Grant Deed

Australian Communications Consumer Action Network Limited

and

The party identified as the Grant Recipient in item 1 of the Schedule

**GRANT DEED**

This Deed is entered into

**Between:**

**Australian Communications Consumer Action Network Limited**

ACN 133 719 678

Of

PO Box A1158 Sydney South, NSW 1235 (“**ACCAN**”)

And The party identified as the Grant Recipient in item 1 of the Schedule

 (“**Grant Recipient**”)

**Background**

1. ACCAN’s goals are to:
	1. represent the interests of consumers in relation to telecommunications issues; and
	2. conduct or facilitate research into the social, economic, environmental and technological implications of developments relating to telecommunications.
2. ACCAN has received funding from the Australian Government to achieve its goals, including by conducting an independent grants program to fund projects carried out by third parties (**Independent Grants Program**).
3. The Grant Recipient has sought funding under the Independent Grants Program for the conduct of a project that is consistent with ACCAN's goals.
4. ACCAN has decided to provide funding to the Grant Recipient for the purposes and subject to the terms and conditions of this Deed and the Grant Recipient has accepted the funding on this basis.

**This Deed witnesses**:

# Performance and Payment

## Term

This Deed, including the Schedule, commences on the day it is signed by the last party and, unless terminated earlier, continues until:

### the date specified as the deed end date in item 3.7 of the Schedule (**Deed End Date**); or

### if no date is specified, the date the Grant Recipient has done all things the Grant Recipient is required to do under this Deed.

## Performance of Project and Funding

### The Grant Recipient must perform the services described in item 3 of the Schedule (**Project**).

### In performing the Project, the Grant Recipient must:

#### satisfy the project objectives and activities described in item 3.2 of the Schedule (**Project Objectives and Activities**); and

#### deliver the project outputs specified in item 3.3 of the Schedule (**Project Outputs**),

but is not required to provide the Project elements (if any) set out in item 6 of the Schedule.

### In consideration for performing the Project, ACCAN will pay the funds to the Grant Recipient in accordance with clause 1.3 for use by the Grant Recipient solely in respect of the Project and in accordance with this Deed (**Funds**, **Funding**).

## Payment

ACCAN will pay the Grant Recipient the Funds in accordance with the fee arrangements specified in item 4 of the Schedule on the following bases:

### The Grant Recipient may submit invoices following completion of the milestones described in item 5 of the Schedule (**Milestone**) where the Milestone has a payment attributed to it.

### If no Milestones are listed in the Schedule, the amount of each invoice must reasonably represent the proportion of the Project work completed at the date the invoice is issued.

### Any invoices issued by the Grant Recipient under this Deed must satisfy the invoicing requirements (if any) specified in item 4 of the Schedule. If an invoice does not satisfy these requirements, ACCAN is not required to pay that invoice.

### ACCAN will pay the Grant Recipient’s invoices once ACCAN is satisfied, at its discretion, that the associated Milestone or work has been completed by the Grant Recipient in accordance with the requirements of this Deed and the Schedule.

### Notwithstanding clause 1.3.4:

#### ACCAN is not required to pay an invoice if the Grant Recipient has not delivered one or more items required by this Deed; and

#### payment of an invoice is not to be taken as evidence that the associated Milestone or work has been completed by the Grant Recipient in accordance with the requirements of this Deed but must be taken only as payment on account.

### If the Grant Recipient’s invoice is not received by ACCAN on or before the dates for completion of Milestones in item 5 of the Schedule (or subsequently notified by ACCAN) (**Milestone Dates**), payment of the Funds may be delayed.

### The amount of Funds specified in item 4.1 of the Schedule is the maximum amount that ACCAN must pay to the Grant Recipient. If the Grant Recipient does not submit its invoices to ACCAN within 30 days of the Milestone Dates (or where no Milestone Dates exist, within a reasonable time), ACCAN may decline to pay the Grant Recipient the amounts claimed.

### Where the Grant Recipient considers it may not complete a Milestone by the relevant Milestone Date (**Delay**):

#### the Grant Recipient must request an extension of the Milestone Date from ACCAN;

#### ACCAN must not unreasonably withhold its consent to extend the Milestone Date; and

#### ACCAN may reduce the scope of the Project and vary the Funds accordingly.

## Recovery of Funds

### Within 5 business days of the Deed End Date or earlier termination of this Deed, or such later date as is agreed by ACCAN, the Grant Recipient must immediately refund all of the Funds paid to the Grant Recipient that the Grant Recipient has not spent on the Project or that have not been expended by Grant Recipient in accordance with the project budget in item 3.4 of the Schedule.

### Upon notice from ACCAN, or such later date as is agreed by ACCAN, the Grant Recipient must refund any Funds which ACCAN reasonably considers have not been applied by the Grant Recipient for the sole purpose of the Project within 5 business days of such notice .

## GST

### In this clause words that are defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning as their definition in that Act.

### Except as otherwise provided by this clause, all consideration payable under this Deed in relation to any supply is exclusive of GST.

### If GST is payable by ACCAN to the Grant Recipient for the Project, the GST will be paid at the same time and in the same manner as the consideration.

### The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST payable under clause 1.5.3.

# Grant Recipient’s general obligations

## Carrying out of the Project

The Grant Recipient must:

### comply with:

#### the provisions of all laws (including common law, principles of equity and Commonwealth and State and Territory or local government legislation, regulations, standards, by-laws and other subordinate legislation); and

#### ACCAN’s policies listed in item 10 of the Schedule;

### carry out its obligations under this Deed in a proper, timely and efficient manner using the standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced person carrying out such obligations;

### ensure the highest quality of work;

### act in good faith and in the best interests of ACCAN and consumers of telecommunications services;

### keep ACCAN informed of all matters which it ought reasonably be made aware, and provide ACCAN with such information in relation to the Project as may reasonably be required by ACCAN; and

### have all relevant ethics approvals necessary to complete the Project.

## Ethics approvals and review

### In addition to any other requirements specified in the Schedule, the Grant Recipient must:

#### submit the research protocol for the Project (**Protocol**) to an appropriately constituted ethics review committee in its institution or at the state level (where the Project will be carried out) (**Committee**); and

#### provide ACAAN with a copy of the Committee’s written approval of the protocol.

### If:

#### the Grant Recipient is unable to obtain the Committee’s approval necessary to complete the Project;

#### the Grant Recipient is unable to obtain the Committee’s approval necessary by the relevant Milestone Date; or

#### the Committee has rejected the protocol,

#### the Grant Recipient must advise ACCAN within 3 business days of becoming aware of the delay or failure to obtain the necessary approval.

### The Grant Recipient agrees to cooperate with ACCAN in any review conducted by ACCAN of the Grant Recipient’s research protocol or compliance with this clause 2.2.

## Insurance

### Unless otherwise permitted by ACCAN in writing, the Grant Recipient must have and maintain insurance of the type and in the amount specified in items 9.1, 9.2 and 9.3 of the Schedule at all times while performing the Project and, in respect of any professional indemnity insurance, for a period of 7 years from the end of this Deed.

### Insurance taken out under clause 2.3.1 must be taken out with an insurer recognised by the Australian Prudential Regulation Authority or regulated by a State or Territory Auditor-General.

### Within 5 business days of a request by ACCAN, the Grant Recipient must provide ACCAN with proof of this insurance.

## Keeping Records

### The Grant Recipient must maintain full and accurate records of the Project including its progress against the Milestones, the receipt and use of Funding, the amount of unspent Funding, other contributions to the Project it receives (including those made by the Grant Recipient), the acquisition of assets, and the creation of Intellectual Property (**Records**).

### Records maintained under clause 2.4.1 must be retained by the Grant Recipient for at least 7 years after the end of this Deed.

## Program Evaluation

The Grant Recipient agrees to participate in any evaluations of the Independent Grants Program or the Project performed by ACCAN or an external party approved by ACCAN, including by attending meetings or interviews with ACCAN and making information and the Records available to ACCAN.

## No Subcontracting without Consent

The Grant Recipient must not subcontract any of its obligations under this Deed without ACCAN's prior written approval, which may be withheld at ACCAN's absolute discretion.

## Grant Recipient Personnel

Unless otherwise agreed in writing by ACCAN:

### the key person specified in item 7 of the Schedule (**Key Person**) must have primary responsibility for the performance of the Project; and

### the members of the Grant Recipient team specified in item 8 of the Schedule and the Key Person are the only people that may deliver the Project.

## Conflict of interest

### The Grant Recipient warrants that it is not, to the best of its knowledge, aware of any business or personal relationship which may compromise its ability to discharge its obligations under this Deed in good faith and objectively (**Conflict**).

### If a Conflict arises during the course of this Deed, the Grant Recipient must:

#### immediately notify ACCAN of the Conflict in writing;

#### within a reasonable time, make full disclosure to ACCAN of all information relating to the Conflict; and

#### take such steps that ACCAN may reasonably require to resolve or otherwise deal with that Conflict.

### If the Grant Recipient fails to notify ACCAN under this clause 2.8, or is unable or unwilling to resolve or deal with the Conflict as required, ACCAN may terminate this Deed in accordance with clause 8.3.

# Intellectual property

## Intellectual Property Rights of the parties

### Any Intellectual Property Rights:

###  of a party existing immediately before this Deed remain vested in that party;

### brought into existence by ACCAN for the purposes of the Project vest immediately with ACCAN; and

### brought into existence by the Grant Recipient for the purposes of the Project vest immediately with the Grant Recipient.

## Intellectual Property licence to the Grant Recipient

ACCAN grants the Grant Recipient a revocable, royalty-free, non-exclusive, non-transferable licence for the term of this Deed to use, reproduce, communicate and adapt the Intellectual Property Rights in materials provided by ACCAN to the Grant Recipient within Australia solely for the purposes of this Deed and the Project.

## Licence of Project Materials

###  The Grant Recipient grants ACCAN a permanent, free, irrevocable, worldwide, non-exclusive licence (including the right to sublicence) to use, reproduce, communicate, publish, modify, adapt and exploit all Intellectual Property Rights in any material created or used by or on behalf of the Grant Recipient during or as part of the Project including any Intellectual Property Rights in the Project Outputs (**Project Materials**) for any purpose.

### The Grant Recipient agrees that the licence granted in clause 3.4.1 includes a right for ACCAN to license the Project Materials to the public under an Open Access Licence. The Grant Recipient accepts and agrees to be bound by the terms and conditions of the Open Access Licence.

## Licence of Existing Materials

The Grant Recipient grants ACCAN a permanent, free, irrevocable, worldwide, non-exclusive licence (including the right to sublicence) to use, reproduce, communicate, publish, modify, adapt and exploit all Intellectual Property Rights in Existing Materials for any purpose.

## Grant Recipient’s own property

The Grant Recipient is not required to assign any Intellectual Property it owns (including where ownership arises under this Deed) to ACCAN.

## Third party Intellectual Property

### The Grant Recipient must obtain for ACCAN, to the extent necessary for the purposes of this Deed and the Project, a permanent, royalty-free, irrevocable, worldwide, non-exclusive licence (including the right to sublicense) to use, reproduce, communicate, publish, modify, adapt and exploit third party Intellectual Property Rights used by the Grant Recipient, including any third party Intellectual Property Rights in the Project Materials, for the purposes of this Deed and the Project.

### The Grant Recipient warrants that ACCAN is entitled to use and deal with any Intellectual Property Rights which may be used by ACCAN in connection with this Deed or the Project and that the use by ACCAN of any Intellectual Property Rights in the manner contemplated by this Deed will not infringe the Intellectual Property Rights of any third party.

## Dealing with Intellectual Property Rights

### The Grant Recipient must:

### if requested by ACCAN, bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 3;

### not deal with the Intellectual Property Rights in the Project Materials during the term of this Deed except as expressly provided for in this Deed.

## Moral Rights

### Promptly following a request from ACCAN, the Grant Recipient must obtain a written consent from all natural persons who are the author of any of the Project Materials permitting ACCAN, any sublicensee of ACCAN and any person on behalf of ACCAN or its sublicensees to perform the following acts:

#### using, reproducing, adapting or exploiting all or any part of the Project Materials, with or without attribution of authorship;

#### supplementing the Project Materials with any other material;

#### using the Project Material in a different context to that originally envisaged; and

#### releasing the Project Material to the public under an Open Access Licence.

### Where the Grant Recipient is a natural person, that person’s signing of this Deed will be taken as that person’s written consent to the acts described in clause 3.8.1 by any person authorised under clause 3.8.1.

### In any other case, the Grant Recipient must:

#### obtain from each author of any Project Material a written consent to the acts described in clause 3.8.1 (whether occurring before or after the consent is given) which extends directly or indirectly to the performance of the acts described in clause 3.8.1 by ACCAN or any person claiming under or through ACCAN;

#### obtain from each author of any Project Material existing immediately before this Deed a written consent to the acts described in clause 3.8.1 (whether occurring before or after the consent is given) which extends directly or indirectly for ACCAN’s benefit in relation to ACCAN’s licensed use of such material; and

#### on request, provide the executed original of each such consent to ACCAN.

# Privacy

In this clause 4:

### **Privacy Law** means all legislation, principles, industry codes and policies relating to the collection, use, disclosure, storage or granting of access rights to Personal Information, and includes the *Privacy Act 1988* (Cth), *Spam Act 2003* (Cth) and *Do Not Call Register Act 2006* (Cth) and any applicable State or Territory privacy legislation including health;

### **Privacy Regulator** means a regulatory body responsible for administering a Privacy Law, including the Office of the Australian Information Commissioner, the Victorian Privacy Commissioner (and its State and Territory counterparts), the Australian Competition Consumer Commission and the Australian Communications and Media Authority; and

### the terms **Agency**, **Contracted Service Provider**, **Personal Information**, **Australian Privacy Principles** and **Registered APP Code** have the meaning given in the *Privacy Act* *1988* (Cth) (**Privacy Act**).

For the purpose of this Deed, the Grant Recipient agrees to be treated as a Contracted Service Provider.

When dealing with Personal Information in the course of the Project, the Grant Recipient must ensure it complies, and must ensure that each person carrying out any part of the Project complies, with the Australian Privacy Principles, any applicable Registered APP Codes and all Privacy Laws.

Without limiting clause 4.3, the Grant Recipient must, and ensure that each person carrying out any part of the Project must, when collecting, holding, using, disclosing and otherwise handling Personal Information in connection with the Project:

### only collect, hold, use, disclose, handle and otherwise deal with Personal Information strictly for the purposes of the Grant Recipient:

#### carrying out the Project in accordance with an explicit requirement of this Deed; and

#### complying with its explicit obligations under this Deed;

### ensure that Personal Information is only disclosed to or accessible by those members of the Grant Recipient team who have a positive need for such disclosure or access for the purpose of such Grant Recipient team members carrying out the Project in accordance with this Deed;

### not transfer any Personal Information to a place or person outside of Australia, or allow any person outside of Australia to have access to Personal Information, except with ACCAN’s prior written consent;

### ensure that the Personal Information is protected against misuse, loss, unauthorised access, interference, corruption, deletion, modification or disclosure;

### not do any act or engage in any practice which if done or engaged in by an Agency, would be a breach of an Australian Privacy Principle;

### carry out and discharge the obligations contained in the Australian Privacy Principles as if it were an Agency;

### notify individuals whose Personal Information it holds, that complaints about the Grant Recipient acts or practices may be investigated by the Australian Information Commissioner who has power to award compensation against the Grant Recipient in appropriate circumstances;

### comply with any request under section 95C of the *Privacy Act 1988* (Cth) (relating to disclosure of any provisions of this Deed (if any) that are inconsistent with an Australian Privacy Principle or an Approved Privacy Code binding on a party);

### comply with any directions, guidelines, determinations or recommendations of a Privacy Regulator to the extent that they are consistent with the requirements of this clause 4;

### ensure that its employees, agents, officers or volunteers who are required to deal with Personal Information for the purposes of this Deed are made aware of the Grant Recipient’s obligations in this clause 4;

### without limiting clause 2.6, ensure that any subcontract that it enters into for the purpose of fulfilling its obligations under this Deed imposes on the subcontractor the same obligations as the Grant Recipient has under this clause 4;

### immediately notify ACCAN if it:

#### becomes aware that any Personal Information is or may have been misused, interfered with, corrupted or lost, or subject to unauthorised access, modification or disclosure;

#### becomes aware of any breach, potential breach or alleged breach of its or a subcontractor’s obligations or the obligations of any member of the Grant Recipient or a subcontractor’s team under this clause 4;

#### receives a complaint or enquiry from an individual about an alleged breach of any Privacy Law; or

#### receives a request or inquiry from a Privacy Regulator in relation to any Personal Information; and

### promptly comply with any request or inquiry made by ACCAN in relation to:

#### management of Personal Information by or on behalf of the Grant Recipient under or in connection with this Deed;

#### the parties’ compliance with any Privacy Law (including in relation to staff training, privacy notices and privacy consents);

#### any breaches, potential breaches or alleged breaches of Privacy Laws by the Grant Recipient or any member of the Grant Recipient team; and

#### any investigation or enforcement action by a Privacy Regulator.

# Acknowledgement and publicity

## Acknowledgement of support

### The Grant Recipient must acknowledge the financial and other support received from ACCAN and the Australian Government:

#### in all publications, workshops, presentations, promotional and advertising materials, public announcements and activities related to the Project; and

#### on any products, processes, inventions developed as a result of the Project by or on behalf of the Grant Recipient.

### The Grant Recipient must obtain ACCAN's prior written approval of the form and content of any such acknowledgment.

### The Grant Recipient must immediately stop acknowledging the support of ACCAN and the Australian Government if requested in writing by ACCAN.

## Right to publicise Funding

ACCAN may publicise and report on the Funding awarded to the Grant Recipient. This may be done verbally or in writing, including on the ACCAN website, in media releases, annual reports and other general announcements about ACCAN and its Independent Grants Program. Reporting and publicity may include the name of the Grant Recipient, the amount of Funding, the date of this Deed, the term of the Deed, and the title and description of the Project.

## Copies of publications and media

If the Grant Recipient has been Funded to produce any publication or other media release, the Grant Recipient must:

### obtain ACCAN’s prior written approval of the form and content of such publication and media release; and

### provide to ACCAN a copy of the publication and/or media release, including in electronic format, immediately after it is published.

# Reporting

## Progress Report Form

### A progress report form (**Progress Report Form**) may be provided by ACCAN to the Grant Recipient for completion by the Grant Recipient.

### The Grant Recipient must provide ACCAN, to ACCAN’s satisfaction, a completed Progress Report Form, including details regarding the Grant Recipient’s progress against Milestones to date and the financial records of the Project by the relevant date in item 3.5 of the Schedule.

## Acquittal Form

### An acquittal form (**Acquittal Form**) will be provided by ACCAN to the Grant Recipient for completion by the Grant Recipient.

### The Grant Recipient must provide ACCAN, to ACCAN’s satisfaction, a completed Acquittal Form by the date in item 3.6 of the Schedule.

###  The completed Acquittal Form must include a full acquittal of all Funds provided to the Grant Recipient for the Project.

###  The completed Acquittal Form must include a full description of the success of the Project in relation to the Project Objectives and Activities and Milestones described in the Schedule.

## Reconciliation

### As soon as practicable after receiving a Progress Report Form or Acquittal Form, ACCAN will determine whether the Grant Recipient:

#### has any unspent or misspent Funds; and

#### owes any other amount to ACCAN in accordance with this Deed.

### Without limiting ACCAN’s rights under this Deed, if ACCAN determines under 6.3.1 that the Grant Recipient has an amount of unspent or misspent Funds and/or owes ACCAN any other amount, ACCAN may (at its sole discretion) by written notice to the Grant Recipient:

#### require the Grant Recipient to repay all or part of that amount to ACCAN;

#### require the Grant Recipient to use that amount for a particular purpose(s); or

#### reduce a further payment of Funds by that amount.

# Access to premises and Records

## Right to conduct audits

ACCAN or its representative or nominee may conduct audits relevant to the performance of the Grant Recipient’s obligations under this Deed. Audits may be conducted of:

### the Grant Recipient’s operational practices and procedures as they relate to this Deed, including security procedures;

### the accuracy of the Grant Recipient’s invoices and reports in relation to the provision of the Project under this Deed;

### the Grant Recipient’s compliance with its obligations under this Deed;

### material (including books and records) in the Grant Recipient’s possession relevant to the Project or Deed; and

### any other matters reasonably determined by ACCAN to be relevant to the Project or Deed.

## ACCAN’s access

ACCAN may, at reasonable times and on giving reasonable notice to the Grant Recipient:

### access the Grant Recipient’s premises to the extent relevant to the performance of this Deed;

### require the provision by the Grant Recipient, its employees, agents or subcontractors, of records and information in a data format and storage medium accessible by ACCAN by use of its existing computer hardware and software;

### inspect and copy documentation, books and records, however stored, in the Grant Recipient’s custody or under the Grant Recipient’s control, the Grant Recipient’s employees, agents or subcontractors; and

### require assistance in respect of any inquiry into or concerning the Project or this Deed. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry, any request for information directed to ACCAN, and any inquiry conducted by Parliament or any Parliamentary committee.

## Conduct of audit and access

ACCAN will use reasonable endeavours to ensure that audits performed pursuant to clause 7.1 and ACCAN’s exercise of the rights granted by clause 7.2 do not unreasonably delay or disrupt in any material respect the Grant Recipient’s performance of its obligations under the Deed.

## Costs

ACCAN will be responsible for the costs of conducting any audit under clause 7.1 or 7.2, unless the audit shows that the Grant Recipient is in breach in any material respect of this Deed, in which case the Grant Recipient must meet all of ACCAN’s costs and the Grant Recipient’s costs associated with the audit (including of the auditor).

## Auditor-General and Australian Information Commissioner

### ACCAN’s rights under clauses 7.2.1 to 7.2.3. apply equally to the Auditor-General or a delegate of the Auditor-General, or the Australian Information Commissioner or a delegate of the Australian Information Commissioner, for the purpose of performing the Auditor-General's or Australian Information Commissioner's statutory functions or powers.

### The Grant Recipient must do all things necessary to comply with the Auditor-General's or Australian Information Commissioner's requirements (or their respective delegate’s requirements), provided such requirements are legally enforceable and within their respective powers.

## No reduction in responsibility

The requirement for, and participation in, audits does not in any way reduce the Grant Recipient’s responsibility to perform its obligations in accordance with this Deed.

## Subcontractor requirements

The Grant Recipient must ensure that any sub-deed entered into for the purpose of this Deed contains an equivalent clause granting the rights specified in this clause.

## No restriction

Nothing in this Deed reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General or the Australian Information Commissioner (or their respective delegates). ACCAN’s rights under this Deed are in addition to any other power, right or entitlement of the Auditor-General or the Australian Information Commissioner (or their respective delegates).

## Survival

This clause 7 applies for the duration of this Deed and for a period of 7 years from the end of this Deed.

# Termination

## Immediate termination

Termination by ACCAN

### ACCAN may terminate this Deed immediately, by giving written notice to the Grant Recipient if:

#### in ACCAN’s sole opinion, acting reasonably, the Grant Recipient (or one of its personnel):

##### commits an act of fraud, dishonesty or other serious misconduct, including providing incorrect or misleading information to ACCAN; or

##### conducts the Project in a way that is likely to adversely affect ACCAN’s reputation as a result of its association with the Grant Recipient under this Deed;

#### the Grant Recipient suffers an Insolvency Event; or

#### the Grant Recipient or the Key Person:

##### dies or loses capacity;

##### becomes bankrupt; or

##### is charged with a serious criminal offence.

### ACCAN may terminate this Deed by giving the Grant Recipient 20 business days notice if the Commonwealth of Australia terminates its funding agreement with ACCAN.

### The Grant Recipient is entitled to the amount of the Funding owing at the date of termination with respect to Milestones or work that the Grant Recipient has delivered to ACCAN prior to the date of termination under this clause 8.2 (as determined by ACCAN at its sole discretion).

### The parties can terminate this Deed at any time by mutual agreement.

## Termination for breach

### If either party (**First Party**) reasonably considers that the other party is in material breach of the other party's obligation under this Deed, the First Party may give notice of such breach requiring it to be remedied, or compensation tendered if the breach is not capable of remedy, within 14 days, failing which the First Party may terminate the Agreement immediately by giving notice in writing.

###  The parties agree that it will be reasonable for ACCAN to consider that the Grant Recipient will be in material breach of the Grant Recipient's obligations under this Deed where it fails to complete a Milestone by the relevant Milestone Date.

## Grant Recipient’s obligations

On receipt of a notice of termination, or reduction in scope under clause 1.3.8(c), the Grant Recipient must:

### cease or reduce the performance of its obligations under this Deed in accordance with the notice;

### immediately do everything possible to mitigate all losses, costs, and expenses, arising from the termination or reduction in scope contained in the notice;

### continue work under any part of the Project not affected by the notice; and

### immediately return to ACCAN any Funds in accordance with clause 1.4 or deal with any such Funds as required by ACCAN by notice to the Grant Recipient in writing.

## Abatement of Funding

### If there is a reduction in scope of the obligations under this Deed, ACCAN’s liability to pay any part of the Funding will be reduced to the amount specified by ACCAN in the notice under clause 1.4.

# Dispute Resolution

Where a dispute arises between the parties in connection with this Deed, the parties must enter into discussions in good faith to resolve the dispute or to agree on a process to resolve all or part of the dispute without court proceedings. Unless the parties otherwise agree, discussions between the parties under this clause must continue for 21 days.

If the dispute is not resolved under clause 9.1, either party may refer the dispute for mediation administered by the Australian Disputes Centre Limited (**ADC**) in accordance with the ADC’s current Mediation Guidelines.

The mediator must be appointed by agreement between the parties but, failing agreement, will be appointed by the Chairman of the ADC or the Chairman's authorised representative.

For the purposes of this clause 9, 'dispute' includes any disagreement, difference of opinion, or failure to agree on any matter related to this Deed or its performance.

A party must not start court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this Deed unless that party has complied with this clause 9.

The parties must continue to perform their obligations under this Deed during the resolution of any dispute(s).

# General

## No Liability

### Without limiting ACCAN's obligation to pay the Funds to the Grant Recipient where the Grant Recipient is entitled to the Funds under this Deed, ACCAN has no liability to the Grant Recipient for any direct or indirect loss (whether arising under the common law or statue) in any way related to the subject matter of this Deed, including any special loss, consequential loss, loss of profit, loss of revenue, business interruption, loss of goodwill, damage to reputation or loss or damage in connection with any failure to realise anticipated savings, even if such loss or damage was in the reasonable contemplation of the parties at the time of entry into this Deed.

### The Grant Recipient indemnifies ACCAN against any loss or damage suffered or incurred (whether directly or indirectly) by ACCAN arising from or in connection with:

#### any claim by a third party against ACCAN or the Grant Recipient in connection with the Project;

#### any breach by the Grant Recipient of this Deed; or

#### the use by ACCAN of the Project Material or Existing Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights or Moral Rights in Project Material or Existing Material..

## No Assignment

The Grant Recipient may not assign, transfer or otherwise dispose of any benefit, obligation or right under this Deed without the prior written consent of ACCAN. Any change in the beneficial ownership, management or control of more than 20% of a Grant Recipient that is a body corporate is deemed to be an assignment of rights under this Deed.

## Severance

If any provision of this Deed is or becomes unenforceable or void with in whole or in part, for any reason, then that provision is deemed to be deleted without in any way affecting the validity or enforceability of any other provision, provided this does not frustrate the commercial purpose of the Deed.

## Amendment

This Deed may only be amended in writing signed both parties.

## Entire Agreement

### This Deed (including the Schedule) constitutes the entire agreement between the parties as to its subject matter, and all agreements, representations, undertakings, warranties, arrangements and statements (if any) whether expressed or implied in relation to its subject matter are merged herein and otherwise are hereby excluded and cancelled.

### This Deed takes precedence, to the extent of any inconsistency, over any other document referred to herein or otherwise incorporated into the relationship between the parties.

## Definitions

## In this Deed, unless otherwise defined:

### **Deed** means this document, as varied from time to time in writing signed by both parties, and includes any Schedules and Annexures;

### **Existing Material** means all Material, including the Material specified in the Schedule, in existence prior to the date of this Deed:

#### incorporated in;

#### supplied with, or as part of; or

#### required to be supplied with, or as part of,

the Project Material (other than Project Material created for the purpose of any prior agreement between the Parties regarding the Project);

### **Intellectual Property Rights** means all and any patents, patent applications, trade marks, service marks, trade names, domain names, registered designs, unregistered design rights, copyrights works, know how, trade secrets and confidential information, URLs, drawings, discoveries, inventions, improvements, technical data, formulae, computer programs, software, know-how, logos 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;

### **Insolvency Event** means, in relation to a person, any of the following:

#### the person, being an individual, commits an act of bankruptcy;

#### the person becomes insolvent;

#### the person assigns any of its property for the benefit of creditors or any class of them;

#### a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to the person or the person enters into a scheme of arrangement with its creditors or is wound up;

#### the holder of a security interest takes any step towards taking possession of or takes possession of any assets of the person or exercises any power of sale;

#### a judgment or order is made against the person in an amount exceeding $10,000 (or the equivalent in any other currency) and that judgment or order is not satisfied, quashed or stayed within 20 business days after being made;

#### any step is taken to do anything listed in the above paragraphs; and

#### any event that is analogous or has a substantially similar effect to any of the events specified in this definition in any jurisdiction; and

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## Interpretation

In this Deed, unless a contrary intention appears or the context requires otherwise:

### where a bold and capitalised term is included in a clause of this Deed, the same capitalised term used elsewhere in this Deed has the same meaning;

### a reference to:

#### a person includes a firm, partnership, joint venture, association, corporation or other corporate body;

#### a person includes the legal personal representatives, successors and permitted assigns of that person;

#### any 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 first-mentioned body;

#### this or other document includes the document as varied or replaced regardless of any change in the identity of the parties;

#### a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;

#### a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this Deed;

#### writing includes all modes of representing or reproducing words in a legible, permanent and visible form;

#### the singular includes the plural and vice versa;

#### a ‘business day’ means a day other than a Saturday, a Sunday or a public holiday in New South Wales; and

#### a gender includes the other genders;

### the words "includes" or "including" are to be construed as includes (or including) without limitation;

### headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Deed; and

### if a payment or other act is required by this Deed 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 business day.

## Notice

Any notice to be given under this Deed must be in writing and must be sent to the address or email address for notices identified in item 2 of the Schedule. Notices sent by:

### pre-paid post are deemed to have been delivered five (5) business days after posting; and

### e-mail are deemed to have been delivered when the transmission is completed except that the sender's email provider indicates a malfunction in transmission or the recipient notifies the sender of an incomplete transmission. If the transmission is not completed before 5:00 pm (addressee’s time) on a normal business day, delivery is regarded as having taken place at 9:00 am on the following business day.

## Governing Law and Jurisdiction

This Deed is governed by and is to be construed in accordance with the laws of New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and waives any right to object to proceedings being brought in those courts.

## Rule of construction

In the interpretation of this Deed, no rule of construction applies to the disadvantage of the party preparing the document on the basis that it prepared or put forward this document or any part of it.

## No relationship

### No party to this document has the power to obligate or bind any other party. Nothing in this document will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the parties. Nothing in this document will be deemed to authorise or empower any of the parties to act as agent for or with any other party.

### The Grant Recipient must not, and must ensure its employees, partners, officers, volunteers, subcontractors and agents do not, represent itself as being ACCAN’s or the Australian Government’s employee, partner, officer, volunteer or agent, or as otherwise able to bind or represent ACCAN or the Australian Government.

## No merger

The warranties, undertakings, agreements and continuing obligations in this document do not merge on completion.

## Counterparts

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

## Waiver

The failure of a party at any time to insist on performance of any provision of this Deed 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 Deed.

## 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 Deed.

## Survival and enforcement of indemnities

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

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

## Electronic execution

### A party may sign this Deed, and any variations to it, by electronic means where permitted by law. Each other party consents to that party signing by electronic means.

### The parties agree that if any party signs this Deed under clause 10.16.1, then:

#### an electronic form of this Deed with that party’s electronic signature(s) appearing will constitute an executed counterpart; and

#### a print-out of this Deed with that party’s electronic signature(s) appearing will also constitute an executed counterpart.

Executed by the parties as a Deed.

Signed, by (or for and on behalf of) the Grant Recipient by its duly authorised representative:

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Signature of Authorised Representative

*The Authorised Representative warrants that it has authority to execute this Deed on behalf of the Grant Recipient*

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Name of Signatory

in the presence of:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness Signature

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Witness full name

**Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Signed for and on behalf of Australian Communications Consumer Action Network Limited:

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Signature

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Name of Signatory

in the presence of:

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Witness

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Witness full name

**Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

SCHEDULE

1. **Grant Recipient:** [insert full legal name of Grant Recipient] of [insert address of Grant Recipient]
2. **Contact Details for Notices:**

ACCAN

Address: PO Box A1158 Sydney South, NSW 1235
Contact: Tanya Karliychuk, Director of Operations

E-Mail: grants@accan.org.au

Phone: 02 9288 4000

Grant Recipient

Address: [Insert]

Contact: [Insert]

E-Mail: [Insert]

Phone: [Insert]

1. **Services to be provided by the Grant Recipient:**
	1. **Title of the Project:**

[Insert]

* 1. **Project Objectives and Activities:**

[Insert]

* 1. **Project Outputs:**

[Insert]

* 1. **Project Budget:**

**[Insert** Summary as per application**]**

|  |  |  |  |
| --- | --- | --- | --- |
| **Income description** | **Amount** | **Expenditure description** | **Amount** |
| ACCAN Grant |  |  |  |
|  |  |  |  |
|  |  |  |  |
| **Total** |  |  |  |

* 1. **Progress Report Form due dates:**

|  |  |
| --- | --- |
|  | Progress Report Form due date |
| Progress Report Form 1 | N/A |
| Progress Report Form 2 | N/A |
| Progress Report Form 3 | N/A |

* 1. **Acquittal Form to be provided to ACCAN:**

**[Insert** Agreed date**]**

* 1. **Deed End Date:**

[Insert]

1. **Fee arrangements**
	1. **Funds**

**The total Funds to be paid for the Project are [Insert] (Ex GST).** The payment will be made within 14 working days of the date upon which ACCAN receives a tax invoice issued in accordance with this Deed

* 1. **Invoicing**

The Grant Recipient must submit an invoice in accordance with Clause 1 of the Deed, and include the following information:

Title of the project; identify the project as a ‘[insert year] Round’ project; identify the date and milestone the invoice is associated with; include payment details such as electronic transfer details; send the invoice to finance@accan.org.au cc to grants@accan.org.au

1. **Milestones for Payment of Funds**

|  |  |  |  |
| --- | --- | --- | --- |
|  | Milestone Description | **Milestone Completion Date** | Milestone Payment |
| Milestone 1 | Initial payment | Within 14 days of signing Deed | [Insert] |
| Milestone 2 | [Insert] | [Insert] | [Insert] |
| Milestone 3 | [Insert] | [Insert] | [Insert] |

1. **Elements that the Grant Recipient is not required to provide:**

[Insert item and supplier]

1. **Key person from Grant Recipient responsible for the delivery and quality of Project:**

[Insert]

1. **Members of Grant Recipient team:**

[Insert]

1. **Insurance**
	1. **Level of Workers’ Compensation Insurance Required:**

[Insert]

Provide the policy name, policy number, the amount and the period the policy is valid for.

* 1. **Level of Professional Indemnity Insurance Required:**

Provide the policy name, policy number, the amount and the period the policy is valid for.

* 1. **Level of Public Liability Insurance Required:**

[Insert]

Provide the policy name, policy number, the amount and the period the policy is valid for.

If insurance policies have expired or are in the process of being renewed, a statement is required here which verifies that the policy will be renewed. For example, “The Grant Recipient has indicated it has held the following insurance policy and hereby undertakes that it will renew and maintain this policy or like policy during the period of the Deed (or, in the case of professional indemnity insurance, for a period ending 7 years from the date of expiration or earlier termination of this Deed) as soon as reasonably practicable, and undertakes to inform ACCAN of any changes as they arise.”

1. **ACCAN Policies to comply with**

[ACCAN Privacy Policy](https://accan.org.au/privacy-policy)