

Grant Agreement 2022

APIDTT Pty Ltd

ACN 638 389 072

in its capacity as trustee of the Asia Pacific Internet Development Trust

ABN 35 932 505 068

and

APNIC Foundation Limited

ACN 646 643 156

Contents

1.	Definitions.....	2
2.	Term.....	4
3.	Conduct of the Grant Activities	4
4.	New Project Requests	5
5.	Subcontracting	6
6.	Payment	6
7.	Taxes, duties and government charges	7
8.	Management of Grant Funds and bank account	7
9.	Reports.....	8
10.	Financial records	8
11.	Liaison.....	9
12.	Access to premises and materials	9
13.	Publicity	9
14.	Prohibited conduct	9
14.1	Fraud.....	9
14.2	Prohibited dealings	10
14.3	Anti-corruption	10
14.4	Survival	10
15.	Intellectual Property.....	11
16.	Suspension and termination.....	11
17.	Repayment of Grant Funds	12
18.	Dispute resolution.....	13
18.1	Disputes	13
18.2	Notice of Dispute	13
18.3	Initial Dispute Resolution Meeting	13
18.4	Referral of Dispute.....	13
19.	Grantee warranties.....	13
20.	Indemnity	15
21.	Insurance	15
22.	Confidentiality	16
23.	Protection of Personal Information	16
24.	Conflict of Interest	18

25.	Notices	18
25.1	Delivery of notice	18
25.2	Notice details	19
25.3	Time of service	19
26.	Governing law	19
27.	Interpretation	19
27.1	Words and headings	19
27.2	Specific references	20
28.	General	20
28.1	Variation	20
28.2	Counterparts	20
28.3	Entire agreement and no reliance	21
28.4	Liability	21
28.5	Severability	21
28.6	Waiver	21
28.7	Further assurance	21
28.8	Survival and enforcement of indemnities	21
28.9	No merger	21
28.10	Business Day	21
Schedule 1	Grant Details	22
Schedule 2	New Project Details	25
Schedule 3	Continuing Project Details	35
Attachment 1	New Project Request	56

Grant Agreement 2022

Dated

Parties

Name	APIDTT Pty Ltd ACN 638 389 072 ABN 35 932 505 068 in its capacity as trustee of the Asia Pacific Internet Development Trust
Address	6 Cordelia Street, South Brisbane, Queensland, 4101
Email	info@apidtt.org
Contact	Paul Wilson/Jun Murai
Short name	APIDTT

Name	APNIC Foundation Limited ACN 646 643 156
Address	6 Cordelia Street, South Brisbane, Queensland, 4101
Email	duncan@apnic.net
Contact	Duncan Macintosh
Short name	Grantee

Background

- A. The Asia Pacific Internet Development Trust (**Trust**) was established to fund Internet development initiatives in the Asia Pacific region, including technical skills development and capacity building, improvements to critical Internet infrastructure, supporting research and development, and improving the community's capability to build an open, global, stable and secure Internet.
- B. The establishment of the Trust is a joint initiative of the WIDE Project, a project in Japan founded by Keio University, Tokyo Institute of Technology and The University of Tokyo, and the Asia Pacific Network Information Centre to raise funds to support the aims and objects of the Trust.
- C. APIDTT and the Grantee are parties to a Grant Agreement dated 19 February 2021 under which APIDTT agreed to provide grant funds for the purpose of approved projects (**2021 Grant Agreement**).
- D. The Grantee has proposed a number of new projects as well as continuing projects from the 2021 Grant Agreement to APIDTT that are consistent with the aims and objects of the Trust and has applied to APIDTT for grant funds to fund the Projects.
- E. APIDTT has approved the Projects proposed by the Grantee and has agreed to provide Grant Funds to the Grantee to be used solely for the Projects on, and subject to, the terms of this Agreement.

The parties agree

1. Definitions

In this Agreement:

2021 Grant Agreement means the grant agreement entered into between APIDTT and the Grantee on 19 February 2021.

Activity Material means any Material, other than Reporting Material, created or developed by the Grantee as a result of the Grant Activity and includes any Existing Material that is incorporated in or supplied with the Activity Material.

Additional Projects has the meaning given in clause 4.1.

AEST means Australian Eastern Standard Time (UTC + 10 hours).

Asset means an item of tangible property purchased or leased either wholly or in part by the Grantee with the use of the Grant Funds, with a value of \$5,000 or more, inclusive of GST but does not include Existing Material, and includes any item of tangible property listed in Item 6 of Schedule 1 that is to be acquired using Grant Funds.

Australian Accounting Standards means the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the *Australian Securities and Investments Commission Act 2001* (Cth).

Business Day means a day other than a Saturday, Sunday or public holiday in Queensland.

Budget means the budget for expenditure of the Grant Funds for the purposes of conducting the Projects or performing obligations under this Agreement in the form prescribed by APIDTT from time to time.

Commencement Date means the date specified in Item 1 of Schedule 1.

Commit at a particular date means Grant Funds that the Grantee is contractually obliged to pay to a third party in respect of any part of the activities making up the Grant Activity and that can be identified in a written contractual arrangement with that third party.

Conflict of Interest means any conflict of interest, any risk of conflict of interest and any apparent conflict of interest arising through the Grantee or the Personnel engaging in any activity or obtaining any interest that is likely to conflict with or restrict the Grantee in performing the Grant Activity fairly and independently.

Continuing Projects means the projects described in Schedule 3.

Existing Material means Material developed independently of this Agreement.

Expiry Date means the date specified in Item 2 of Schedule 1, or such other date agreed between the parties in writing.

Government Agency means:

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

(c) an incorporated company over which the Commonwealth exercises control.

Grant Activity means the activity set out in Item 6 of Schedule 1.

Grant Funds means the funds to be paid by APIDTT to the Grantee under this agreement as set out in Item 3 of Schedule 1.

Guidelines means the guidelines of an advisory nature for the conduct of the Grant Activity notified to the Grantee in writing, as varied from time to time.

Intellectual Property Rights means all copyright, patents, registered and unregistered trademarks (including service marks), registered designs, and other rights resulting from intellectual activity (other than Moral Rights).

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

Item means an item of a Schedule.

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

Material includes documents, equipment, software (including source code and object code versions), goods, information and data stored by any means including all copies and extracts of them.

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

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

New Projects means the projects described in Schedule 2.

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.

Personnel means:

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

Policies means the policies set by APIDTT at any time for the conduct of the Grant Activity including any policies on complaints, incidents, branding, fundraising, research and publications and notified to the Grantee in writing, as varied from time to time.

Privacy Commissioner means the office established under the *Privacy Act 1988* (Cth) and includes any other person that may, from time to time, perform the functions of that office.

Projects means the Continuing Projects and the New Projects.

Project Period means the period from the Commencement Date to the Expiry Date.

Publicity means any publications, promotions, letterhead or public announcements.

Reporting Material means all Material which the Grantee is required to provide to APIDTT for reporting purposes as specified in this Agreement.

Report means Material provided to APIDTT in accordance with clause 9 (Reports).

Representative means a contact of a party as set out on page 1 of this Agreement under the heading 'Parties' (or as notified by a party to the other party in writing from time to time).

Schedule means a schedule of this Agreement.

Term means the term of this Agreement specified in clause 2.

Unspent at a particular date means Grant Funds that have not been spent or Committed by the Grantee in accordance with this Agreement.

2. Term

This Agreement commences on the Commencement Date and ends on the Expiry Date unless terminated earlier in accordance with this Agreement.

3. Conduct of the Grant Activities

3.1 The Grantee must:

- 3.1.1 use the Grant Funds only for the performance of this Agreement;
- 3.1.2 perform the Grant Activity according to the Budget, within the Project Period and according to the terms and conditions set out in this Agreement (including any applicable Policies and taking full account of the Guidelines);
- 3.1.3 ensure and procure the performance of all aspects of the Grant Funds as set out in Schedule 1;
- 3.1.4 at all times ensure that all work undertaken under this Agreement supports the expected outcomes and objectives for the Grant Activity set out in Item 6.1 of Schedule 1;
- 3.1.5 ensure it maintains general competencies required to enable it to perform the Grant Activity to the highest standard, financial and administrative and general management skills, as well as the ability to plan, execute, monitor and control its activities.

3.2 Without limiting the generality of clause 3.1.1, where the Budget identifies Grant Funds as being provided for a particular activity, the Grantee must only use those Grant Funds identified by the Budget for that activity unless otherwise agreed by APIDTT in writing.

3.3 Without limiting anything else in this Agreement, the Grantee must perform the Grant Activity and carry out its duties and obligations under this Agreement:

- 3.3.1 in a prudent and reasonable manner;
- 3.3.2 in accordance with suitable and appropriate methods and practices;
- 3.3.3 with a high degree of skill, care and diligence that may reasonably be expected of a skilled, professional person, suitably qualified and experienced, in the performance of projects similar to the Grant Activity;

- 3.3.4 in a manner that:
 - (a) is consistent with high probity standards; and
 - (b) reasonably protects the interests of the Trust and does not bring APIDTT into disrepute;
 - 3.3.5 is in accordance with a high professional standard and established, proper and effective management methods and practices;
 - 3.3.6 using sufficient materials and services of an adequate quality; and
 - 3.3.7 in good faith.
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4. New Project Requests

- 4.1 If the Grantee wishes to request additional Grant Funds from APIDTT for the purpose of pursuing a new project not previously approved under this Agreement (**Additional Project**), the Grantee must:
 - 4.1.1 complete the New Project Request attached as Attachment 1, including:
 - (a) expected outcomes and objectives;
 - (b) activity description; and
 - (c) activity costing (approx.),
 - 4.1.2 provide all information requested by APIDTT to enable APIDTT to assess:
 - (a) whether the Additional Project is consistent with the aims and objects of the Trust; and
 - (b) the merits of the Additional Project.
- 4.2 APIDTT may elect to approve or reject an Additional Project in its complete and unfettered discretion and, if approved, may impose any terms and conditions on such approval as it deems necessary.
- 4.3 If APIDTT elects to approve an Additional Project by countersigning the New Project Request:
 - 4.3.1 the Additional Project will be deemed to be incorporated as an addition to Schedule 2 of this Agreement and treated thereafter as a New Project;
 - 4.3.2 the Grantee must conduct the Additional Project in accordance with the terms of this Agreement, including with respect to all obligations of the Grantee due to be performed after the date of APIDTT's approval of the Additional Project;
 - 4.3.3 the Grantee must comply with any additional terms imposed by APIDTT which will be deemed incorporated into and enforceable under this Agreement;
 - 4.3.4 the total funding requested and specified in the New Project Request will be deemed to be an increase in the total Grant Funds payable under this Agreement; and
 - 4.3.5 APIDTT agrees to pay the additional Grant Funds for the Additional Project in accordance with clause 6 or as otherwise agreed between the parties.

5. Subcontracting

5.1 The Grantee agrees that:

5.1.1 except as provided in clause 5.1.2, it will not subcontract the performance of any part of the Grant Activity without the prior approval in writing of APIDTT; and

5.1.2 APIDTT's prior approval is not required for:

- (a) any subcontracting for the performance of any part of the Grant Activity to APNIC Pty Ltd or to any related bodies corporate of APNIC Pty Ltd; or
- (b) administrative type contracts not directly related to the performance of the Grant Activity (the categories of these administrative contracts include web hosting and cleaning contracts).

5.2 APIDTT may impose any terms and conditions it considers appropriate when giving its approval under clause 5.1.1.

5.3 In respect of any subcontractor approved by APIDTT under this clause, the Grantee must ensure that:

5.3.1 the subcontract facilitates compliance by the Grantee with its obligations under this Agreement;

5.3.2 the subcontract will not conflict with or detract from the rights and entitlements of APIDTT under this Agreement;

5.3.3 the other party to the subcontract has the necessary relevant expertise and the appropriate types and amounts of insurance to perform work in relation to the Grant Activity;

5.3.4 the subcontract contains all the relevant terms of this Agreement including those relating to subcontracting, audit and access, privacy, confidentiality, warranties and indemnities, disclosure and termination and in particular that the Grantee has a right to terminate the subcontract on terms no less favourable than those accorded APIDTT by clause 16, in the event of this Agreement being terminated;

5.3.5 the other party to the subcontract is prohibited from further subcontracting the Grant Activity without the prior written approval of APIDTT; and

5.3.6 if requested, the Grantee will promptly provide a copy of the relevant subcontract to APIDTT.

6. Payment

6.1 Subject to clause 6.5 and the provisions of this Agreement, APIDTT agrees to pay the Grant Funds to the Grantee in accordance with the payment schedule set out in Item 4 of Schedule 1.

6.2 The funding to be contributed by APIDTT for the performance of this Agreement by the Grantee will not exceed the amount of the Grant Funds.

6.3 The Grantee acknowledges and agrees that APIDTT is not obliged to continue funding the Grantee for the Grant Activity after the end of the Term or otherwise to fund the Grantee for the Grant Agreement other than as expressly provided for under this Agreement.

- 6.4 Without limiting its rights, APIDTT may at its discretion defer, reduce or not make a payment of Grant Funds:
- 6.4.1 where it forms the reasonable opinion that the full payment is not properly required because of Grant Activity surpluses or underspends; or
 - 6.4.2 until the Grantee has performed all of its obligations that are required to be performed up to the date that the relevant payment is due under this Agreement.
- 6.5 APIDTT is not obliged to make any payment under this clause 6 until the Grantee submits an invoice that complies with the requirements of clause 6.6.
- 6.6 Each invoice the Grantee submits for payment of the Grant Funds must include the following:
- 6.6.1 the date of this Agreement;
 - 6.6.2 the name and ABN (if applicable) of the Grantee;
 - 6.6.3 the funds to be invoiced including a description of the milestone the invoice relates to; and
 - 6.6.4 bank account details for payment of the invoice by electronic funds transfer.
- 6.7 APIDTT may set-off any amount payable to the Grantee against any amounts payable to APIDTT by the Grantee.
- 6.8 The Grantee has no right of set-off against APIDTT.

7. Taxes, duties and government charges

- 7.1 Subject to this clause, all taxes, duties and government charges (**Taxes**) imposed or levied in Australia or overseas in connection with this Agreement must be paid by the Grantee or as the Grantee might arrange.
- 7.2 Without limiting clause 7.1 the Grantee must pay Goods and Services Tax (**GST**) on the goods, services and other supplies made under this Agreement (supplies) to the extent that they are taxable supplies within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**).
- 7.3 In relation to any GST payable under clause 7.2, the Grantee must issue APIDTT with a tax invoice in accordance with the GST Act.
- 7.4 The Grantee warrants it is registered in accordance with the GST Act and agrees to remain registered during the Term.

8. Management of Grant Funds and bank account

- 8.1 The Grantee must keep proper accounts and records of its use of the Grant Funds, so that the Grant Funds can be separately identified within the accounts and records of the Grantee.
- 8.2 The Grantee must use and deal with any interest earned on the Grant Funds as if that money earned were part of the Grant Funds.
- 8.3 Unless otherwise directed or permitted by APIDTT, the Grantee must not Commit any part of the Grant Funds for expenditure that is likely to occur after the end of the Term.

9. Reports

- 9.1 The Grantee must keep comprehensive written records of the conduct of the Grant Activity including performance against the Policies and Guidelines, progress against the milestones of the Grant Activity and the acquisition of Assets.
- 9.2 The Grantee must provide the Reports in accordance with the timeframe and specifications detailed in Item 5 of Schedule 1.
- 9.3 The Grantee acknowledges and agrees that if the Grantee fails to provide any Report as required, to the reasonable satisfaction of APIDTT within the timeframe specified in Item 5 of Schedule 1, APIDTT may withhold or suspend payments of Grant Funds to the Grantee.
- 9.4 The Grantee agrees to provide APIDTT with any necessary information, material or assistance, as requested in writing by APIDTT within 5 Business Days or as specified in the written request.
- 9.5 This clause 9 survives the expiration or early termination of this Agreement.

10. Financial records

- 10.1 The Grantee must keep financial records relating to the Grant Activity so as to enable:
- 10.1.1 all income and expenditure related to the Grant Activity to be identified in the Grantee's accounts;
 - 10.1.2 the preparation of financial statements in accordance with Australian Accounting Standards; and
 - 10.1.3 the audit of these records in accordance with Australian Auditing Standards.
- 10.2 Within 20 Business Days of the Expiry Date or the date of early termination of this Agreement, the Grantee must provide to APIDTT:
- 10.2.1 a statement of receipts and expenditure that is a true and fair reflection of the use of the Grant Funds which must include a definitive statement as to whether the financial accounts are complete and accurate and a statement of the balance of the Grant Funds remaining; and
 - 10.2.2 a certificate confirming that:
 - (a) all Grant Funds received were expended for the purpose of the Grant Activity and in accordance with this Agreement and that the Grantee has complied with this Agreement;
 - (b) salaries and allowances paid to persons involved in the Grant Activity are in accordance with any applicable award or agreement in force under any Law on industrial or workplace relations; and
 - (c) at the time the Final Report is provided to APIDTT, the Grantee is able to pay all its debts as and when they fall due.
 - 10.2.3 The certificate referred to in clause 10.2.2 must be provided by a person authorised by the Grantee to execute documents and legally bind the Grantee.
- 10.3 This clause 10 survives the expiration or early termination of this Agreement for a period of 7 years.

11. Liaison

- 11.1 The Grant recipient must liaise with and report to APIDTT as reasonably required by APIDTT for the purposes of this Agreement.
- 11.2 Upon receipt of written notice, the Grantee must within the timeframe stipulated in the notice, or within 14 days if no timeframe is stipulated in the notice, provide any information in relation to the Grant Activity requested by APIDTT for the purposes of this Agreement, including monitoring and evaluation.

12. Access to premises and materials

- 12.1 The Grantee must give APIDTT and persons authorised in writing by APIDTT (referred to in this clause 12 collectively as **those permitted**) access to premises at which records and materials associated with this Agreement are stored or work in relation to the Grant Activity is undertaken.
- 12.2 The Grantee must give to those permitted access in order to be able to inspect and copy Materials in the Grantee's possession or control, for the purposes associated with this Agreement or any review of performance under this Agreement. The Grantee must also give those permitted access to any Assets, wherever they may be located, and reasonable access to the Personnel for the same purpose.
- 12.3 The rights referred to in clause 12.1 are, wherever practicable, subject to:
 - 12.3.1 the provision of reasonable prior notice by APIDTT (except where APIDTT believes that there is an actual or apprehended breach of the law);
 - 12.3.2 access being sought during reasonable times (except where those permitted believe that there is an actual or apprehended breach of the Law); and
 - 12.3.3 the Grantee's reasonable security procedures.
- 12.4 The Grantee agrees to provide all assistance reasonably requested by APIDTT in respect of any inquiry into or concerning the Grant Activity or this Agreement in a timely manner.
- 12.5 This clause 12 survives the expiration or early termination of this Agreement for a period of 7 years.

13. Publicity

At the request of APIDTT, the Grantee must take steps to acknowledge the financial and other support provided by APIDTT in all Publicity by it or on its behalf in relation to the Grant Activity in a manner reasonably specified by APIDTT from time to time.

14. Prohibited conduct

14.1 Fraud

- 14.1.1 For the purposes of this clause 14.1, **Fraud** means dishonestly obtaining a benefit, or causing a loss, by deception or other means, and includes attempted, alleged, suspected or detected fraud.
- 14.1.2 The Grantee must take all reasonable steps to prevent and detect Fraud in relation to this Agreement.

- 14.1.3 If the Grantee becomes aware of any Fraud involving any activities funded in whole or in part under this Agreement, the Grantee must notify APIDTT within 5 Business Days.

14.2 Prohibited dealings

- 14.2.1 The Grantee must ensure that individuals, persons, entities or organisations involved in implementing the Grant Activity, including itself or its Personnel:
- (a) are not directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act;
 - (b) are not, and do not become listed on the "List of Terrorist Organisations" made under the *Criminal Code Act 1995* (Cth) and related regulations, posted at: <https://www.nationalsecurity.gov.au/Listedterroristorganisations/Pages/default.aspx>;
 - (c) are not, and do not become 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/pages/consolidated-list.aspx>;
 - (d) are not, and do not become listed on, the World Bank's "Listing of Ineligible Firms and Individuals" posted at <http://web.worldbank.org/external/default/main?theSitePK=84266&contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984>;
 - (e) 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);
 - (f) are not owned or controlled by individuals, persons, entities or organisations mentioned in subparagraphs (b) to (d); and
 - (g) do not to provide direct or indirect support, resources or assets to individuals, persons, entities or organisations associated with terrorism or mentioned in subparagraphs (b) to (d).
- 14.2.2 The Grantee will inform APIDTT immediately if it discovers that it or a contractor, sub-contractor or grant recipient has or may have contravened this clause.

14.3 Anti-corruption

- 14.3.1 The Grantee warrants that the Grantee and its Personnel have not made or caused to be made, or received or sought to receive, any offer, gift or payment, consideration or benefit of any kind, which would or could be construed as an illegal or corrupt practice, either directly or indirectly to any party, as an inducement or reward in relation to the execution of this Agreement.
- 14.3.2 This Grantee must not, and must ensure that its Personnel do not:
- (a) make or cause to be made, or receive or seek to receive, any offer, gift or payment, consideration or benefit of any kind, which would or could be construed as an illegal or corrupt practice, either directly or indirectly to any party, as an inducement or reward in relation to this Agreement; or
 - (b) engage in any practice that could contravene the Australian offence of bribing a foreign public official.

14.4 Survival

This clause 14 survives the expiry or termination of this Agreement.

15. Intellectual Property

- 15.1 The Grantee owns the Intellectual Property Rights in Material created by the Grantee as a result of undertaking the Grant Activity.
- 15.2 The Grantee provides APIDTT a permanent, non-exclusive, irrevocable, royalty-free licence to use, modify, communicate, reproduce, publish, adapt and sub-license the Reporting Material for APIDTT Purposes. This licence does not apply to Activity Material.
- 15.2.1 The Grantee represents and warrants that APIDTT's use of the Reporting Material for APIDTT Purposes will not infringe the Moral Rights of any person that contributed to the Material in the Reporting Material.
- 15.2.2 This Agreement does not affect the ownership of Intellectual Property Rights in Existing Material.
- 15.3 For the purposes of this clause 15, "APIDTT Purposes" does not include commercialisation or the provision of the Activity Material to a third party for its commercial use.

16. Suspension and termination

- 16.1 If:
- 16.1.1 APIDTT is satisfied on reasonable grounds that the terms and conditions of this Agreement have not been complied with by the Grantee;
- 16.1.2 APIDTT is satisfied on reasonable grounds that the Grantee is unable or unwilling to satisfy the terms of this Agreement;
- 16.1.3 APIDTT, by notice in writing, requests the Grantee to take action to meet a timeframe or perform an activity in accordance with this Agreement and, after 10 Business Days from the date of the notice (or such longer period as is specified in the notice), the Grantee has failed to take such action;
- 16.1.4 APIDTT is satisfied on reasonable grounds that any statement made by the Grantee is incorrect or incomplete in a way which would have affected the original decision to approve the Grant Funds for the Grant Activity;
- 16.1.5 APIDTT is not satisfied on reasonable grounds that the purposes and activities of the Grantee remain compatible with the purpose of the Grant Activity;
- 16.1.6 APIDTT is satisfied on reasonable grounds that a Report given by the Grantee is not complete or accurate;
- 16.1.7 the Grantee:
- (a) becomes bankrupt or insolvent or is wound-up;
 - (b) makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or has a receiver, manager or administrator appointed on behalf of debenture holders or creditors;
 - (c) goes into liquidation or passes a resolution to go into liquidation or becomes subject to any petition or proceedings in a court for its compulsory winding-up or becomes subject to the supervision of a court either voluntarily or otherwise;
 - (d) suffers any execution against its assets having adverse effect on its ability to perform the Agreement; or

- (e) suffers anything analogous to, or of a similar effect to anything described above under the Law;

16.1.8 the Grantee, by notice in writing given to APIDTT, withdraws from this Agreement; or

16.1.9 APIDTT in its unfettered discretion considers it appropriate for any other reason,

APIDTT may, by written notice to the Grantee, terminate this Agreement or require the Grantee to suspend dealings with the Grant Funds immediately.

16.2 On termination of this Agreement, or for the duration of any suspension of dealings with the Grant Funds, the Grantee must cease all dealings with the Grant Funds and if notified by APIDTT immediately repay the Grant Funds to APIDTT.

16.3 APIDTT may end the suspension of dealings with the Grant Funds by written notice to the Grantee, subject to such preconditions (including variations to this Agreement) which APIDTT may require.

16.4 APIDTT will not be obliged to pay any part of the Grant Funds to the Grantee after the termination of this Agreement or during any period of suspension of dealings with the Grant Funds.

16.5 Except as provided in this clause, APIDTT will not come under any liability to the Grantee for termination of this Agreement in accordance with clause 16.1.

16.6 If a purported termination for cause by APIDTT under any of clauses 16.1.1 - 16.1.8 is determined by a competent authority not to be properly a termination for cause, then that termination by APIDTT will be deemed to be a termination for convenience under clause 16.1.9 which termination has effect from the date of the notice of termination referred to in clause 16.1.

17. Repayment of Grant Funds

17.1 If:

17.1.1 on the expiry or any early termination of this Agreement, any Grant Funds that:

- (a) remain Unspent by the Grantee or unspent by the Grantee in accordance with this Agreement; or
- (b) cannot, by reconciliation between the accounts and records maintained by the Grantee (as reported to APIDTT by the Grantee in any of the financial statements referred to in clause 10) and the Budget, be shown to the reasonable satisfaction of APIDTT to have been spent or Committed in accordance with this Agreement; or
- (c) at any time APIDTT forms the reasonable opinion that any Grant Funds have been used, spent or Committed by the Grantee other than in accordance with this Agreement,

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

17.2 If the Grantee fails to repay the Grant Funds in accordance with a notice issued under clause 17.1:

17.2.1 the Grantee must pay APIDTT Interest on the amount specified in the notice from the date it was due, for the period it remains unpaid; and

17.2.2 the amount specified in the notice, and Interest owed under this clause will be recoverable by APIDTT as a debt due to APIDTT by the Grantee.

- 17.3 The Grantee acknowledges that Interest payable under clause 17.2 represents a reasonable pre-estimate of the loss incurred by APIDTT as a result of the loss of investment opportunity for, or the reasonable cost of borrowing other money in place of, the amount which should have been repaid.
- 17.4 This clause 17 survives the expiration or early termination of this Agreement.

18. Dispute resolution

18.1 Disputes

If a dispute arises out of or in relation to this Agreement, or the breach, termination, validity or subject matter of this Agreement, or as to any claim in tort, in equity or under any domestic or international statute or law (**Dispute**), the parties will endeavour in good faith to settle the Dispute in accordance with this clause before having recourse to litigation, except for an urgent interim injunction.

18.2 Notice of Dispute

Where a party considers that a Dispute has arisen it will give a written notice to the other party as soon as reasonably practicable setting out:

- 18.2.1 the nature of the Dispute; and
- 18.2.2 the party's proposed resolution of the Dispute.

18.3 Initial Dispute Resolution Meeting

Within 5 Business Days of a notice being given in accordance with clause 18.2, the Representatives of each party or their successors or nominees will meet and use their best endeavours to negotiate a resolution of the Dispute acceptable to both parties.

18.4 Referral of Dispute

If the Dispute is not resolved in accordance with clause 18.3 within 10 Business Days after the initial dispute resolution meeting, the Dispute will be referred to the chief executive officers of APIDTT and the Grantee who will use their best endeavours to resolve the Dispute as soon as possible. If the dispute is not resolved within 28 days of referral to the chief executive officers, or within such longer time as may be agreed, the parties may exercise any other rights in relation to the dispute.

19. Grantee warranties

19.1 The Grantee represents and warrants to APIDTT that:

- 19.1.1 it will promptly notify and fully disclose to APIDTT in writing any event or occurrence actual or threatened arising during the Term which could have an adverse effect on the Grantee's ability to perform any of its obligations under this Agreement;
- 19.1.2 it has full power and authority to enter into, perform and observe its obligations under this Agreement;
- 19.1.3 the execution, delivery and performance of this Agreement has been duly and validly authorised by the Grantee;
- 19.1.4 it will promptly notify and fully disclose to APIDTT in writing if:

- (a) it becomes insolvent or is wound up;
 - (b) it makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or has a receiver, manager or administrator appointed on behalf of creditors;
 - (c) it goes into liquidation or passes a resolution to go into liquidation, or becomes subject to any petition or proceedings in a court for its compulsory winding up or becomes subject to the supervision of a court or regulatory authority, either voluntarily or otherwise;
 - (d) it suffers any execution against its assets; or
 - (e) anything analogous to, or of a similar effect to, anything described above under the Law occurs in respect of the Grantee;
- 19.1.5 the unconditional execution and delivery of, and compliance with its obligations under this Agreement do not:
- (a) contravene any Law to which it or any of its property is subject or any order or directive from a Government Agency binding on it or any of its property;
 - (b) contravene its constituent documents;
 - (c) contravene any agreement or instrument to which it is a party;
 - (d) contravene any obligation of it to any other person; or
 - (e) require it to make any payment or delivery in respect of any financial indebtedness before the scheduled date for that payment or delivery;
- 19.1.6 no litigation, arbitration, mediation, conciliation or proceedings including any investigations, are taking place, pending, or are threatened against the Grantee which could have an adverse effect upon either the Grantee's capacity to perform its obligations under this Agreement or the Grantee's reputation;
- 19.1.7 unless otherwise disclosed in this Agreement, it is not entering into this Agreement as trustee of any trust or settlement;
- 19.1.8 it has not made any false declaration in respect of any current or past dealings with APIDTT or any Government Agency, including in any tender or application process or in any agreement;
- 19.1.9 it has had no significant deficiency in the performance of any substantive requirement or obligation under any prior agreement with APIDTT or any Government Agency;
- 19.1.10 it has, and will continue to have and to use, the skills, qualifications and experience, to perform the Grant Activity in an efficient and controlled manner with a high degree of quality and responsiveness and to a standard that complies with this Agreement; and
- 19.1.11 it has and will continue to have the necessary resources, including financial resources, to perform the Grant Activity and will use those resources to perform the Grant Activity.
- 19.2 The Grantee acknowledges that APIDTT in entering into this Agreement is relying on the warranties and representations contained in this Agreement.

- 19.3 Each representation and warranty survives the execution of this Agreement.

20. Indemnity

- 20.1 The Grantee indemnifies APIDTT, its officers, employees and agents from and against any:
- 20.1.1 loss or liability incurred by APIDTT;
 - 20.1.2 loss of or damage to property of APIDTT; or
 - 20.1.3 loss or expense incurred by APIDTT in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by APIDTT,
- arising from:
- 20.1.4 any act or omission by the Grantee, subcontractor or the Personnel in connection with this Agreement, where there was fault (including, any negligent or otherwise tortious act or omission) on the part of the person whose conduct gave rise to that liability, loss, damage or expense; or
 - 20.1.5 any breach by the Grantee of its obligations or warranties under this Agreement.
- 20.2 The Grantee's liability to indemnify APIDTT under clause 20.1 will be reduced proportionately to the extent that any negligent or other tortious act or omission of APIDTT contributed to the relevant liability, loss, damage, or expense.
- 20.3 The right of APIDTT to be indemnified under this clause:
- 20.3.1 is in addition to, and not exclusive of, any other right, power or remedy provided by Law; and
 - 20.3.2 does not entitle APIDTT to be compensated in excess of the amount of the relevant liability, loss, damage, or expense.
- 20.4 This clause 20 survives the expiration or early termination of this Agreement.

21. Insurance

- 21.1 The Grantee must take out and maintain all appropriate types and amounts of insurance, with one or more reputable insurers acceptable to APIDTT, for so long as any obligations remain in connection with this Agreement.
- 21.2 The insurance policies referred to in clause 21.1 must cover APIDTT and the Grantee against any liability arising out of, or in connection with, the performance of the Grantee's obligations under this Agreement.
- 21.3 The Grantee must deliver to APIDTT any relevant insurance policies and certificates of currency within 24 hours of a written request by APIDTT to do so.
- 21.4 This clause 21 survives the expiration or early termination of this Agreement.

22. Confidentiality

- 22.1 The Grantee agrees not to disclose to any person, other than APIDTT, any Confidential Information relating to this Agreement or the Grant Activities without prior approval in writing from APIDTT.
- 22.2 APIDTT may impose any conditions it considers appropriate when giving its approval under clause 22.1 and the Grantee agrees to comply with those conditions.
- 22.3 APIDTT may at any time by notice in writing to the Grantee, require the Grantee to give, and to arrange for the Personnel to give, written undertakings in a form required by APIDTT relating to the non-disclosure of Confidential Information.
- 22.4 If the Grantee receives a request under clause 22.3, it agrees to promptly arrange for all such undertakings to be given.
- 22.5 The obligations on the Grantee under this clause will not be taken to have been breached where the information referred to:
- 22.5.1 is disclosed to a legal, financial or probity advisor of the Grantee who have a need to know (subject to them being under a duty of confidentiality) or to a court to the extent required as part of legal proceedings; or
 - 22.5.2 is required by Law to be disclosed.
- 22.6 APIDTT gives no undertaking to treat Grantee information, or this Agreement, as confidential. The Grantee acknowledges that APIDTT may disclose information relevant to this Agreement, or this Agreement itself, to any person:
- 22.6.1 to the extent required by Law or by a lawful requirement of any government or governmental body, authority or agency;
 - 22.6.2 if required in connection with legal proceedings;
 - 22.6.3 for public accountability reasons, including disclosure on request to Government Agencies; or
 - 22.6.4 for any other requirement of APIDTT.
- 22.7 The obligations contained in this clause 22 are in addition to those specified in clause 23 and survive the expiration or early termination of this Agreement.

23. Protection of Personal Information

- 23.1 This clause applies only where the Grantee deals with Personal Information when, and for the purpose of, performing the Grant Activity under this Agreement.
- 23.2 In this clause, the terms 'agency', 'approved privacy code' (**APC**), 'contracted services provided', 'Australian Privacy Principle' (**APP**), 'health service' and 'health information' have the same meaning as they have in section 6 of the *Privacy Act 1988* (Cth) (**Privacy Act**) and subcontract and other grammatical forms of that word have the meaning given in section 95B(4) of the *Privacy Act*.
- 23.3 The Grantee acknowledges that it may be treated as a contracted services provider and agrees in respect of performing this Agreement:

- 23.3.1 to use or disclose Personal Information obtained during the course of performing the Grant Activity under this Agreement, only for the purposes of this Agreement;
- 23.3.2 not to do any act or engage in any practice that would breach an APP contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that APP;
- 23.3.3 to carry out and discharge the obligations contained in the APPs as if it were an agency;
- 23.3.4 to notify individuals whose Personal Information the Grantee holds, that complaints about acts or practices of the Grantee may be investigated by the Privacy Commissioner who has power to award compensation against APIDTT in appropriate circumstances;
- 23.3.5 not to use or disclose Personal Information or engage in an act or practice that would breach section 16F (direct marketing) of the Privacy Act, any APP or an APC where that section, APP or APC is applicable to the Grantee, unless:
 - (a) in the case of section 16F, the use or disclosure is necessary, directly or indirectly, in the performance of the Grant Activity under this Agreement; or
 - (b) in the case of an APP or an APC, the activity or practice is authorised by this Agreement and engaged in for the purpose of performing the Grant Activity under this Agreement and the activity or practice is inconsistent with the APP or APC;
- 23.3.6 to comply with any request under section 95C of the Privacy Act relating to disclosure of any provisions of this Agreement (if any) that are inconsistent with an APP or an APC binding on a party to this Agreement;
- 23.3.7 to notify APIDTT immediately if the Grantee becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in this clause, whether by the Grantee or any subcontractor;
- 23.3.8 to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner to the extent that they are consistent with the requirements of this clause; and
- 23.3.9 to ensure that any officer, employee or agent of the Grantee who is required to deal with Personal Information for the purposes of this Agreement is made aware of the obligations of the Grantee set out in this clause.
- 23.4 The Grantee agrees to ensure that each subcontract entered into for the purpose of fulfilling its obligations under this Agreement imposes on the subcontractor the same obligations as the Grantee has under this clause, including the requirement in relation to subcontracts.
- 23.5 APIDTT may, at any time by notice in writing to the Grantee, require the Grantee to give, and to arrange for the Personnel to give, undertakings in writing, in a form required by APIDTT, relating to the non-disclosure of Personal Information.
- 23.6 If the Grantee receives a request under clause 23.5, it agrees to promptly arrange for all such undertakings to be given.
- 23.7 The Grantee agrees to indemnify APIDTT in respect of any loss, liability or expense suffered or incurred by APIDTT which arises directly or indirectly from a breach of any of the Grantee's

obligations under this clause, or a subcontractor under the subcontract provisions referred to in clause 23.4.

- 23.8 The Grantee's obligations under this clause are in addition to, and do not restrict, any obligations it may have under the Privacy Act or any privacy codes or privacy principles contained in, authorised by or registered under any Law including any such privacy codes or principles that would apply to the Grantee but for the application of this clause.
- 23.9 Notwithstanding any other provision in this clause, where the Grantee provides a health service to an individual it will:
- 23.9.1 comply with the APPs in relation to the use and disclosure of health information about the individual; and
- 23.9.2 transfer health information to another health service provider when directed to do so by APIDTT.
- 23.10 This clause 23 survives expiration or early termination of this Agreement.

24. Conflict of Interest

- 24.1 The Grantee must ensure that it has appropriate and effective policies and procedures in place to prevent a Conflict of Interest and identify a Conflict of Interest before it arises and that all Personnel are fully aware of these.
- 24.2 The Grantee warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing of this Agreement no Conflict of Interest exists or is likely to arise in the performance of its obligations under this Agreement by itself or by any of the Personnel, except in respect of those persons whom the Grantee has notified to APIDTT in writing as having a Conflict of Interest.
- 24.3 If during the Term a Conflict of Interest exists or arises or appears likely to arise, the Grantee must:
- 24.3.1 immediately notify APIDTT in writing, making a full disclosure of all relevant information relating to the Conflict of Interest and setting out the steps the Grantee proposes to take to resolve or otherwise deal with the Conflict of Interest; and
- 24.3.2 take such steps as APIDTT requires to resolve or otherwise deal with the Conflict of Interest to APIDTT's satisfaction.
- 24.4 The Grantee must not (and must use its best endeavours to ensure that the Personnel and any volunteers do not) engage in any activity or obtain any interest during the course of this Agreement that is likely to conflict with or restrict the Grantee in conducting the Grant Activity or fulfilling its obligations to APIDTT fairly and independently.

25. Notices

25.1 Delivery of notice

- 25.1.1 A notice or other communication given to a party under this Agreement must be in writing and in English, and must be delivered to the party by:
- (a) delivering it personally to the party;

- (b) leaving it at the party's address set out in the notice details;
- (c) posting it by prepaid post to the party at the party's address set out in the notice details;
- (d) email to the party's email address set out in the notice details.

25.1.2 If the person to be served is a company, the notice or other communication may be served at the company's registered office.

25.2 Notice details

25.2.1 The notice details of each party are set out on page 1 of this Agreement under the heading 'Parties' (or as notified by a party to the other parties according to this clause).

25.2.2 Any party may change its notice details by giving notice to the other parties.

25.3 Time of service

25.3.1 A notice or other communication is taken to be delivered:

- (a) if delivered personally or left at the person's address, upon delivery;
- (b) if posted within Australia to an Australian address:
 - (i) using express post, 2 Business Days after posting; and
 - (ii) using any other prepaid post, 6 Business Days after posting;
- (c) if posted to an address in a different country, 10 Business Days after posting; and
- (d) if delivered by email, at the time the email left the sender's email system, unless the sender receives notification that the email was not received by the recipient.

25.3.2 Despite clause 25.3.1, a notice or other communication which is received after 5.00pm or on a non-business day (each in the place of receipt), is taken to be delivered at 9.00am on the next business day in the place of receipt.

26. Governing law

This Agreement is governed by the law applying in Queensland and the parties submit to the non-exclusive jurisdiction of the courts of Queensland.

27. Interpretation

27.1 Words and headings

In this Agreement, unless expressed to the contrary:

- 27.1.1 words denoting the singular include the plural and vice versa;
- 27.1.2 the word 'includes' in any form is not a word of limitation;
- 27.1.3 where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;

- 27.1.4 headings and sub-headings are for ease of reference only and do not affect the interpretation of this Agreement; and
- 27.1.5 no rule of construction applies to the disadvantage of the party preparing this Agreement on the basis that it prepared or put forward this Agreement or any part of it.

27.2 Specific references

In this Agreement, unless expressed to the contrary, a reference to:

- 27.2.1 a gender includes all other genders;
- 27.2.2 any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;
- 27.2.3 any document (such as a deed, agreement or other document) is to that document (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time;
- 27.2.4 writing includes writing in digital form;
- 27.2.5 'this Agreement' is to this Agreement as amended from time to time;
- 27.2.6 a time or date is a reference to a time or date in AEST;
- 27.2.7 'US\$', '\$', 'USD' or 'dollars' is a reference to United States dollars;
- 27.2.8 a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this Agreement;
- 27.2.9 any property or assets of a person includes the legal and beneficial interest of that person of those assets or property, whether as owner, lessee or lessor, licensee or licensor, trustee or beneficiary or otherwise;
- 27.2.10 a person includes a firm, partnership, joint venture, association, corporation or other body corporate;
- 27.2.11 a person includes the legal personal representatives, successors and permitted assigns of that person, and in the case of a trustee, includes any substituted or additional trustee; and
- 27.2.12 any body (**Original Body**) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body.

28. General

28.1 Variation

This Agreement may only be varied by a document executed by the parties.

28.2 Counterparts

This Agreement may be executed in counterparts, all of which taken together constitute one document.

28.3 Entire agreement and no reliance

28.3.1 This Agreement:

- (a) constitutes the entire agreement between the parties about the subject matter contained in it; and
- (b) supersedes and cancels any contract, deed, arrangement, related condition, collateral arrangement, condition, warranty, indemnity or representation relating to the subject matter contained in it, that was imposed, given or made by a party (or an agent of a party) prior to entering into this Agreement.

28.3.2 The Grantee acknowledges that in entering into this Agreement the Grantee has not relied on any representations made by API DTT (or its agents or employees) other than matters expressly set out in this Agreement.

28.4 Liability

If a party consists of 2 or more people or entities, an obligation of that party binds each of them jointly and severally.

28.5 Severability

28.5.1 Any provision of this Agreement that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

28.5.2 If it is not possible to read down a provision as required by this clause, part or all of the clause of this Agreement that is unlawful or unenforceable will be severed from this Agreement and the remaining provisions continue in force.

28.6 Waiver

The failure of a party at any time to insist on performance of any provision of this Agreement is not a waiver of the party's right at any later time to insist on performance of that or any other provision of this Agreement.

28.7 Further assurance

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Agreement.

28.8 Survival and enforcement of indemnities

28.8.1 Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this Agreement.

28.8.2 It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

28.9 No merger

The warranties, undertakings, agreements and continuing obligations in this Agreement do not merge on completion of the transactions contemplated by this Agreement.

28.10 Business Day

If a payment or other act is required by this Agreement to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

Schedule 1 Grant Details

Item no.	Item	Detail
1.	Commencement Date	1 January 2022
2.	Expiry Date	31 December 2022
3.	Grant Funds	USD 14,357,603 (plus GST, if any)
4.	Payment Schedule	<p>Tranche 1, being equal to 60% of the Grant Funds (USD 8,614,562), is payable within 30 days of the later of the signing of this Agreement.</p> <p>Tranche 2, being the lesser of:</p> <p>(a) the forecast full year expenditure of the Grant Activities to 31 December 2022 as at the date of the Interim Report (or such other time agreed between the parties); or</p> <p>(b) the Grant Funds,</p> <p>less Tranche 1, is payable within 30 days of the Interim Report being accepted by APIDTT.</p>
5.	Reporting requirements	
5.1	Interim Report	<p>14 July 2022</p> <p>Interim reports will be provided on each project that includes a financial report and details of each project's activities according to the information provided in each project proposal</p>
5.2	Final Report	<p>31 December 2022</p> <p>A comprehensive report that provides a summary of the Grant Activity and its stated objectives and the work undertaken to implement the Grant Activity and to achieve those objectives, plus an assessment of whether the Grant Activity met the stated objectives as well as any lessons learned as to how a similar grant activity could be better undertaken in the future. The Grantee may include in the report photographs or other material that demonstrates the work performed by the Grantee to meet the Grant Activity.</p>
6.	Grant Activity	
6.1	Expected outcomes and objectives	See the objectives against each of the Projects described in Schedule 2 and Schedule 3 respectively.
6.2	Activity description	See the Projects described in Schedule 2 and Schedule 3 respectively.

6.3

**Activity costing
(approx.)**

See the budget against each of the Projects described in Schedule 2 and Schedule 3 respectively.

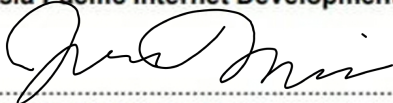
	Project Total	Overhead Total	Grant Total
New Projects	3,271,080	430,516	3,701,596
Continuing Projects	9,316,267	1,339,740	10,656,007
Total	12,587,347	1,770,256	14,357,603

Table 1: Grant overview (USD)

Signing Page

Executed by the parties

Executed by APIDTT Pty Ltd ACN 638 389 072
in its capacity as trustee for the
Asia Pacific Internet Development Trust:



Signature of Director

Jun Murai

Print full name

)
)



Signature of Director

Paul Wilson

Print full name

Executed by APNIC Foundation Limited
ACN 646 643 156:



Signature of Director

Danish Ali Lakhani

Print full name

)
)



Signature of Director/Company Secretary

Duncan Macintosh

Print full name