personal Information

- (a) ANSTO agrees with respect to all activities related to or in connection with the performance of the Program or in connection with this Agreement:
- (i) to comply with the Australian Privacy Principles referred to in section 14 and Schedule 1 of the Privacy Act 1988;
 - (ii) not to transfer personal information held in connection with this Agreement outside Australia, or to allow parties outside Australia to have access to it, without the prior approval of Defence;
 - (iii) to co-operate with any reasonable demands or inquiries made by the Australian Privacy Commissioner in relation to the management of personal information by ANSTO or breach or alleged breaches of privacy;
 - (iv) to ensure that any person who has an access level which would enable that person to obtain access to any personal information (as defined in the Privacy Act 1988) is made aware of, and undertakes in writing, to observe the Australian Privacy Principles referred to in clause 14(a)(i) above;
 - (v) to comply with any policy guidelines laid down by or issued by the Australian Privacy Commissioner from time to time relating to the handling of personal information;
 - (vi) to comply with any reasonable direction of or observe any recommendation of the Australian Privacy Commissioner relating to any acts or practices of ANSTO that the Commissioner considers to be a breach of the obligations in clause 14(a)(i), above;
 - (vii) to comply with any reasonable direction of Defence to provide the Australian Privacy Commissioner access for the purpose of monitoring ANSTO's compliance with this clause;
 - (viii) to indemnify Defence in respect of any loss, liability or expense suffered or incurred by Defence arising out of or in connection with a breach of the obligations of ANSTO under this clause or any misuse of personal information held, or any disclosure by ANSTO in breach of an obligation of confidence whether arising under the Privacy Act 1988 or otherwise;
 - (ix) to ensure that any record (as defined in the Privacy Act 1988) containing personal information provided to ANSTO by Defence or any other person pursuant to this Agreement is, at the expiration or earlier termination of this Agreement, either returned to Defence or deleted or destroyed in the presence of a person authorised by Defence to oversee such deletion or destruction; and
 - (x) to the naming or other identification of ANSTO in reports by the Australian Privacy Commissioner.

- (b) ANSTO shall immediately notify Defence if ANSTO becomes aware of a breach of its obligations under clause 14(a).
- (c) This clause survives the expiration or earlier termination of this Agreement.

15. Confidentiality

15.1 Confidential Information

- (a) Except as expressly provided in this Agreement, each party must keep the Confidential Information of the other party confidential and may only:
 - (i) use the Confidential Information of the other party for the purposes of performing their obligations under this Agreement; and
 - (ii) may only disclose the Confidential Information of the other party with the prior written consent of that party.
- (b) The obligations of confidentiality in paragraph 15.1(a) will expire five years after the commencement of the Funding Period.

15.2 Exceptions to obligations

The disclosure obligations on each party under paragraph 15.1 will not be taken to have been breached to the extent that Confidential Information of another party:

- (a) is disclosed by a party to its Representatives who need to know it in order to comply with obligations, or to exercise rights, under this Agreement;
- (b) is disclosed to a party's Representatives, solely to enable effective management, review or auditing of activities related to this Agreement;
- (c) is disclosed by a party to the responsible Minister;
- (d) is disclosed by a party, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- (e) is disclosed by a party to the Australian Auditor-General, Ombudsman, Information Commissioner or Privacy Commissioner; or
- (f) is required by Law to be disclosed.

15.3 Obligation on disclosure

Where a party discloses Confidential Information of another party to another person, the disclosing party must notify the receiving person that the information is Confidential Information of the other party. Nothing in this Agreement operates to permit ANSTO to provide confidential information of a third party or ANSTO to Defence in breach of obligations under clause 12.2 of this Agreement. Defence is not liable in respect of any disclosure of information provided in breach of that clause.

15.4 No reduction in privacy obligations

Nothing in this Agreement derogates from any obligation which any party may have under the *Privacy Act 1988* (Cth) as amended from time to time, in relation to the protection of personal information as defined in that Act.

15.5 ANSTO to keep books and records

ANSTO must at its cost:

- (a) keep adequate books and records, in accordance with Accounting Standards, in sufficient detail to enable:
 - (i) all receipts and payments related to the Funds to be identified and reported in accordance with this Agreement; and
 - (ii) the amounts payable by Defence under this Agreement to be determined; and
- (b) retain for a period of seven years after the expiry or termination of this Agreement all books and records relating to the Funds.

16. Audit and access

16.1 Right to conduct audits

The parties agree that Defence or its nominated Representative may conduct audits of ANSTO and the Program relevant to the performance of the Program, including investigating or inspecting (as applicable):

- (i) the accuracy of invoices and Reports;
- (ii) compliance with confidentiality and privacy obligations under this Agreement;
- (iii) material (including books and records) in the possession of ANSTO relevant to the Funds, expenditure of the Funds or this Agreement; and
- (iv) any other matters reasonably determined by Defence to be relevant to the Funds or this Agreement.

16.2 Access by Defence and Defence's auditors

- (a) Subject to paragraph 16.2(b) and compliance with the relevant ANSTO's reasonable security procedures, Defence may, at reasonable times and on giving reasonable notice:
 - (i) access the premises of ANSTO to the extent relevant to the performance of this Agreement;
 - (ii) require the provision by ANSTO, its employees, agents or subcontractors of records and information in a data format and storage medium accessible by Defence where possible by use of

Defence's existing computer hardware and software to the extent relevant to the performance of this Agreement;

- (iii) to the extent relevant to the performance of this Agreement, inspect and copy documentation, books and records, however stored, in the custody or under the control of ANSTO, its employees, agents or subcontractors; and
 - (iv) require assistance in respect of any inquiry into or concerning the Funds or this Agreement. For these purposes, an inquiry includes any administrative or statutory review, audit or inquiry, any request for information directed to Defence, and any inquiry conducted by any Parliamentary committee.
- (b) If a matter is being investigated which, in the opinion of Defence, may involve an actual or apprehended breach of the Law, Defence is not required to give reasonable prior notice to ANSTO for the purposes of paragraph 16.2(a).
 - (c) Defence may exercise the access rights in this clause 16.2 in its own right or by making such access rights available to its auditors in order for Defence to comply with any obligations to its shareholders or regulators.

16.3 Verification by Defence's auditors of use of Funds

ANSTO must provide Defence or its nominee with access, upon reasonable written notice (where 5 business days shall be reasonable notice), to ANSTO's financial records and books of account to enable Defence to verify to its auditors on the auditors' request that the Funds have been applied to the Program in accordance with this Agreement.

16.4 Conduct of audit and access

Defence must use reasonable endeavours to ensure that audits performed pursuant to this clause 16 do not unreasonably delay or disrupt in any material respect ANSTO's performance of their obligations under this Agreement or its business.

16.5 Costs

Unless otherwise stated in this Agreement or unless otherwise agreed in writing between the parties, each party must bear its own costs of any reviews and/or audits. If any review or audit conducted by Defence under this Agreement reveals a material non-compliance by ANSTO with the terms of this Agreement or the Law, ANSTO will bear (and must reimburse Defence for) all costs of the review or audit, including any third party costs paid or payable by Defence.

16.6 No reduction in responsibility

The requirement for, and participation in, audits does not in any way reduce ANSTO's responsibilities to perform its obligations in accordance with this Agreement.

16.7 ANSTO Cooperation

In relation to any review, audit or evaluation of the Program, ANSTO must:

- (a) provide all reasonable assistance to Defence or its auditors;
- (b) respond to all reasonable requests from Defence or its auditors; and
- (c) provide any information reasonably required by Defence or its auditors.

16.8 Survival

This paragraph 16 applies for the Funding Period and for a period of seven years from the expiry or termination of this Agreement.

17. Publicity

17.1 Publicity by Defence

ANSTO agrees that Defence has the right to publicise and report on the awarding of the Funds to ANSTO under this Agreement, and may do this by, amongst other means, including the name and logo of ANSTO, the amount of the Funds and the details of the Program in media releases and general announcements, including on the internet, and in annual reports.

17.2 Publicity by ANSTO

ANSTO must, before making a public announcement in connection with this Agreement, the Program or any transaction contemplated by this Agreement (excluding publications in learned journals, theses, seminars and conference presentations of a technical nature, or as part of a patent application process or outcomes from research that are in the public domain), obtain Defence's written agreement to the announcement, except to the extent that the announcement:

- (a) is required by Law or a regulatory body (including a relevant stock exchange); or
- (b) is made in relation to any research that does not involve research by Defence personnel.

17.3 Publicity required by Law

If ANSTO is required by Law or a regulatory body to make a public announcement in connection with this Agreement or any transaction contemplated by this Agreement, ANSTO must, to the extent practicable, first

consult with Defence with the intent that Defence can take into account the reasonable requirements of any relevant party such as relevant Ministers.

17.4 Acknowledgement of Overall Commonwealth Contributions to Australian Synchrotron

ANSTO must, in all its publications, promotional and advertising materials, public announcements, events and activities in relation to the Program, or any products, processes or inventions developed as a result of the Program, and otherwise as reasonably requested by Defence, acknowledge the financial and other support received from the Commonwealth of Australia including Defence in the manner approved or requested by the Commonwealth (including Defence) prior to its use.

18. Dispute resolution

The parties agree not to commence legal proceedings in respect any dispute arising under this Agreement until the procedure provided by Schedule 3 has been followed.

19. Termination

19.1 Termination if certain other contracts are terminated

Defence may terminate this Agreement effective immediately by giving notice to ANSTO if the DEDJTR Funding Agreement is terminated for breach and where there are no new arrangements in place that provide the same level of funding

19.2 Termination by Defence for cause

- (a) Defence may terminate this Agreement effective immediately by giving notice to ANSTO if:
 - (i) ANSTO breaches a material provision of this Agreement where that breach is not capable of remedy;
 - (ii) ANSTO breaches any provision of this Agreement and fails to remedy the breach within 21 days after receiving notice requiring it to do so;
 - (iii) Defence reasonably believes it has received inaccurate, incomplete or misleading information from ANSTO in relation to the Program or in any report or information provided under this Agreement;
 - (iv) Defence reasonably believes there is fraud or misleading or deceptive conduct on the part of ANSTO or any ANSTO Representative;

- (v) Defence received notice that work on the Program will cease, or has ceased;
 - (vi) ANSTO is unable to continue its role for any reason; or
 - (vii) an event specified in clause 19.2(b) occurs.
- (b) The termination events contemplated in clause 19.2 (vii) are as follows:
- (i) there is any change in ANSTO's direct or indirect beneficial ownership or control which is not notified to and approved in writing by Defence;
 - (ii) ANSTO ceases to carry on business;
 - (iii) ANSTO ceases to be able to pay its debts as they become due;
 - (iv) ANSTO's status as a corporate Commonwealth entity; and
 - (v) anything which has a substantially similar effect as an event referred to in clause 19.2(b)(iii) or clause 19.2(b)(iv) occurs in relation to ANSTO in any jurisdiction.

19.3 Effect of termination on outstanding amounts

On termination of this Agreement pursuant to this clause 19, Defence is not obliged to pay any outstanding amount of the Funds or any other moneys to ANSTO except if, in the case of termination pursuant to clause 19.2(b)(iii) of this Agreement, ANSTO has demonstrated to Defence's satisfaction (at its discretion) that this amount is due and payable under this Agreement to ANSTO.

19.4 Termination does not affect accrued rights

Termination of this Agreement does not affect any accrued rights or remedies of a party.

19.5 Termination in the event of a dispute

Defence may, at its sole and absolute discretion, exercise the rights of Defence under this clause 19, despite the existence of a dispute. Defence does not have to comply with the process set out at clause 18 in order to exercise Defence's rights under this clause 19.

19.6 Certain provisions to survive termination

The following provisions survive the expiration or early termination of this Agreement: clause 5 (Varying Funding), clause 6 (Unspent Funds or Overpayments), clause 12 (Reporting), clause 13 (Intellectual Property), clause 14 (Protection of Personal Information), clause 15 (Confidentiality), clause 16 (Audit and access), clause 17 (Publicity), clause 18 (Dispute resolution), clause 19 (Termination), clause 21 (Indemnity), clause 24.1

(Amounts due to) and clause 24.14 (GST), together with any provision of this Agreement which is expressly or by implication from its nature is intended to survive the expiry or termination of this Agreement.

20. Insurance

ANSTO must effect and maintain adequate insurance or similar coverage to cover any liability arising as a result of the conduct of the Program, including public liability insurance for \$20 million or more per claim and professional indemnity insurance (limit of liability \$20 million) and if requested, provide Defence with satisfactory evidence of such insurance and its currency. ANSTO shall be responsible for effecting all insurances required under Worker's Compensation legislation and for taking all other actions required as an employer.

21. Indemnity

- (a) ANSTO will indemnify Defence, its officers, employees and agents against any liability, loss, damage, costs and expenses arising from any claim, suit, demand, action or proceeding by any person, where such loss or liability was caused by a wilful, unlawful or negligent act or omission by ANSTO, its employees, agents or subcontractors in connection with this Agreement.
- (b) ANSTO's liability under 21(a) shall be reduced proportionally to the extent that any act or omission of Defence or its employees or agents contributed to the loss or liability.

22. Compliance with Laws

The Parties shall, in carrying out this Agreement, comply with the provisions of any relevant statutes, regulations, by-laws and the requirements of any Commonwealth, State, Territory or local Authority.

23. Notices and other communications

- (a) Each communication (including each notice, consent, approval, request or demand) under or in connection with this Agreement:
 - (i) must be legible and in writing or, dispatched by electronic communication;
 - (ii) must be addressed or dispatched by electronic communication to the following address or facsimile number (or as otherwise notified by a party to the other parties from time to time or when it becomes a party to this Agreement):

Defence Science and Technology Group (DSTG) Contact

Name: To Be Advised

Address:

Tel:

Email:

Defence Chief Finance Officer Group (CFOG) Contact

Name: Mr Ian Anderson,
Deputy Director Financial and Grants Policy

Address: Department of Defence
Chief Finance Officer Group
R1-2-B048
PO Box 7902
CANBERRA BC ACT 2610

Tel: (02) 6265 5907

Email: ian.anderson9@defence.gov.au

Operator

Name: Professor Andrew Peele, Director
Address: Australian Synchrotron
 800 Blackburn Road
 Clayton, Vic 3168
Tel: + 61 3 8540 4100

Email: andrew.peele@synchrotron.org.au

- (iii) must be signed, or in the case of electronic communication dispatched, by the sender or by an authorised officer of the sender;
- (iv) must be delivered by hand or posted by prepaid post to the address, or dispatched by electronic communication in each case, provided for in accordance with clause 23(a)(ii);
- (v) is taken to be received by the addressee:
 - A. (in the case of prepaid post) on the fifth business day after the date of posting;
 - B. (in the case of delivery by hand) on delivery; and
 - C. (in the case of electronic communication) on the electronic communication entering a system outside the control of the sender, or the first of those systems where the electronic communication enters successively 2 or more systems.
- (b) If under any provision of this Agreement any notice or other communication is required to be in writing that requirement is taken to have been satisfied if the person giving the notice or other communication gives that notice or other communication by electronic communication in accordance with this clause 23.
- (c) Each communication sent in accordance with this clause 23 may be relied on by the recipient if the recipient, acting reasonably, believes the communication to be genuine and if it appears to be executed by or on behalf of the sender in accordance with clause 23(a)(iii) or to have been sent from the email address of an authorised officer of the sender (without the need for further enquiry or confirmation).

24. Miscellaneous

24.1 Amounts due to Defence

- (a) Without limiting any other of Defence's rights or remedies, any amount owed or payable to Defence (including by way of refund or repayment under clause 6 of this Agreement), or which Defence is entitled to recover from

ANSTO, under this Agreement will be recoverable by Defence as a debt due and payable to Defence by ANSTO.

- (b) Defence may set-off any money due for payment by Defence to a party under this Agreement against any money due for payment by that party to Defence under this Agreement.

24.2 Variation

Except as expressly stated to the contrary in this Agreement, no agreement, notice or understanding that purports to vary or extend this Agreement will be legally binding upon any party unless the agreement, notice or understanding is in writing and signed by a duly authorised Representative of each party.

24.3 Approvals and consents

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

24.4 Assignment and novation

A party may only assign its rights or novate its rights and obligations under this Agreement with the prior written consent of the other party.

24.5 Costs

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

24.6 Counterparts

This Agreement may be executed in counterparts. All executed counterparts constitute one document.

24.7 No merger

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

24.8 No warranties or representations

ANSTO acknowledges that in entering into this Agreement it has not relied on any representations or warranties about its subject matter except as expressly provided by the written terms of this Agreement.

24.9 Further action

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

24.10 Severability

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

24.11 Waiver

Waiver of any provision of or right under this Agreement:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

24.12 Relationship

- (a) The parties must not represent themselves, and must ensure that their officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of any other party, or as otherwise able to bind or represent any other party.
- (b) This Agreement does not create a relationship of employment, agency or partnership between the parties.

24.13 Governing law and jurisdiction

This Agreement is governed by the laws of New South Wales and each party irrevocably and unconditionally submits to the non exclusive jurisdiction of the courts of that Territory.

24.14 GST

For the purposes of this clause 24.14:

- a) unless otherwise stated, terms that have a defined meaning in this clause have the same meaning as in the GST Act;
- b) the term "consideration" takes its ordinary meaning, rather than its defined meaning in the GST Act; and
- c) if a supply is treated as a periodic or progressive supply under the GST Act, each periodic or progressive component of the supply will be treated as if it is a separate supply.

Unless otherwise stated, all Funding to be paid or provided under this Agreement is exclusive of GST.

If GST applies to a supply made under this Agreement, for consideration that is not stated to include GST, the recipient must pay to the supplier an additional amount equal to the GST payable on the supply ("GST Amount"). The GST Amount is payable at the same time that the first part of the

consideration for the supply is to be provided. However, this clause 24.14 will not apply if the GST on the supply is reverse charged and payable by the recipient.

Notwithstanding any other provision, the recipient need not pay the GST Amount until it has received a tax invoice or adjustment note (as the case may be) from the supplier.

If an adjustment event arises in respect of a supply to which this clause 24.14 applies, the GST Amount must be adjusted to reflect the adjustment event and a payment must be made by the supplier to the recipient, or by the recipient to the supplier, as the case may be.

If a party is entitled to be reimbursed or indemnified for a cost or expense under this deed the amount to be reimbursed must be reduced to the extent that the party (or the representative member for a GST Group of which that party is a member) is entitled to an input tax credit for the cost or expense.

Unless otherwise stated, if an amount payable under this Agreement is to be calculated by reference to:

- a) the consideration to be received for a supply; or
- b) the consideration to be provided for an acquisition;

then, for the purposes of that calculation, the consideration is to be reduced to the extent that it includes any amount on account of GST (regardless of whether the amount is separately identified or included as part of the consideration).

Schedule 1 - Payment Schedule

Amount (GST excl)	Conditions for Payment
\$2,000,000	<p>On 28 February 2017 after:</p> <ul style="list-style-type: none"> • receipt by Defence of a correctly rendered tax invoice • receipt by Defence of confirmation in writing by ANSTO that it is compliant with all funding agreements with the Synchrotron Funding Parties

Schedule 2 Australian Synchrotron Access Model – Post 1 July 2016

Background

The Australian Synchrotron (the Synchrotron) is one of Australia's most significant investments in landmark scientific infrastructure. Since commencing operations in 2007, the facility has enabled more than 20,000 researcher visits across more than 4000 individual experiments resulting in discoveries reported in over 2,300 refereed publications. These discoveries contribute materially to the wellbeing and economic strength of the region, for instance through the development of new drugs that are improving patient outcomes in leukaemia and other diseases, as well as generating millions of dollars for the research institutions involved.

Contributions from government and institutional funders provided for the initial build and operation of the facility. Contributions from the State of Victoria have been essential, reflecting its interest as the initiating investor as well as the geographical location of the facility. Commensurate with the regional impact of the facility funding for operations has, increasingly, been provided by the Australian Government and New Zealand. As part of the National Innovation and Science Agenda announced in December 2015, the Australian Government has committed \$520 million to operate the Synchrotron over the 10 years to 2025-2026 on the condition that the Australian Nuclear Science and Technology Organisation (ANSTO) assumes sole ownership of the facility from July 2016.

The access model is designed to enable science for the benefit of the community, by providing world-class synchrotron expertise and facilities and to be the catalyst for the best scientific research and innovation in Australia and New Zealand.

The key principles of the access model are:

- a balance between open merit-based access and targeted access;
- for merit-based access:
 - a peer-review system consistent with international best practice to ensure the Synchrotron catalyses the best scientific research and innovation;
 - the judgment of scientific merit will produce an appropriate balance between discovery and applied research to encourage science for the benefit of the community;
 - continuation of the practice of providing travel support, for non-Victorian based, and accommodation support, for non-metropolitan Melbourne based, research teams;
 - recognition of the requirements of the operating funders.
- that targeted access includes facility time for paid/proprietary access, continued development of world-class synchrotron expertise and facilities, educational access, and discretionary access. In the case of newly constructed beamlines, targeted access will also include time for funders; and
- transparency.

These principles are discussed in more detail below. The access model from 30 June 2016, which will commence at the start of the third cycle of beamtime operations in 2016, will be:

	Merit	Targeted	
		Facility	Funders
Existing Beamlines	80%	20%	0 ¹
New Beamlines	50% minimum ²	20%	30%

Balance between merit and Targeted Access

For the beamlines existing as at 30 June 2016, the Synchrotron will provide 80% of the available time for merit access. Available time is the remaining time, while there is stored beam, after allowing for planned commissioning, maintenance and repair activities. For beamlines built after 30 June 2016, 50% of the available time will be provided for merit access. This represents the underlying capital investment in the facility and ongoing operations costs that enables a new beamline to run. A Targeted Access share of 30% of available time will be offered to the parties providing capital funding for new beamlines. These balances of merit and targeted time are consistent with international practice. Different funding arrangements, for instance with international or state partners, will also be considered and may change the targeted share for funders, but the model described here is the baseline.

International best practice for merit access

Synchrotron light source user facilities world-wide operate on the principle of free access for non-proprietary research, with access determined by a peer-reviewed system based on merit. The principles of access to major user facilities were codified and endorsed in 1996 by the International Union of Pure and Applied Physics (IUPAP)³. They include that:

- the criteria to be used in selecting experiments and determining their priority are scientific merit, technical feasibility, the capability of the experimental group and the availability of the required resource;
- the institutional, regional or national affiliations of the experimental teams should not influence the selection of an experiment nor the priority accorded to it; and
- host facilities should not normally require experimental groups to contribute to the running costs of the facilities.

This system has endured for over 30 years including outlasting several failed experiments in user-pays access. Its primary advantage is that it ensures that only high quality science is performed on what are expensive and limited large scale research facilities such as synchrotron light sources. Australia's synchrotron (and neutron beam) user programs have always conformed to these IUPAP access principles, from the beginning of the program on the

¹ An agreed condition for the transfer to Commonwealth ownership and operation is that there will be no targeted access after 2016 based on prior contributions to operations or capital.

² Merit time may increase above this minimum level where a funder allocates its share to the merit program.

³ See <http://www.iupap.org/ga/ga22/majfacil.html>

Australian beamline in Japan, throughout the Australian Synchrotron Research Program (ASRP), and now in the merit access program at the Synchrotron.

Also consistent with international practice is the principle of informal reciprocal international access. The Synchrotron will accept beamtime proposals from researchers at organisations outside Australia and New Zealand. Such proposals will form part of the merit process set out in Appendix 1. Time for international proposals will be awarded free of charge, although, travel and accommodation support will not be provided. Historically, international access to the Facility has been relatively low, comprising about 4% of the current merit access scheme. There are four justifications for continuing to offer free access to the Facility for international users and for including such access in the merit access program:

1. International synchrotron facilities have played an essential and indispensable role in the development of the Australian synchrotron user community via providing free access to their facilities for Australian scientists via the ASRP, the Australian beamline in Japan, and other programs over the last two decades.
2. Australians continue to enjoy free access to overseas synchrotron facilities, primarily for capabilities not yet offered by the Facility, via schemes such as the International Synchrotron Access Program administered by the Facility. This continuing overseas access for Australian users will therefore offset international users accessing the Facility.
3. Australia has obligations in relation to international research collaboration and the Facility will be operated in a manner consistent with these.
4. Competition with international proposals within the merit scheme provides a strong benchmark indicator to Australian and New Zealand of the relative performance of local applications judged against international competitors and may serve to encourage higher quality applications.

An appropriate balance between discovery and applied research

Program Advisory Committees have been established for each beamline to oversee the peer review assessment of proposals for beamtime and to produce recommendations for allocation of beamtime. The facility will work with these committees to manage an appropriate balance between discovery and applied research, to allow industry-relevant research to compete with more fundamental science. This will be done by defining assessment criteria that give weight to outcomes from research as set out in Appendix 1.

Recognition of impacts and national research priorities in merit access

To enhance benefit to the community the criteria used in selecting experiments and determining their priority also includes the degree to which the experiment broadly supports Australian or New Zealand (as appropriate) national research priorities and is likely to result in beneficial impact to society. National benefit will include economic, health, social and cultural benefits.

A beneficial impact for society is also recognised in continuing to facilitate access to the Australian Synchrotron by novice synchrotron users. Accordingly, a factor in assessing track record of applicants will be to take into account the career opportunities of the individuals.

Recognition of the requirements of funding partners

The specific requirements of the parties providing operational funding to the facility during 2016/17 are incorporated into the access model. This includes the right for the New Zealand Synchrotron Group (NZSG) to determine access for all New Zealand researchers capped in

accordance with the funding contribution from NZSG, and for New Zealand researchers to have access on a no less favourable basis than Australian researchers.

The State of Victoria will make a significant contribution to the operating costs of the Synchrotron in 2016-17. Consequently the access model, for the 2016-17 financial year only, includes a right for the State of Victoria to nominate users. This right will normally be exercised by Victoria defining the users that may be denoted as Victorian users and allowing them to compete in the merit program, along with a guarantee of minimum access for Victorian researchers, in accordance with the operating funding contribution from the State of Victoria. These requirements will be allocated from within the merit component of the Access Model and will be conducted, as much as possible, in accordance with the merit selection process as outlined in Appendix 1.

The merit access process, which uses these principles, is set out in Appendix 1. Modifications to this model, such as the introduction of quotas for early career, international or industry-related researchers, may be considered should the facility assess that the access process is not allocating beamtime in a way that is aligned with these principles for access.

Targeted Access

For all beamlines, the Australian Synchrotron will provide 20% of the available time for targeted access. Such targeted access, is for:

- **Paid/proprietary access**

Part of the business case for funding the Australian Synchrotron is the benefit that research undertaken at the Facility provides for industry. Enabling direct access to world-class technology, such as the Synchrotron, enables improved outcomes for industry. Accordingly, the Synchrotron will continue to operate a paid/proprietary access system, where beamtime and support services can be purchased under a proprietary user agreement. A nominal 10% of the available time will be allocated to facilitate paid/proprietary access. If requests for paid/proprietary access exceed this limit, more time may be allocated from either remaining Targeted Access Time or merit time, at the director's discretion. The paid access rate will be based on a full cost recovery basis.

It is also recognised that a significant amount of benefit is delivered to Australian and New Zealand industry through research partnerships that access the Australian Synchrotron through the merit program. This is expected to continue and will be encouraged by the facility. A major determinant as to whether industry relevant research should access the facility via the merit or proprietary access channel will be whether the research will be published in the peer-reviewed open literature.

- **Development of world-class synchrotron expertise**

It is an internationally accepted expectation that synchrotron beamline staff be active researchers. Independent research by staff will primarily be supported via the merit access proposal system, capped at 10% of the merit access allocation. The training and development of facility staff benefits the whole user community and will be supported so that, where beamline scientists are unable to win merit time they may obtain targeted access, subject to approval by the Director. This class of access will be capped so that no one beamline scientist obtains more than six shifts per operating cycle through this

mechanism and so that, overall, time awarded to staff does not exceed 10% of the available time.

- **Development of world-class synchrotron facilities and maintenance and repair**
Where necessary, Targeted Access will be used for commissioning new beamline capability, and for calibrating, maintaining and repairing beamline equipment.
- **Educational access**
The Synchrotron supports promotion and education of science, technology and mathematical skills. Targeted access may be used to support these outcomes.
- **Discretionary access** In a small number of cases there are circumstances where it may benefit the Synchrotron or the nation to award access other than under the merit scheme or the other forms of targeted access. In such cases, the Australian Synchrotron Director has discretion to award access from Targeted Access time.

Targeted Access – For New Beamline Funders

For new beamlines – those built after 30 June 2016 – and subject to the final details of any capital funding contracts, funders of capital and/or operating funds will receive a return on investment that provides them with access to the specific new beamline(s) to be used at their discretion, subject to safety review by the Synchrotron. Funding the full capital cost of a beamline will entitle funders to 30% of the available time for a period of six years after commissioning⁴. Pro rata entitlements for part funding may be negotiated. In addition funders will be able to compete in the merit time for access to new beamlines.

Transparency

The outcomes of the merit proposal review process will be monitored each cycle, to determine stakeholder application rates and merit process outcomes. The results will be reported at least annually to stakeholders (e.g. by publishing on a website).

⁴ This is the same return on investment that was provided to the original Foundation Investors

Appendix 1: Merit Process

The merit selection of proposals for access to the Australian Synchrotron will operate as follows:

- (a) The Australian Synchrotron will publish dates for proposal submission corresponding to each operating cycle.
- (b) Beamtime proposals are peer reviewed by external scientific reviewers in accordance with the following criteria:
 - A. Quality of the Scientific Proposal – 40% of total score
 - B. National Benefit & Applications of the Proposed Research – 30% of total score
 - C. Track Record (relative to opportunity) – 30% of total score
 - D. Need for Synchrotron Light – no score ("yes" or "no" decision)

Additionally, proposals must be reviewed as safe and technically feasible by Synchrotron staff.

- (c) The proposals and referee scores and comments are reviewed by a Proposal Advisory Committee (PAC) which adjusts the scoring (if needed) to a common scale, and recommends a specific beamtime allocation. The PAC produces a list of proposals in priority order for each beamline as a recommendation to the Synchrotron Director.
- (d) After review and approval by the Synchrotron Director (or delegate), the approved proposal lists are forwarded to each beamline for scheduling. Beamline staff allocate time to the proposals in order of priority until the available beamtime is filled. Any approved proposals that cannot be scheduled must re-apply for time unless notified otherwise by the facility.
- (e) The User Support Office notifies the applicants of the outcome of their proposal and coordinates the administration and regulatory steps (safety training, experimental authorisation, travel support, etc.) required before an experiment can begin.

Schedule 3 - Dispute Resolution

1. The Parties agree that the following procedure will be used in an expeditious way to resolve a dispute:
 - (a) the party claiming there is a dispute will notify the other party in writing, 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 the 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;
 - (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, but there is no resolution within 30 Business Days of the submission, or such extended period of time as the parties agree in writing before the expiration of the 30 Business Days;

then, either party may commence legal proceedings.
2. This procedure does not apply to action that Defence may take, or purport to take, under clauses 4.3, 19 or 20 of the Agreement.
3. Before this procedure is applied, if in Defence's opinion it is appropriate Defence will first refer the dispute to the Funders Committee for discussion and, if possible, resolution.

Schedule 4 - Financial Management Requirements

1. ANSTO must keep financial records relating to the Program to enable:
 - 1.1 all income and expenditure in relation to the Funding for the Program to be identified in ANSTO's financial accounts; and
 - 1.2 the audit of ANSTO's financial accounts relating to the Program.
2. ANSTO must not use any of the Funds as security in relation to any form of loan, credit or payment.

Schedule 5 – Key Program Attributes

Key Program Attributes under the Defence Funding Agreement for the Program are as follows:

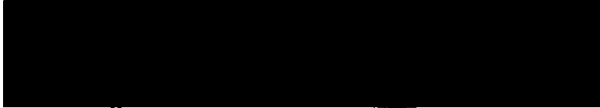
1. The Access Regime is adopted and maintained in relation to the management of the Australian Synchrotron.
2. All legal arrangements by which ANSTO provides access to the Australian Synchrotron to users make such access subject to the Access Regime.
3. Support from Australian Synchrotron scientists, travel assistance, sample shipping funding and complimentary accommodation is made available to Program Users.
4. Transparent mechanisms are in place and maintained for reporting of allocation and usage of beamtime access.

Schedule 6 – Reporting Requirements

Report	Description of report	Due Date
1	<p>First and final report to include (subject to non disclosure obligations relating to non-merit access) in relation to the relevant reporting period:</p> <ul style="list-style-type: none"> ○ confirmation that each Key Program Attribute has been met including reporting on the time allocated to projects by ANSTO and the delivery of funding pledges set out in the Access Regime ○ name of each project carried out under the Program, a brief description of the Research and its potential scientific, community and industry benefits ○ total number of publications citing or acknowledging the use of the Australian Synchrotron and the total for each beamline ○ total number of early career researchers who have accessed the Australian Synchrotron under the Program ○ an audited statement of the Program's income and expenditure, specifying in particular the allocation and expenditure of the Funds up to the date of the report ○ any issues that may impact on completion of the Program and meeting the Key Program Attributes described in Schedule 5 ○ an overall assessment of progress with respect to the Program as described in the Proposal and the Key Program Attributes described in Schedule 5 	9 September 2017

Signed as an agreement.

Signed for and on behalf of the
Commonwealth of Australia as
represented by the Department of
Defence



Bryan L. J. MAS
Name of Witness (print)

Date: 30 June 2016



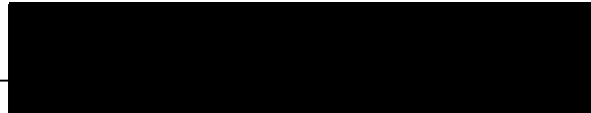
Signature
Ian Wesley Anderson,
Deputy Director Financial and Grants
Policy, 00531654
Name of signatory (print)

Signed by Australian Nuclear Science
and Technology Organisation
47956969590 by its duly authorised officer:



Catherine Kelleher
Full name of Witness

Date: 30 JUNE 2016



MILES HYAM APPERLEY
Full name
HEAD OF RESEARCH INFRASTRUCTURE