

Grant Agreement — Standard Terms and Conditions

1 BACKGROUND

- 1.1 APNIC Foundation intends to allocate the Grant to the Recipient on the basis set out in this Agreement for the purpose of the Recipient undertaking the Project.
- 1.2 The Recipient accepts the Grant, and agrees to undertake the Project, in accordance with this Agreement.

2 DEFINITIONS

In this Agreement, the following definitions apply:

Agreement means this Grant Agreement, incorporating these terms and conditions and the Schedule.

Arbitration Rules means the Resolution Institute Arbitration Rules adopted by the Resolution Institute which are in force at the time a relevant dispute is to be referred to arbitration in accordance with clause 17.4.

Audit and Information Delivery Requirements means the requirements set out in the Grantee Portal as amended from time to time.

Commencement Date means the commencement date specified in the Schedule.

Control means the ability or capacity to determine the outcome of decisions about the party's financial and operating policies.

Estimated Completion Date means the estimated completion date specified in the Project Proposal.

Grant means the total amount of Project Funds and other support to be provided by APNIC Foundation to the Recipient for the purpose of fulfilling the Project and otherwise in accordance with this Agreement.

Grantee Portal means the grants administration system used by APNIC Foundation for the administration of the Grant, which at the date of this agreement is the Fluxx platform accessible at: <https://apnicfoundation.fluxx.io/>.

ICT means Information and Communications Technology.

Insolvency Event means, in relation to a person, anything that reasonably indicates that there is a significant risk that that person is or will become unable to pay its debts as they fall due. This includes any of the following:

- (a) a meeting of the person's creditors being called or held;
- (b) a step being taken to make the person bankrupt;
- (c) an application is presented, or an order is made for the sequestration of the person's estate;
- (d) a step being taken to wind the person up;
- (e) a step being taken to have a receiver, receiver and manager, administrator, liquidator or provisional liquidator appointed to the person or any of its assets or such an appointment taking place;
- (f) the person entering into any type of agreement, composition or arrangement with, or assignment for, the benefit of all or any of its creditors; and
- (g) the person ceases or threatens to cease to carry on its main business.

Intellectual Property Rights means all and any patents, patent applications, trademarks, service marks, trade names, registered designs, unregistered design rights, copyrights, know how, trade secrets, domain names, Internet addresses, rights in confidential

information, and all and any other intellectual property rights, whether registered or unregistered, and including all applications and rights to apply for any of the same.

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.

Procurement Principles means the procurement principles set out in the Grantee Portal as amended from time to time.

Project means the project described in the approved Project Proposal.

Project Acknowledgement has the meaning given in the Schedule.

Project Budget means the itemized project budget submitted by the Recipient as part of the Project Proposal and agreed by APNIC Foundation.

Project Funds has the meaning set out in the Schedule.

Project Lead means the person designated by the Recipient as the 'Project Lead' in the Grantee Portal or otherwise by written notice to APNIC Foundation.

Project Objectives has the meaning set out in clause 4.

Project Proposal means the project proposal submitted by the Recipient to, and accepted by, APNIC Foundation, and which is the subject of this Grant and this Agreement.

Project Reporting Guidelines means the project reporting guidelines set in the Grantee Portal as amended from time to time.

Reports means reports that the Recipient is required to submit to APNIC Foundation under this Agreement.

Resolution Institute means Resolution Institute ACN 008 651 232.

Schedule means the Schedule of disbursements and reports included in this document.

Special Conditions has the meaning set out in the Schedule.

Term means the period between the Commencement Date and the Estimated Completion Date, unless otherwise agreed in writing by both parties.

3 INTERPRETATION

- 3.1 The Schedule to this Agreement forms part of this Agreement. In the event of any conflict between the clauses of the Agreement and any part of the Schedule, the following order of precedence will apply:
 - (a) Special Conditions
 - (b) Agreement
 - (c) Schedule (other than the Special Conditions).
- 3.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:
 - (a) headings are inserted for convenience only and do not affect the interpretation of this Agreement;
 - (b) a reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Brisbane, Australia;
 - (c) if the day on which an act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day;
 - (d) a reference in this Agreement to any law, legislation or legislative provision includes any statutory modification,

- amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (e) a reference in this Agreement to any document or agreement is to that document or agreement as amended, novated, supplemented or replaced;
 - (f) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement;
 - (g) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
 - (h) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
 - (i) a word that indicates the singular also indicates the plural, a word that indicates the plural also indicates the singular, and a reference to any gender also indicates the other genders;
 - (j) a reference to the word 'include' or 'including' is to be interpreted without limitation;
 - (k) reference to '\$', 'dollar' or 'USD' is a reference to the lawful currency of the United States of America;
 - (l) any schedules and attachments form part of this Agreement;
 - (m) if a party consists of more than one person, this Agreement binds them jointly and each of them severally; and
 - (n) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it.

4 PROJECT OBJECTIVES

The Recipient's overall Project objective is as set out in the Project Proposal (**Project Objectives**). These Project Objectives are aligned with the objectives of APNIC Foundation, which are to:

- 4.1 advance social or public welfare of the general public in the Asia Pacific region;
- 4.2 relieve the poverty, distress or disadvantage of individuals and families in the Asia Pacific region; and
- 4.3 advance education of the general public in the Asia Pacific region,

through furthering and promoting the increased availability, affordability and accessibility of a global, open, stable and secure public Internet (collectively, the **APNIC Foundation Objectives**).

5 OBLIGATIONS OF THE RECIPIENT

- 5.1 In performing the Recipient's obligations under this Agreement, and in connection with the Project, the Recipient shall work in close co-operation with the APNIC Foundation Head of Programs and Partnerships, or any such delegate specified by them.
- 5.2 The Recipient has the following obligations under the terms of this Agreement:
 - (a) the Recipient will carry out the Project to perform the Project Objectives and fulfil all obligations according to the detailed Project Proposal and this Agreement;
 - (b) the Recipient is responsible for the receipt and expenditure of all Project Funds in relation to the Project in accordance with this Agreement;
 - (c) the Recipient shall implement and use the Project Funds solely to perform the Project Objectives and activities of the Project in accordance with the Project Budget;
 - (d) the Recipient shall submit to APNIC Foundation the Reports in accordance with the Project Reporting Guidelines;
 - (e) the Recipient shall consult with and obtain the prior approval of APNIC Foundation before making any

- changes in its Project leadership or undergoing a change of Control. As a condition of this grant the Recipient must demonstrate the required scientific and administrative skills to pursue the objectives of this grant successfully; and
- (f) the Recipient must obtain any clearances from the relevant government and any other authorities or agencies that may be required to carry out the Project.

- 5.3 All assets acquired as part of the Project or purchased using Project Funds by the Recipient will be the property of the Recipient. The Recipient, at its sole cost or expense, will be responsible for the maintenance and repair of such assets unless otherwise agreed.

6 OBLIGATIONS OF APNIC FOUNDATION

- 6.1 APNIC Foundation will supervise and monitor the technical and financial aspects of the Project work conducted by the Recipient including any research, development and implementation work required to perform the Project. APNIC Foundation reserves the right to designate a new contact for the Recipient to communicate with in relation to the terms of this Agreement without amending this Agreement.
- 6.2 The maximum amount payable by APNIC Foundation to the Recipient as a grant under this Agreement is as specified in the Schedule.
- 6.3 The tasks to be performed by the Recipient in order to achieve the Project Objectives shall be financed by APNIC Foundation in accordance with the Project Budget and the terms and conditions of this Agreement. In particular, where the disbursement schedule set out in the Schedule includes more than one payment, all subsequent payments contemplated by this Agreement are conditional upon the submission by the Recipient to APNIC Foundation of an itemised financial statement of actual costs incurred and certified by the Recipient together with any required supporting documentation as a true representation of the time and resources dedicated to achieving the Project Objectives. Each of these financial reports must be accompanied by the technical reports described in the Project Reporting Guidelines. The content of all reports to be provided under this Agreement is as set out in the Project Reporting Guidelines or as otherwise advised by APNIC Foundation to the Recipient from time to time.

7 DURATION OF THE AGREEMENT

- 7.1 If this Agreement is not signed by the Recipient and returned to APNIC Foundation within 60 days of receipt from APNIC Foundation, it will be considered null and void.
- 7.2 This Agreement will continue in full force and effect for the Term, unless otherwise terminated in accordance with the terms and conditions of this Agreement.
- 7.3 APNIC Foundation will, in its absolute discretion, determine whether the Recipient has satisfied the Project Objectives to a reasonable standard according to the approved Project Proposal and reporting requirements. Unless such a determination is given by APNIC Foundation, the Project will be considered incomplete, the Recipient will not be entitled to receive the balance of the Project Funds, and will be required to return any unspent and unaccounted funds.
- 7.4 If the Recipient fails to submit the reports described in the Project Reporting Guidelines to APNIC Foundation within the time periods as specified on the Schedule and communicated by APNIC Foundation to the Recipient via the Grantee Portal, APNIC Foundation may terminate this Agreement immediately by notice to the Recipient. In such an instance, APNIC Foundation may decide not to pay any further amounts to the Recipient (including payments for work to which the report(s) relate) and may request the Recipient to return any unspent and unaccounted funds.

- 7.5 After the expiration of this Agreement the Recipient shall not claim payment for any activity or phase of activity not performed in accordance with the terms of this Agreement.

8 CONDITIONS OF PAYMENT

- 8.1 APNIC Foundation shall provide the Project Funds to the Recipient in accordance with the disbursement schedule set out in the Schedule, in consideration for the performance of the Project and the achievement of the Project Objectives.
- 8.2 The Grant is subject to sufficient funds being made available to APNIC Foundation by its donors during the full course of the Grant. In the event that the agreement between any one or more of APNIC Foundation's donors and APNIC Foundation, under which the Project Funds are made available, is terminated for any reason whatsoever, APNIC Foundation is not required to pay the Project Funds to the Recipient and this Agreement terminates immediately. In which case APNIC Foundation will have no liability to or obligations in favour of the Recipient.

9 WARRANTIES

- 9.1 The Recipient represents and warrants that:
- (a) it is duly incorporated and validly exists in accordance with the law of its place of incorporation;
 - (b) the execution, delivery and performance of this Agreement in accordance with its terms have been properly authorised by all necessary corporate action of the Recipient;
 - (c) the Recipient's execution, delivery and performance of this Agreement does not and will not contravene or otherwise conflict with any law, judgment or writ by which it is bound or to which it is subject;
 - (d) no Insolvency Event has occurred to the Recipient and there are no facts, matters or circumstances that could reasonably be expected to give rise to an Insolvency Event in relation to the Recipient; and
 - (e) all information provided and declarations made by the Recipient to APNIC Foundation in respect of the Recipient and the Project in the Project Proposal and the Grantee Portal (and any information subsequently provided) is true, accurate and complete in all material respects, and not knowingly or recklessly misleading or deceptive whether by omission, failure to particularise, or otherwise.

10 INTELLECTUAL PROPERTY RIGHTS

- 10.1 Other than as provided to the contrary in this clause 10, the Recipient owns all Intellectual Property Rights created by the Recipient as a result of this Project.
- 10.2 It is a condition of this Agreement that the Recipient makes all Intellectual Property Rights subsisting in all Technical Reports (**Works**) created (in whole or in part) using the Project Funds, and delivered to APNIC Foundation under this Agreement, available for use in accordance with the licence described at <https://creativecommons.org/licenses/by-sa/4.0/> (as updated or replaced from time to time). Ownership in the Works must not be assigned, and no other licences may be granted, without the prior written consent of APNIC Foundation.
- 10.3 In addition to, and without affecting clause 10.2, the Recipient, its employees and subcontractors consent to APNIC Foundation and its donors, in their absolute discretion, doing any attributable act (as that term is defined in the *Copyright Act 1968* (Commonwealth of Australia)) or reproducing, publishing, copying, adapting, performing, communicating, showing or exhibiting in or to the public, altering or in any other way changing or using or not using the reports, studies or other information or any outcomes of the Project (or a substantial part or adaptation of them) that the Recipient provides to APNIC Foundation or APNIC

Foundations donors, whether before or after the date of this consent, for promotional and reporting purposes:

- (a) with or without attribution of authorship;
- (b) with or without any other materials comprised in the Reports or the outcomes of the Project;
- (c) with or without any other text, data, sounds or images (whether animated or not);
- (d) with no title, the same title or any other title;
- (e) in any medium;
- (f) in any context; and
- (g) in any way it sees fit.

Nothing in this clause 10.3 limits the right of APNIC Foundation's donors to exercise the licence described in clause 10.2 in accordance with its terms.

- 10.4 The Recipient can only use APNIC Foundation's or any other APNIC Foundation donor's trademarks or their name, acronym or emblem/logo with the specific prior authorisation in writing from APNIC Foundation or the relevant APNIC Foundation donor. The Recipient may use the APNIC Foundation logo and any APNIC Foundation trademark on reports and publications solely related to the Project without first obtaining the prior written consent of APNIC Foundation, but must cease to include either or both of them on new publications following receipt of a written direction from APNIC Foundation to cease doing so.
- 10.5 The Recipient will recognize the support of APNIC Foundation by including in all publications the Project Acknowledgement.
- 10.6 The term "APNIC Foundation" must not be used in such a way that could cause it or its donors to be regarded as having contributed to or be vouching for the content of any Project-related publications.
- 10.7 The Recipient shall respect Intellectual Property Rights and shall ensure that its employees and its subcontractors respect Intellectual Property Rights.
- 10.8 The Recipient confirms and warrants that:
- (a) it has the right to grant the permissions or licences contained in the Agreement;
 - (b) there are no claims or legal proceedings pending or threatened, the outcome of which could adversely affect APNIC Foundation's or the APNIC Foundation's donors' rights given under the Agreement;
 - (c) there are no agreements of any nature in favour of anyone that could interfere with the rights granted to APNIC Foundation and APNIC Foundation's donors under this Agreement; and
 - (d) no materials provided by the Recipient to APNIC Foundation or APNIC Foundation's donors will violate or infringe upon the Intellectual Property Rights or privacy rights of anyone, nor will they defame anyone.

11 LIMITATION OF LIABILITIES

- 11.1 The Recipient shall ensure that appropriate disclaimers protecting APNIC Foundation, APNIC Foundation's donors and the Recipient are included in the website and other related platforms the Recipient creates in pursuit of the objectives. The parties will jointly identify the required disclaimers and agree on the wording of such disclaimers.
- 11.2 Neither the Recipient or anyone who the Recipient employs to carry out the Project Objectives is to be considered as an agent or member of the staff of APNIC Foundation or any of APNIC Foundation's donors and, except as otherwise provided in this Agreement, they shall not be entitled to any privileges, immunities, compensation or reimbursements, nor are they entitled to commit APNIC Foundation or APNIC Foundation's donors to any expenditure or other obligations.
- 11.3 The Recipient will use best endeavours to ensure that the performance of the tasks to achieve the Project Objectives

under this Agreement does not prejudice the rights of third parties and is not in violation of any applicable law.

- 11.4 In carrying out this Project, the Recipient shall, subject to its privileges and immunities, be responsible for complying with all applicable laws and regulations of the countries in which the Project will be carried out and to which Project personnel may have to travel to as part of the Project.
- 11.5 Unless indicated to the contrary in this Agreement, the Recipient shall bear all the expenses of carrying out the Project.
- 11.6 The Recipient indemnifies APNIC Foundation and absolves it of any responsibility for any claim, loss or damage sustained as a result of the non-observance of the above-mentioned obligations, and for any Court action, claim or charge of any kind that may result from the wrongful act or omission of the Recipient or by any of its employees in the performance of this Agreement. The Recipient also indemnifies and holds harmless APNIC Foundation, its agents and employees, for any legal costs and/or other legitimate expenses incurred in connection with any legal action in which APNIC Foundation may come to be involved with as the result of the wrongful act or omission of the Recipient, including, without limitation, disputes about any infringement of Intellectual Property Rights. The Recipient's liability to APNIC Foundation under this clause 11.6 shall not exceed two times the total amount of the Project Funds, except in relation to disputes about any infringement of Intellectual Property Rights, in which case, there is no limit to such liability.
- 11.7 For the avoidance of doubt, neither party shall be liable for any indirect or consequential loss or damages arising as a result of the performance of, or failure to perform, this Agreement.
- 11.8 The Recipient undertakes full responsibility for the purchase of any travel, health and medical, accident or other insurance, which may be necessary in respect to any loss, injury, damage or illness occurring during the performance of this Agreement. The Recipient must give details of these insurances (and certificates of currency for them) upon request.
- 11.9 APNIC Foundation's maximum aggregate liability to the Recipient for any loss, damage, injury or any other claim arising out of or in connection with this Agreement, including any breach by APNIC Foundation of this Agreement, however arising, under any indemnity, in tort (including negligence), under any statute (to the extent permitted by law), custom, law or any other basis, is limited to the amount specified in the Schedule.

12 ANTI-TERRORISM AND SANCTIONS

- 12.1 The Recipient represents and warrants that it, and its officers, employees, and subcontractors:
- have not and are not directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act;
 - are not listed on the "List of Terrorist Organisations" made under the Australian Criminal Code Act 1995 (Cth) and related regulations, posted at: <https://www.nationalsecurity.gov.au/what-australia-is-doing/terrorist-organisations/listed-terrorist-organisations>;
 - are not listed on the "Sanctions List" made under the Charter of United Nations Act 1945 (Cth) and the Autonomous Sanctions Act 2011 (Cth), and related legislation, posted at <http://dfat.gov.au/international-relations/security/sanctions/consolidated-list>;
 - are not listed on the World Bank's "Listing of Ineligible Firms and Individuals" posted at <https://www.worldbank.org/en/projects-operations/procurement/debarred-firms>;

- are not acting on behalf of, or at the direction of, individuals, persons, entities or organisations listed on the Lists referred to in subparagraphs (b) to (d);
- are not owned or controlled by individuals, persons, entities or organisations mentioned in subparagraphs (b) to (d); and
- have not and do not provide direct or indirect support, resources or assets to individuals, persons, entities or organisations associated with terrorism or mentioned in subparagraphs (b) to (d)

- 12.2 The representations and warranties given in clause 12.1 are continuing and treated as being given on each day until termination or expiration of this Agreement.
- 12.3 The Recipient must immediately notify APNIC if it becomes aware of any event, circumstance, or information from which it could reasonably be inferred that the warranties and representations given in clause 12.1 are or may become untrue in any respect.
- 12.4 If APNIC Foundation becomes aware of any event, circumstance, or information from which it could reasonably be inferred that the warranties and representations given in clause 12.1 are or may become untrue in any respect:
- the Recipient must provide APNIC Foundation with any and all information reasonably requested by APNIC Foundation within any time frames specified by APNIC Foundation;
 - the Recipient must do all things necessary to comply with any further requirements APNIC Foundation may deem necessary to rectify or mitigate any potential breach of the warranties and representations given in clause 12.1; and
 - APNIC Foundation may terminate this Agreement immediately without notice.

13 ANTI-CORRUPTION

- 13.1 The Recipient declares and guarantees that no offer, gift or payment, consideration or benefit of any kind, which constitutes an illegal practice, has been or will be made to anyone by the Recipient, either directly or indirectly, as an inducement or reward for the award or execution of this Agreement. Any such practice is grounds for terminating the Agreement or taking any other corrective action as required.
- 13.2 The Recipient shall declare in writing to APNIC Foundation if the Recipient, its officers or employees included in the Project:
- were convicted during a period of three years prior to the submission of the Project Proposal, by a court of law in Australia or in any other jurisdiction for an offence involving fraud, bribery or corruption; or;
 - are under sanction, for an offence involving fraud, bribery or corruption, imposed by a government, a governmental organisation or a development organisation providing development assistance.
- 13.3 The Recipient shall require its subcontractors to declare to the Recipient in writing if they or any of their officers or employees involved in the Project:
- were convicted during a period of three years prior to the submission of the Project Proposal, by a court of law in Australia or in any other jurisdiction for an offence involving fraud, bribery or corruption; or;
 - are under sanction, for an offence involving fraud, bribery or corruption, imposed by a government, a governmental organisation or a development organisation providing development assistance.
- 13.4 The Recipient shall make such declarations it receives from its subcontractors known to APNIC Foundation by providing APNIC Foundation with a copy of such declarations.

- 13.5 APNIC Foundation may terminate this Agreement forthwith for default where it is found that the Recipient has made a false declaration.
- 13.6 The Recipient undertakes to investigate and, if necessary, take action, including legal measures, against any person or persons whom there is good reason to suspect of corruption or other improper gain.
- 13.7 The Recipient shall immediately inform APNIC Foundation of any illegal or corrupt practice or any other misuse of the contribution in any activity financed under this Agreement that the Recipient is aware of or that has been brought to its attention, whether or not under the Recipient's responsibility.
- 13.8 The Recipient shall provide APNIC Foundation with information on the findings and any actions or measures taken by the Recipient under this clause 13. Upon receipt of any such notification, the parties shall promptly consult with each other to determine further actions to be taken in order to resolve the matter. The Recipient shall keep APNIC Foundation informed of the progress of any formal investigation concerning the matter and provide APNIC Foundation with a final report of the findings of such investigation upon its conclusion.

14 VISITS TO PROJECT AND PROVISION OF INFORMATION

- 14.1 The Recipient, at the request of APNIC Foundation, will permit officers or representatives of APNIC Foundation or APNIC Foundation's donors to visit the Project site(s) at times convenient to the parties concerned and will facilitate the discussion of the results and progress of the Project.
- 14.2 Irrespective of agreed reporting routines, the parties shall promptly inform each other if a situation arises that makes it likely that the Project will not be carried out as agreed.
- 14.3 The Recipient shall provide APNIC Foundation with any other information regarding the Project that APNIC Foundation may reasonably request. The Recipient shall retain all records for 10 years from the last disbursement by APNIC Foundation or equivalent Recipient's record-keeping policy that complies with its local laws, whichever is the longer period. The Recipient shall also cooperate with and assist APNIC Foundation in the performance of follow-ups and evaluations of the impact of the Project. The obligations of the Recipient in this respect shall apply also to previously agreed support provided by APNIC Foundation to the Project.
- 14.4 The Recipient's obligations under this clause 14 survive any termination or expiration of this Agreement.

15 AUDIT REQUIREMENTS

The Recipient must comply with the Audit and Information Delivery Requirements, to the extent required by those requirements.

16 PROCUREMENT PRINCIPLES

The Recipient must comply with the Procurement Principles for the procurement of all goods, works and services financed by the Project Funds.

17 DISPUTE AND TERMINATION

- 17.1 APNIC Foundation may terminate this Agreement for any reason upon 30 days' written notice to the Recipient.
- 17.2 APNIC Foundation may terminate this Agreement immediately:
- if the Recipient suffers an Insolvency Event;
 - if, in the reasonable opinion of APNIC Foundation, the Recipient ceases to pursue or satisfy the Project Objectives or the APNIC Foundation Objectives (or both);

- for a material breach of any warranty or representation given by the Recipient under this Agreement; or
- if any APNIC Foundation donor terminates the agreement with APNIC Foundation under which the Project Funds are made available to APNIC Foundation.

17.3 In the event of a dispute arising out of or in connection with this Agreement, the parties shall make all reasonable efforts to settle the dispute within 30 days of first receiving notice of the dispute.

17.4 In the event the parties are unable to resolve or settle the dispute in accordance with clause 17.3, the dispute shall be submitted to arbitration in accordance with, and subject to, Resolution Institute Arbitration Rules. Unless the parties agree upon an arbitrator, either party may request a nomination from the Chair of Resolution Institute. There shall be one arbitrator, the language of the arbitration shall be English, and the place of the arbitration shall be Brisbane, Queensland, Australia. The parties agree to make all reasonable efforts to facilitate the arbitration taking place, where possible, remotely via videoconference.

18 FORCE MAJEURE

- 18.1 Neither party will be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control (which events may include, but are not limited to, natural disasters, embargoes, explosions, riots, wars, epidemic or pandemic or other public health and safety emergency, any action taken by a Government Agency including any sanctions or export controls, or acts of terrorism) (Force Majeure Event). In such circumstances the time for performance must be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed OR the affected party will be entitled to a reasonable extension of the time for performing such obligations. The performance of the affected obligations must be resumed as soon as practicable after such Force Majeure Event is removed or has ceased. An extension of time for performance under this clause 18 will not give rise to a right for an increase in the amount of Project Funds.
- 18.2 If the affected party under clause 18.1 is the Recipient and the period of delay or non-performance continues for three months, APNIC Foundation may terminate this Agreement by giving 14 days' written notice to the Recipient.
- 18.3 If the affected party under clause 18.1 is APNIC Foundation and the period of delay or non-performance continues for three months, either party may terminate this Agreement by giving 14 days' written notice to the other party.
- 18.4 In the event of termination under clause 18.2 or 18.3:
- the Recipient will be required to submit a final report for the Project and in any event return any unspent and unaccounted funds; and
 - any obligation of APNIC Foundation to make any further payments will be extinguished.

19 NOTICES

- 19.1 Any notice or communication given to a party under this Agreement is only given if it is in writing and sent in one of the following ways:
- delivered or posted to that party at its address and marked for the attention of its contact (if any) set out on page one of this Agreement;
 - sent to that party via the Grantee Portal; or
 - emailed to that party at its email and marked for the attention of its contact (if any) set out on page one of this Agreement.

19.2 If a party gives the other party three business days' notice of a change of its address or email, any notice or communication is only given by that other party if it is delivered, posted or emailed to the latest address or email given.

20 MISCELLANEOUS

20.1 Approvals and consents

- (a) unless this Agreement expressly provides otherwise, a party may give or withhold an approval or consent in that party's absolute discretion and subject to any conditions determined by the party. A party is not obliged to give its reasons for giving or withholding a consent or approval or for giving a consent or approval subject to conditions.
- (b) where this Agreement refers to a matter being to the 'satisfaction' of a party, this means to the satisfaction of that party in its absolute discretion.

20.2 Assignments and transfers

- (c) the Recipient must not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of APNIC Foundation.
- (d) APNIC Foundation may assign or transfer any of its rights or obligations under this Agreement without the prior consent of the Recipient.

20.3 Sub-contractors

Subject to any restrictions imposed by APNIC Foundation, the Recipient may enter into any sub-contract in pursuit of the Project Objectives provided the Recipient ensures that any and all resulting contracts with subcontractors are consistent with all of the Recipient's obligations contained in this Agreement, unless otherwise agreed by APNIC Foundation.

20.4 Survival

All representations, warranties, disclaimers, indemnifications and reporting obligations contained in this Agreement shall survive the expiration or termination of the Agreement. In the event of a termination, provisions that by their nature would be understood to survive a termination will so survive.

20.5 Transmission of confidential information

The Recipient shall take all reasonable measures to ensure protection against unauthorised access or intrusion to any confidential information.

20.6 Costs

Except as otherwise set out in this Agreement, each party must pay its own costs and expenses for preparing, negotiating, executing and completing this Agreement and any document related to this Agreement.

20.7 Entire agreement

This Agreement contains everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this Agreement was executed.

20.8 Amendments

- (a) This Agreement may be amended:
 - (i) in writing signed by both parties; or
 - (ii) by amendments proposed and agreed by both parties via the Grantee Portal, in which case the Project Lead will have authority to agree to such amendments and bind the Grantee.
- (b) Where the parties agree to amend or vary the time for performance of obligations or the amount of the Project Funds under this Agreement, APNIC Foundation will be permitted at its sole discretion to make all such ancillary changes it deems necessary to give effect to the

amendment or variation (including varying the amount or timing of the disbursements and timing for the delivery of reports).

- (c) Where the Grantee agrees to vary the Agreement to reduce the amount of the Project Funds, the Grantee acknowledges and agrees that such reduction in the Project Funds is final and cannot be reversed.

20.9 Execution of separate documents

This Agreement is properly executed if each party executes either this document or an identical document. In the latter case, this Agreement takes effect when the separately executed documents are exchanged between the parties. For the avoidance of doubt, this Agreement may be executed by the use of electronic or digital signatures applied in accordance with the processes used in the Grantee Portal.

20.10 Further acts

Each party must at its own expense promptly execute all documents and do or use reasonable endeavours to cause a third party to do all things that another party from time to time may reasonably request in order to give effect to, perfect or complete this Agreement and all transactions incidental to it.

20.11 Governing law and jurisdiction

The laws of the State of Queensland, Australia, govern this Agreement. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

20.12 Severability

Each provision of this Agreement is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this Agreement in the relevant jurisdiction, but the rest of this Agreement will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

20.13 Waivers

- (a) A waiver of any right, power or remedy under this Agreement must be in writing signed by the party granting it. A waiver only affects the particular obligation or breach for which it is given. It is not an implied waiver of any other obligation or breach or an implied waiver of that obligation or breach on any other occasion.
- (b) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement does not amount to a waiver.