

Operational agreement for the expenditure of Government 2.0 Project Funds

Dated

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Details

Parties	Microsoft and Government 2.0 Taskforce	
Microsoft	Name	Microsoft Institute Pty Limited
	ABN	68 003 871 412
	Address	1 Epping Road, North Ryde, NSW
	Representative	Simon Edwards Head of Government & Industry Affairs Microsoft Australia
Government 2.0 Taskforce	Name	The Commonwealth of Australia as represented by the Department of Finance and Deregulation in its capacity as Secretariat to the Government 2.0 Taskforce
	ABN	61 970 632 495
	Address	Government 2.0 Taskforce Secretariat Australian Government Information Management Office Department of Finance and Deregulation John Gorton Building King Edward Terrace PARKES ACT 2600 AUSTRALIA
	Representative	Peter Alexander Branch Manager Online Services Branch

Recitals	<p>A The Commonwealth has established the Government 2.0 Taskforce, which has the purpose of advising and assisting the Commonwealth to:</p> <ul style="list-style-type: none">• make government information more accessible and usable — to establish a pro-disclosure culture around non-sensitive public sector information;• make government more consultative, participatory and transparent — to maximise the extent to which government utilises the views, knowledge and resources of the general community;• build a culture of online innovation within government — to ensure that government is receptive to the possibilities created by new collaborative technologies and uses them to advance its ambition to continually improve the way it operates;• promote collaboration across agencies with respect to online and information initiatives — to ensure that efficiencies, innovations, knowledge and enthusiasm are shared on a platform of open standards; and• identify and/or trial initiatives that may achieve or demonstrate how to accomplish the above objectives.
	<hr/> <p>B Microsoft has agreed to make available to service providers engaged to undertake Government 2.0 Projects up to \$2.45 million from the Commonwealth Government Services Provision Fund.</p>
	<hr/> <p>C During the Term, Microsoft will expend the Project Fund on Government 2.0 Projects and related activities in accordance with the terms of this Deed.</p>
	<hr/> <p>D The parties have entered into this Deed on the understanding that the Government 2.0 Taskforce will at no time be a party to Contracts entered into by Microsoft that are funded from the Project Fund and that in entering into this Deed, each party has taken, and will continue throughout the Term to take, all steps necessary to ensure that it complies with all relevant laws.</p>
Date of Deed	See Signing page

General terms

1 Interpretation

1.1 Definitions

These meanings apply unless the contrary intention appears:

Commonwealth means the Commonwealth of Australia.

Commonwealth Government Services Provision Fund means fund of that name created and administered in accordance with the SPF Administration Policy and SPF User Guide.

Contract means a contract entered into by Microsoft and a service provider substantially in the form of the Government 2.0 Service Provider Agreement for a Government 2.0 Project.

Deed means this agreement between the Commonwealth and Microsoft, and includes its schedules and any attachments.

Establishment Date means 22 June 2009.

Expenditure Rules are set out in Schedule 1.

Government 2.0 Project is defined in clause 3.2 ("Project recommendations and approval").

Government 2.0 Service Provider Agreement is attached at Schedule 2.

Government 2.0 Taskforce means the party specified in the Details and includes its subcontractors and personnel.

MCS is defined in clause 3.4 ("Project management for key and development Government 2.0 Projects").

Microsoft is the party specified in the Details and includes its subcontractors and personnel.

Project Fund means the fund established in accordance with clause 2.1 ("Establishment of the Project Fund").

SPF Administration Policy means the document entitled "The administration of service provision funds relating to contracts entered into under the auspices of the VSS-2 agreement".

SPF User Guide means the document entitled "Microsoft Service Provision Fund for Federal Government Agencies User Guide".

Term means the period commencing from the date of this deed and ending on 30 June 2010.

VSS-2 Agreement means the VSS-2 Deed of Agreement between Microsoft and the Commonwealth of Australia dated 7 December 2000 for the supply of Microsoft products.

2 Project Fund

2.1 Establishment of the Project Fund

On the Establishment Date, Microsoft will allocate \$2.45 million to the Project Fund for the purposes of funding Government 2.0 Projects.

2.2 Calculation of Project Fund balance

Between the Establishment Date and the end of the Term, Microsoft will enter into Government 2.0 Projects. During the Term, Microsoft may reduce the balance of the Project Fund by the balance of any payments required to be made by Microsoft under a Contract or as otherwise permitted by this Deed (including the Expenditure Rules).

2.3 Nature of the Project Fund

For the avoidance of doubt, the Project Fund remains under Microsoft's control at all times and is not held in trust by Microsoft for the Commonwealth's or the Government 2.0 Taskforce's benefit.

2.4 Expiry of unexpended Project Fund

If, at the end of the Term, the total amount allocated to the Project Fund has not been paid or committed to Government 2.0 Projects, the parties will hold further discussions about the expenditure of the Project Fund.

3 Government 2.0 Projects

3.1 Projects appropriate for funding

Though not exclusive, the following general areas are appropriate areas for commitment of expenditure by Microsoft from the Project Fund:

- (a) awards, prizes and other benefits for competitions and contests run by the Government 2.0 Taskforce;
- (b) international travel for experts invited to present to or on behalf of the Government 2.0 Taskforce and some international travel for members of the Government 2.0 Taskforce undertaking activities on behalf of the Government 2.0 Taskforce;
- (c) research, conferences, seminars and public meetings; and
- (d) development of specific information technology projects capable of implementation on all publicly available and broadly adopted technology platforms.

3.2 Project recommendations and approval

The Chair of the Government 2.0 Taskforce may make formal recommendations to Microsoft in accordance with the process set out in the Expenditure Rules as to Government 2.0 Projects that should be funded from the Project Fund. Microsoft agrees to fund projects recommended by the Chair of the Government 2.0 Taskforce unless, acting reasonably, Microsoft considers that the project is not suitable to receive financial support from the Project Fund. Microsoft must take into account all relevant considerations when determining whether a project qualifies as a Government 2.0 Project, including the following non-exhaustive matters:

- (a) whether the project is within the terms of reference for the Government 2.0 Taskforce;
- (b) whether the project is capable of being entered into on or before the end of the Term;
- (c) whether funding the project would contravene a provision of this Deed (without limitation including the Expenditure Rules);
- (d) whether, as at the date the recommendation is received by Microsoft, and having regard to other Government 2.0 Projects in progress at that date, there are insufficient funds available in the Project Fund to allow the project to be satisfactorily completed; and
- (e) whether Microsoft otherwise considers, acting reasonably, that the proposed recipient has sufficient resources or capacity to undertake the project without the benefit of funding from the Project Fund.

Upon Microsoft notifying its acceptance of a project recommendation to the Government 2.0 Taskforce, the recommended project will become a “**Government 2.0 Project**”.

3.3 Management of Government 2.0 Projects

In respect of each Government 2.0 Project, Microsoft is responsible for:

- (a) contracting with one or more service providers to deliver the necessary services;
- (b) meeting all payment obligations in relation to the contracted service provider’s performance of the services; and
- (c) providing monthly reports to the Government 2.0 Taskforce setting out a record of its activities during the preceding period, including the status of the Project Fund and all Government 2.0 Projects.

Subject to clause 3.4 (“Project management for key and development Government 2.0 Projects”), the responsibilities listed in clause 3.4(a) to (c) above are Microsoft's only management responsibilities in relation to Government 2.0 Project, and the Government 2.0 Taskforce will manage all other aspects of the Government 2.0 Projects (including the selection and administration of, and day to day contact with, the relevant service provider).

3.4 Project management for key and development Government 2.0 Projects

Where a Government 2.0 Project:

- (a) is projected to require significant governance or project management skill beyond that available to Microsoft or the Government 2.0 Taskforce in the usual course of either's business;
- (b) presents a substantial financial commitment from the Project Fund such that Microsoft and the Government 2.0 Taskforce agree that a project manager should be appointed; or
- (c) involves the development of a technology application or solution where a definition of the project has not been specifically defined but a concept or problem has been identified by the Government 2.0 Taskforce,

Microsoft may engage Microsoft Consulting Services ("MCS") to provide project management services for the project. In these circumstances only:

- (d) MCS shall manage the governance and progress of the Government 2.0 Project and act as the contracting party responsible for completing the project;
- (e) MCS will establish contracts with service providers required to deliver the project on terms approved by the Government 2.0 Taskforce; and
- (f) if the project is a development project, prior to establishing any contract MCS will:
 - (i) discuss with the Government 2.0 Taskforce the scope of the project, the budget, timelines and other issues related to the work; and
 - (ii) prepare for the Government 2.0 Taskforce's approval a draft scope of works document and shall allow the Government 2.0 Taskforce to select the service provider from a list of three potential service providers who in its view could undertake the work.

3.5 Government 2.0 Project Contracts

- (a) (**Contract terms**) Unless clause 3.4 ("Project management for key and development Government 2.0 Projects") applies or the Expenditure Rules provide to the contrary, Microsoft will contract with Government 2.0 Project service providers on terms that are substantially similar to the Government 2.0 Service Provider Agreement.

To avoid doubt:

- (i) any Contract must be entered into during the Term; and
- (ii) a Contract formed prior to the expiration or earlier termination of this Deed will continue in force until it is terminated or expires.

- (b) **(Treatment of Intellectual Property Rights)** The parties will follow the process set out in Step 5 of Expenditure Rules clause 1.2 ("Expenditure Process") in respect of Intellectual Property Rights developed under a Contract.
- (c) **(Taxes)** To avoid doubt, Microsoft is responsible for any Tax payable on any assignment under clause 3.5(b) above, and Microsoft may deduct the amount of such Taxes from the Project Fund.
- (d) **(Definitions)** For the purposes of this clause 3.5 ("Government 2.0 Project Contracts"):
 - (i) "Intellectual Property Rights" has the meaning it is given in a Contract; and
 - (ii) "Tax" means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by a regulatory agency, together with any related interest, penalty, fine or other charge.

4 General

4.1 Publicity

Neither party may make press or other announcements or releases relating to the content of this Deed without the approval of the other party unless and to the extent that the announcement or release is required to be made by the party by law or by a stock exchange. This clause 4.1 ("Publicity") will in no way constrain the Commonwealth or the Government 2.0 Taskforce from making press or other announcements regarding projects that are commissioned using funds from the Project Fund.

4.2 Liaison

Each party's Representative will be the contact point for issues arising in respect of this Deed, including facilitating the selection and approval of projects, the creation of contracts, the payment of invoices and resolution of any disputes arising from the operation of the Project Fund.

4.3 Entire agreement

This Deed constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

4.4 No representations or warranties

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

4.5 Variation and waiver

A provision of this Deed or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

4.6 No partnerships

Nothing contained or implied in this Deed constitutes a party the partner, agent, or legal representative of the other party for any purpose or creates any partnership, agency or trust, and no party has any authority to bind the other party in any way.

4.7 Governing law and jurisdiction

- (a) This Deed is governed by the law of the Australian Capital Territory.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory
- (c) Each party waives any right to object to any proceedings being brought in those courts for any reason.

4.8 Counterparts

This Deed may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

Signing page

EXECUTED as a deed

Executed by Commonwealth of Australia
acting through the Department of
Finance and Deregulation ABN 61 970
632 495 by John M Sheridan and in the
presence of:



Signature of Witness

MARTIN BOLTON
Name of Witness in full



Signature of Authorised Person

JOHN MURDOCH SHERIDAN
Name of Authorised Person in full


Executed by Microsoft Institute Pty
Limited ABN 68 003 871 412 in
accordance with section 127 of the
Corporations Act 2001 (Cth) by or in the
presence of: Sarah Chapman

01/10/09
Date



Signature

Tracey Ann Fellows
Full name of director



Signature

BRIAN PATRICK ARMSTRONG
Full name of second director/secretary

DATED: 7 October 2009

Schedule 1 - Expenditure Rules

1 Direct project costs

1.1 Guiding principle for expenditure of direct costs

Microsoft may deduct from the Project Fund all payments made to service providers under contracts for the provision of a Government 2.0 Project.

1.2 Expenditure Process

Note: The below process may be amended in relation to key and development projects (see clause 3.4 (“Project management for key and development Government 2.0 Projects”)).

Step 1

Before determining to undertake an activity that will require expenditure from the Project Fund, the Government 2.0 Taskforce, will seek from Microsoft in writing (by email) confirmation of the uncommitted balance of the Project Fund.

Step 2

Within 72 hours of receiving a request from the Government 2.0 Taskforce, Microsoft will confirm in writing (by email) the uncommitted balance of the Project Fund.

Step 3

Upon determination by the Government 2.0 Taskforce, the Government 2.0 Taskforce will notify Microsoft in writing of those activities, projects, competitions etc that the Government 2.0 Taskforce recommends should be funded by expenditure from the Project Fund. That notification will include:

- (a) a description of the proposed project/activity/competition;
- (b) the name of the service provider/s or whether the Government 2.0 Taskforce agrees to Microsoft selecting a service provider;
- (c) definition of the goals or outcomes the Government 2.0 Taskforce is seeking from the expenditure;
- (d) an estimated cost of the activity or project budget; and
- (e) an indication as to when the activity will need to be undertaken or completed.

If at any point during a Government 2.0 Project, Microsoft or the Government 2.0 Taskforce becomes aware of the potential for a cost-overrun or determines that it will require additional services from the service provider, the Government 2.0 Taskforce Secretariat will submit a supplementary budget to Microsoft for approval as soon as practicable. Provided that sufficient uncommitted funds remain in the Project Fund to fund the supplementary budget, Microsoft will

approve the supplementary budget, and ensure that the Contract with the service provider is updated to reflect any such changes.

Step 4

If Microsoft notifies the Government 2.0 Taskforce that Microsoft accepts a project recommendation in accordance with clause 3.2 (“Project recommendations and approval”), Microsoft will in consultation with the Government 2.0 Taskforce select or agree a service provider, as per item (b) of Step 3 above, to provide the service or goods required and, where appropriate, will supply the Government 2.0 Taskforce with a copy of the quote provided by the service provider for those services, including GST. Where appropriate Microsoft will seek quotes for the provision or delivery of goods or services and will agree with the Government 2.0 Taskforce from quotes provided by a selected service provider.

Step 5

Microsoft will arrange a Contract to procure the goods or services required from the service provider. In so doing Microsoft will obtain the Government 2.0 Taskforce’s views regarding the specific terms of the Contract and will endeavour to incorporate those views into the Contract.

All intellectual property created during Government 2.0 Projects in respect of the development of the services or goods will be subject to the reasonable requirements of the Government 2.0 Taskforce. In particular, Microsoft will follow the following process when negotiating the provisions of each Contract:

- (a) Microsoft will, at no cost to the Commonwealth, use best endeavours to ensure that the ownership of foreground intellectual property created during or as a consequence of a Government 2.0 Project will vest in or be assigned to the Commonwealth as represented by the Department of Finance and Deregulation from their creation;
- (b) if Microsoft is unable to achieve the position described in (a), it will:
 - (i) promptly notify the Government 2.0 Taskforce of this fact; and
 - (ii) use best endeavours to procure an irrevocable, non-exclusive, perpetual, transferable, royalty-free licence (including the right of sub-licence) for the Commonwealth to use and exploit the foreground intellectual property; and
- (c) if Microsoft is unable to procure the grant of a licence referred to in (b), promptly:
 - (i) notify the Government 2.0 Taskforce that it has been unable to procure the assignment or licence of the relevant intellectual property rights; and
 - (ii) discuss with the Government 2.0 Taskforce a resolution for the issue (which may include not using the service provider, agreeing to a more limited licence, or relying on the Commonwealth’s statutory rights).

Microsoft will provide the Commonwealth with reasonable assistance in enforcing the intellectual property rights that are assigned to, vested in or licensed to the Commonwealth under each Contract.

Step 6

Upon receipt of an invoice from a service provider for goods or services provided pursuant to a Contract, Microsoft will seek validation from the Government 2.0 Taskforce that the goods or services have been provided to the satisfaction of the Government 2.0 Taskforce. Upon receipt of confirmation from the Government 2.0 Taskforce, Microsoft will make payment to the service provider in accordance with the Contract and will record that payment against the record of the Project Fund. Despite the previous sentence, Microsoft may make a payment under the Contract if no confirmation has been provided by the Government 2.0 Taskforce, if failure to make the payment would cause Microsoft to be in breach of the Contract.

2 Administrative and incidental costs

2.1 Government 2.0 Taskforce administrative costs

The Project Fund may not be used to meet the costs associated with the Government 2.0 Taskforce secretariat, the engagement of members of the Government 2.0 Taskforce (including the Chair), or other administrative costs incurred running the Government 2.0 Taskforce.

2.2 Project Management costs - MCS

If the Parties agree that MCS is to manage a Government 2.0 Project in accordance with clause 3.4 (“Project management for key and development Government 2.0 Projects”), MCS will be paid a fee (which will be deducted from the Project Fund) for the management services it delivers for each project it manages. This fee will be agreed and disclosed on a case by case basis before the relevant Government 2.0 Project commences. All payments for information technology projects will include GST.

2.3 Co-ordination costs

Where the provision of a Government 2.0 Project requires coordination skills (e.g. the conduct of a seminar) that are not available within Microsoft, or in or arranged by the Government 2.0 Taskforce, a third party will be contracted to deliver the service outcome. The fees of this third party will be paid from the Project Fund

2.4 Document preparation and legal advice

The reasonable costs of preparing this Deed (including the Expenditure Rules and Government 2.0 Service Provider Agreement) will be met from the Project Fund. Should further legal advice or support in respect of the operation of the arrangements be required by either the Government 2.0 Taskforce or Microsoft, the costs of that advice or support will be agreed before any such costs are incurred. For the avoidance of doubt, payment from the Project Fund for any legal advice does not create any obligation on either party to disclose the content of the legal advice to the other party.

2.5 Competitions

Where the Government 2.0 Taskforce seeks to conduct a competition, it will establish the logistics and legalities of the competition. The costs of doing so will be covered from the Project Fund.

Winners will be selected by the Government 2.0 Taskforce and notified to Microsoft by the Chair of the Government 2.0 Taskforce, and Microsoft will facilitate the payment of prizes from the Project Fund in line with the Chair's advice.

2.6 Travel

Where the Government 2.0 Taskforce seeks to provide travel services for advisers to the Government 2.0 Taskforce, it will notify Microsoft of the Government 2.0 Taskforce's requirements. Bookings for those individuals will be made by Microsoft. The Government 2.0 Taskforce shall notify Microsoft of the names, dates and travel requirements of individuals and any conditions or limitations for that travel (e.g. class of travel, itinerary flexibility etc). Microsoft shall make bookings for those individuals and advise the Government 2.0 Taskforce accordingly.

All fees and charges, including all fees for changes to an itinerary, will be charged to the Project Fund. Unless agreed to the contrary, the Microsoft is not obliged to:

- (a) book domestic travel for Government 2.0 Taskforce members;
- (b) charge to the Project Fund the costs incurred by Government 2.0 Taskforce members during any international travel, including accommodation, meal and per diem fee costs; or
- (c) charge to the Project Fund travel insurance associated with any travel.

Schedule 2 - Government 2.0 Service Provider Agreement



MS - Cth
Government 2-0 - Ter