



Australian Government

**Department of Infrastructure, Transport,
Regional Development, Communications and the Arts**

REGIONAL CONNECTIVITY PROGRAM ROUND THREE GRANT AGREEMENT

between

The Commonwealth represented by
***Department of Infrastructure, Transport,
Regional Development, Communications and the
Arts***

ABN 86 267 354 017

and

Grantee

ABN insert

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Grant Agreement – Grant ID number **insert**

Once completed, this document, including each Part, each of the Schedules and any Annexures, forms an Agreement between the Commonwealth and the Grantee.

Parties to this Agreement

The Grantee

Full legal name of Grantee	
Legal entity type	E.g. local government authority, company, co-operative etc
Trading or business name	
Any relevant licence, registration or provider number	
Australian Business Number (ABN)	
Australian Company Number (ACN) or other entity identifiers	
Trust Name and ABN (where applicable)	
Registered for Goods and Services Tax (GST)?	
Registered office (physical/postal)	
Relevant business place (if different)	

The Commonwealth

The Commonwealth of Australia represented by the
Department of Infrastructure, Transport, Regional Development, Communications and the Arts
ABN 86 267 354 017
2 Phillip Law St, Canberra ACT 2601

Background

The Commonwealth has agreed to enter this Agreement under which the Commonwealth will provide the Grantee with the Grant for the purpose of assisting the Grantee to undertake the associated Activity. The Grantee agrees to use the Grant and undertake the Activity in accordance with this Agreement and the relevant Grant Details.

Scope of this Agreement

This Agreement comprises the following parts:

- a. this Grant Agreement cover document;
- b. Part A - Grant Details;
- c. Part B - The Grant
- d. Part C - Capital Works and Operational Period;
- e. Schedule 1 (Capital Works Particulars) and Schedule 2 (Detailed Activity Budget and Milestone Payments);
- f. Schedule 3 Additional Capital Works Requirements;
- g. Part D - Reporting;
- h. Part E - Grant Conditions; and
- i. Schedule 4 (Extension of Time (EOT) Request – Capital Works Completion Date), Schedule 5 (Project Frustration Notification) and Schedule 6 (Material Variation Request).

If there is any ambiguity or inconsistency between the parts of this Agreement, the part appearing higher in the list will have precedence to the extent of the ambiguity or inconsistency.

This Agreement represents the Parties' entire agreement in relation to the Grant provided under it and the relevant Activity and supersedes all prior representations, communications, agreements, statements and understandings, whether oral or in writing.

PART A - GRANT DETAILS

A Purpose of the Grant

- A.1 The purpose of the Grant is to target telecommunications infrastructure investment to provide economic opportunities for regional communities and businesses and enable their participation in the digital economy.
- A.2 This Grant is being provided under the Regional Connectivity Program Round Three (**the Program**), and these Grant Details form part of the Agreement between the Commonwealth and the Grantee.
- A.3 This Grant is being provided as part of the Program pursuant to the Regional Connectivity Program Round Three Grant Opportunity Guidelines released on 20 March 2023 (**the Guidelines**), as amended from time to time to the close of proposals.
- A.4 The objective of the Program is to use a place-based approach to target telecommunications infrastructure investment that will provide economic opportunities and improve participation in the digital economy for regional communities and businesses.
- A.5 The intended outcomes of the Program are to:
- provide place-based solutions to regional digital connectivity issues through a range of mobile and/or broadband services; and
 - complement the National Broadband Network, the Mobile Black Spot Program and the telecommunications industry's commercial investment plans.
- A.6 The Grantee has been awarded this Grant under the Program to **insert a general description of the funded solutions and the broad intended outcomes.**

B Activity

- B.1 The Grantee must undertake the Activity in accordance with this Agreement.
- B.2 The Activity consists of the Capital Works and the Operational Period for each Project, the provision of Reporting Material, and the obligations set out in these Grant Details.
- B.3 The Grantee must:
- carry out the Capital Works for each Project described in Schedule 1 in accordance with Part C;
 - operate and maintain the completed Assets during the Operational Period for each Project in accordance with Part C;
 - provide the Reporting Material in accordance with Reporting Documentation Requirement Guide in Part D and Item D.5 of the Grant Details; and
 - comply with its obligations under this Agreement.
- B.4 The Grantee must comply with and implement the Stakeholder Engagement Plan.

C Commencement and Term of this Agreement

- C.1 The Agreement commences on the date the last party signs this Agreement.
- C.2 The Agreement expires on the date that is seven years from the date on which the Commonwealth accepts the Capital Works Completion Report, which is the **Agreement End Date**, unless terminated or cancelled earlier in accordance with clause 58 or 59.

D Milestones, Activity Periods, Reporting and Meetings

- D.1 The Grantee must achieve Practical Completion for each Asset in a Project, in accordance with clause 20, by the date specified as the **Asset Completion Due Date** in Schedule 1.
- D.2 The **Project Completion Date** for a Project is the date the Commonwealth gives the Grantee notice that the Project Completion Statement for that Project has been accepted.
- D.3 The Grantee must complete the Capital Works for all Projects by **insert date**, which is the **Capital Works Completion Date**.
- D.4 The **Operational Period** for a Project starts on the Project Completion Date for that Project and ends on the date that is seven years from that Project Completion Date.
- D.5 The Grantee must prepare and provide the following Reports and notices to the Commonwealth:

No.	Requirement	Due Date
1.	Grantee provides the Stakeholder Engagement Plan to the Commonwealth (see clause 30 of Part D)	Within 40 Business Days of commencement of this Agreement
2.	Grantee provides the Project Management Plan and Risk Management Plan to the Commonwealth (see clause 31 of Part D)	Within 3 months of commencement of this Agreement [Note, for grantees with a large number of Projects we may change this to "within 6 months"];
3.	Grantee provides Capital Works Progress Reports to the Commonwealth (see clause 32 of Part D)	First Capital Works Progress Report to be provided on [date of first report] and then subsequent reports to be provided quarterly thereafter until the Capital Works Completion Date
4.	Grantee provides the Capital Works Completion Report to the Commonwealth (see clause 33 of Part D)	Within 20 Business Days of the date of the final Asset to reach Practical Completion
5.	Grantee provides Operational Period Reports to the Commonwealth (see clause 35 of Part D)	12 months from the Capital Works Completion Date, then within 20 Business Days of a request from the Commonwealth until the Agreement End Date (no more than once per year)

- D.6 Representatives of the Grantee and the Commonwealth must meet on a monthly basis (or at alternative intervals as agreed), from the commencement of the Agreement until such time as the Commonwealth provides notice of acceptance of the Capital Works Completion Report (or until the Agreement is terminated, if sooner). The purpose of the meetings is to discuss the progress of the Activity and any emerging issues, risks or delays.

E Grant Amount and Payment Milestones

E.1 The total amount of the Grant will be **insert** (GST **incl/excl**).

E.2 GST **is/ is not** payable on the Grant.

E.3 The Grantee's nominated bank account into which the Grant is to be paid is:

Institution	Account Name	BSB Number	Account Number
Insert	Insert	Insert	Insert

E.4 The Commonwealth will pay the Grant in the instalment amounts specified in Table 1 of Schedule 2 in accordance with this Item E.

E.5 Payments of the Grant will only be made on receipt of a correctly rendered Tax Invoice, which may be issued by the Grantee on completion of the following payment milestones:

No.	Payment Milestone
1.	Mobilisation Payment on commencement of this Agreement
2.	Commonwealth provides notice of acceptance of Project Management Plan and Risk Management Plan
3.	Commonwealth provides notice of acceptance of the AAA Statement for a Project, noting that the Commonwealth is not required to accept any AAA Statements before it has received and accepted the Stakeholder Management Plan, Project Management Plan and Risk Management Plan (see clause 24.6)
4.	Commonwealth provides notice of acceptance of a Project Completion Statement
5.	Commonwealth provides notice of acceptance of the Capital Works Completion Report

E.6 Where multiple payment milestones have been reached for multiple Assets or Projects, the amounts should be consolidated into a single Tax Invoice. To be correctly rendered, a Tax Invoice must separately identify amounts against the relevant Project Identifiers, Asset Identifiers and Payment Milestones to which the amounts relate, as set out in Schedule 2, along with a total amount for that Tax Invoice (including any GST payable).

F Party representatives and address for notices

F.1 The Parties' representatives will be responsible for liaison and the day-to-day management of the Grant, as well as accepting and issuing any written notices in relation to the Grant.

F.2 Grantee's representative and address:

Grantee Representative	Name
Position	Insert
Postal/physical address(es)	Insert
Business hours telephone	Insert
Mobile	Insert
Email	Insert

F.3 Commonwealth's representative and address

Position	Director, Regional Connectivity Program
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Postal/physical address(es)	Department of Infrastructure, Transport, Regional Development, Communications and the Arts GPO Box 594 Canberra ACT 2601
Email	regionalconnectivity@communications.gov.au

G Official openings and other events

- G.1 If the Grantee wishes to conduct an official opening in connection with an Asset, the Grantee must provide the Commonwealth with at least three options for dates for the official opening at least 30 Business Days prior to the first proposed date for the official opening.
- G.2 The Grantee must invite the Commonwealth to nominate a person to officiate at any event held in connection with the Activity, including an official opening, no later than 30 Business Days before the date of the event.
- G.3 The Grantee must obtain the Commonwealth's prior written approval to invite any other Commonwealth or State elected official or other officials to attend an official opening or other event held in connection with the Activity, unless otherwise agreed by the Commonwealth.

PART B - THE GRANT

1 Payment of the Grant

- 1.1 The Commonwealth must pay the Grant to the Grantee in accordance with the Grant Details.
- 1.2 Notwithstanding any other provision of this Agreement, the Commonwealth may by notice withhold payment of any amount of the Grant and/or take any other action specified in this Agreement if it reasonably believes that:
 - a) the Grantee has not complied with this Agreement;
 - b) the Grantee is unlikely to be able to perform the Activity or manage the Grant in accordance with this Agreement; or
 - c) there is a serious concern relating to the Grantee or this Agreement that requires investigation.
- 1.3 A notice under clause 1.2 will contain the reasons for any action taken under clause 1.2 and, where relevant, the steps the Grantee must take to address those reasons.
- 1.4 The Commonwealth will only be obliged to pay a withheld amount once the Grantee has addressed the reasons contained in a notice under clause 1.2 to the Commonwealth's reasonable satisfaction.
- 1.5 The Grantee agrees to hold the Grant in an account in the Grantee's name and which the Grantee controls, with an authorised deposit-taking institution authorised by the *Banking Act 1959* (Cth) to carry on banking business in Australia.

2 Other Contributions

- 2.1 In this Agreement, **Other Contributions** means the financial or in-kind contributions other than the Grant set out in Table 2 of Schedule 2.
- 2.2 The Grantee must provide, or ensure the provision of, the Other Contributions and use them to undertake the Activity.
- 2.3 To the extent that an Other Contribution is not provided or used in accordance with this clause 2, then the Commonwealth may:
 - a) suspend payment of the Grant applicable to the affected Project/s until the Other Contributions are provided or used in accordance with this Agreement; or
 - b) reduce the scope of this Agreement in accordance with clause 56 to either remove the affected Assets from the relevant Project/s or remove the affected Project/s from this Agreement (noting that this will also result in a proportionate reduction in the amount of the Grant: see clause 56.3).

3 Spending the Grant

- 3.1 Subject to clause 4 the Grantee must use the Grant and any Other Contributions and undertake the Activity consistently with the Activity Budget specified in Table 1 of Schedule 2.
- 3.2 The Grant and Other Contributions may not be applied to:
 - a) ongoing operating and maintenance costs, including utilities, staffing, and site rental or lease costs;

- b) soft infrastructure, including computer software or hardware that is not an integral part of the Asset;
- c) project overhead items including the purchase of office equipment, vehicles or mobile capital equipment (examples include trucks and earthmoving equipment and the Grantee's internal plant operating costs); or
- d) business case development and feasibility studies.

4 Applying Project Underspends

4.1 For the purpose of this clause 4:

- a) **Total Budget for an Asset** means the total budget for that Asset set out in the Activity Budget in Table 1 of Schedule 2, inclusive of all Grantee and third party cash Other Contributions but exclusive of any in-kind Other Contributions);
- b) **Total Project Budget** means, for each Project, the Total Project Budget set out in the Activity Budget in Table 1 of Schedule 2, inclusive of all Grantee and third party cash Other Contributions but exclusive of any in-kind Other Contributions;
- c) an **Asset Underspend** means the amount (if any) by which the actual expenditure of a completed Asset is less than the Total Budget for that Asset;
- d) an **Asset Overspend** means the amount (if any) by which the actual expenditure of a completed Asset is over the Total Budget for that Asset;
- e) a **Project Underspend** means, for a Project, the amount (if any) by which the total actual expenditure of the completed Assets in that Project is less than the Total Project Budget for that Project as set out in Table 1 of Schedule 2;
- f) a **Project Overspend** means, for a Project, the amount (if any) by which the total actual expenditure of the completed Assets in that Project is greater than the Total Project Budget for that Project as set out in Table 1 of Schedule 2;
- g) the **Commonwealth's Relative Contribution to the Total Project Budget** means the proportion of the Grant Contribution to that Project to the Total Project Budget for that Project as set out in Table 1 of Schedule 2;
- h) the **Commonwealth's share of a Project Underspend** means the proportion of a Project Underspend equivalent to the Commonwealth's Relative Contribution to the Total Project Budget for that Project; and
- i) the **Commonwealth's share of a Project Overspend** means the proportion of a Project Overspend equivalent to the Commonwealth Relative Contribution to the Total Project Budget for that Project.

4.2 The Parties acknowledge that the Grantee, in submitting the financial acquittal report under clause 34, may seek the Commonwealth's written approval to, within a Project, apply any Asset Underspends to any Asset Overspends.

4.3 The Grantee must maintain a record of any application of the Commonwealth's share of a Project Underspend to the Commonwealth's share of a Project Overspend in accordance with clause 4.2 and, if requested in writing, provide a copy of the record within a reasonable period of time to the Commonwealth.

4.4 For the purpose clause 7.1, in the event any amount of a Commonwealth's share of Project Underspends remains following the completion of the process in clause 4.2, the Parties agree that this amount of the Grant is additional to the requirements of the Activity.

Example: Where the Commonwealth's Relative Contribution to the Total Project Budget is 75% and there is a remaining Project Underspend of \$100,000, the amount of the Grant that is additional to the requirements of the Activity for that Project will be \$75,000.

4.5 Nothing in this clause 4 limits the Commonwealth's rights under clause 7.1.

5 Not used

6 Taxes, duties and government charges

6.1 The Grantee agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement, except as provided by this Agreement.

6.2 If Goods and Services Tax (GST) is payable by a supplier on any supply made under this Agreement, the recipient of the supply will pay to the supplier an amount equal to the GST payable on the supply, in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.

6.3 If at the commencement of the Agreement the Grantee is not registered for GST and during the term of the Agreement the Grantee becomes, or is required to become, registered for GST, the Grantee agrees to notify the Commonwealth in writing within 7 days of becoming registered for GST.

7 Repayment

7.1 If any amount of the Grant:

- a) has been spent other than in accordance with this Agreement; or
- b) is additional to the requirements of the Activity;

then the Commonwealth may by written notice:

- c) require the Grantee to repay that amount to the Commonwealth;
- d) require the Grantee to deal with that amount as directed by the Commonwealth; or
- e) deduct the amount from subsequent payments of the Grant or amounts payable under another agreement between the Grantee and the Commonwealth.

7.2 If the Commonwealth issues a notice under this Agreement requiring the Grantee to repay a Grant amount:

- a) the Grantee must do so within the time period specified in the notice;
- b) the Grantee must pay interest on any part of the amount that is outstanding at the end of the time period specified in the notice until the outstanding amount is repaid in full; and
- c) the Commonwealth may recover the amount and any interest under this Agreement as a debt due to the Commonwealth without further proof of the debt being required.

PART C - CAPITAL WORKS AND OPERATIONAL PERIOD

Capital Works

8 Capital Works

- 8.1 The Grantee must carry out the Capital Works for each Project, being the construction or installation of the Assets specified in Schedule 1, at the Site Locations specified. Each Asset must meet the Infrastructure Characteristics and Technology Characteristics specified in Schedule 1 and be fit for the specified Designated Use, and the specified Service Offering and Retail Services (if applicable) must be able to be provided from the Asset.
- 8.2 **[Drafting Note: The Commonwealth may be required to include certain obligations relating to compliance with the WHS Accreditation Scheme for Commonwealth building work, and the Australian Industry Participation Plan, for Grants above certain threshold amounts. These are set out in Schedule 3. If any Schedule 3 requirements apply, this clause 8.2 will be inserted]**
The Grantee must comply with the requirements set out in Schedule 3 in carrying out the Capital Works.

9 Approvals

- 9.1 The Grantee must obtain all Approvals necessary to commence and perform the Activity in accordance with this Agreement.
- 9.2 In the AAA Statement for each Project, the Grantee must provide written certification and sign-off by the Grantee's representative (who has the relevant oversight and/or delegation) that the Grantee has obtained the necessary Approvals and access rights to commence and perform the Activity (see clause 32).
- 9.3 If the Grantee does not obtain the necessary Approvals in accordance with clause 9.1, the Commonwealth may, at its sole discretion:
- withhold payment of any amount of the Grant in accordance with clause 1.2; or
 - reduce the scope of, suspend or terminate this Agreement in accordance with clauses 56, 57 and 58.

10 Asset Completion Due Date and delays

- 10.1 Subject to this clause 10, the Grantee must ensure that each Asset achieves Practical Completion by the Asset Completion Due Date specified in Schedule 1.
- 10.2 Subject to clause 11, if the Grantee becomes aware that it will be delayed in completing an Asset by the Asset Completion Due Date for any reason, the Grantee must:
- promptly notify the Commonwealth in writing of the delay, including the cause and nature of the delay and provide details of the steps the Grantee will take to limit and mitigate the delay; and
 - update the schedule for delivery of Assets and Projects in the next Capital Works Progress Report.
- 10.3 Subject to clause 11, Capital Works Progress Reports must expressly identify any updates to the schedule for delivery of Assets and Projects that will result in Practical Completion of an Asset occurring more than 3 months after the Asset Completion Due Date for any reason. This

is to be treated as a proposal to the Commonwealth to extend the Asset Completion Due Dates for those Assets...

- 10.4 The Commonwealth may accept or reject the proposed extension of an Asset Completion Due Date under clause 10.3 at its sole discretion. If the Commonwealth rejects the extension, the Commonwealth may request the Grantee make changes to the proposed Asset Completion Due Date in the Capital Works Progress Report. If the Commonwealth accepts the Capital Works Progress Report without amendment, the Commonwealth is taken to have agreed to the extension of the Asset Completion Due Date for the relevant assets.

11 Capital Works Completion Date and delays

- 11.1 If the Grantee becomes aware that it will be delayed in completing the Capital Works for all Projects by the Capital Works Completion Date for any reason, the Grantee must, in writing and substantially in the form of Schedule 4, promptly:
- notify the Commonwealth of the delay, including the cause and nature of the delay and provide details of the steps the Grantee will take to limit and mitigate the delay;
 - provide the Commonwealth with an updated Schedule 1 with proposed updates to the Asset Completion Due Dates; and
 - request an extension to the Capital Works Completion Date.
- 11.2 The Commonwealth may accept or reject a request to extend the Capital Works Completion Date made under clause 11.1 at its sole discretion. If accepted, the Commonwealth must provide the Grantee notice of the extended Capital Works Completion Date and provide an updated Schedule 1 with new Asset Completion Due Dates. If rejected, the Commonwealth must provide the Grantee notice that the request has been rejected, and must reduce the scope of the Agreement to remove the affected Projects in accordance with clause 56.
- 11.3 If there is a delay in completing the Capital Works for all Projects by the Capital Works Completion Date as a result of a Force Majeure Event that has continued for more than 60 days, the Commonwealth may, at its sole discretion, reduce the scope of this Agreement in accordance with clause 56.

12 Project Frustration

- 12.1 If the Grantee considers that there is likely to be a Project Frustration Event in respect of a particular Project, the Grantee must, in writing and substantially in the form of Schedule 5, promptly notify the Commonwealth and request the Commonwealth consider removing the Project.
- 12.2 Within 20 Business Days of receipt of a notice issued by the Grantee under clause 12.1, the Commonwealth may, in writing, request the Parties meet to discuss the notice. The Parties must meet as soon as practicable after the Commonwealth requests the meeting.
- 12.3 The Grantee must not inform any person that there is likely to be a Project Frustration Event in respect of a particular Project unless agreed to in writing by the Commonwealth.
- 12.4 The Commonwealth may, at its sole discretion, accept or reject that there is a Project Frustration Event in respect of the particular Project. If the Commonwealth:

- a) accepts that there is a Project Frustration Event in respect of a particular Project – the Commonwealth must reduce the scope of the Agreement to remove the affected Project in accordance with clause 56; or
- b) rejects that there is a Project Frustration Event in respect of a particular Project – the Grantee must continue to carry out the Capital Works as they relate to the particular Project and continue to comply with its obligations under this Agreement in respect of the Project.

13 Commonwealth Material, facilities and assistance

13.1 In this agreement, **Commonwealth Material** means any Material:

- a) provided by the Commonwealth to the Grantee for the purpose of the Agreement; or
- b) derived at any time from the Material, including the Material specified in clause 13.1a), but does not include Reporting Material or Activity Material.

13.2 Nothing in this Agreement affects the ownership of Commonwealth Material.

13.3 The Commonwealth grants the Grantee a licence to use the Commonwealth Material for the sole purpose of performing the Activity in accordance with this Agreement.

13.4 The Grantee must return or destroy all copies of the Commonwealth Material at the expiration or earlier termination or cancellation of this Agreement as directed by the Commonwealth.

13.5 The Grantee must comply with any directions or requirements notified by the Commonwealth when accessing the facilities and assistance or using and storing the Commonwealth Material.

14 Specified Personnel

14.1 The Grantee agrees that the following personnel (**Specified Personnel**) will be involved in the Activity as set out below:

- a) [insert details, including name and nature of the role or work to be undertaken]

14.2 The Grantee must notify the Commonwealth as soon as practicable if the Specified Personnel are unable to perform the work as required under this clause.

14.3 The Grantee must remove any personnel (including Specified Personnel, subcontractors, agents or volunteers) involved in the Activity at the request of the Commonwealth.

14.4 If clause 14.2 or clause 14.3 applies, the Grantee will provide replacement personnel acceptable to and at no additional cost to the Commonwealth at the earliest opportunity and without any interruption to the Grantee's compliance with its other obligations under this Agreement.

15 Subcontracting

15.1 The Grantee is responsible for the performance of its obligations under this Agreement, including in relation to any tasks undertaken by subcontractors.

15.2 The Grantee must make available to the Commonwealth the details of any of its subcontractors engaged to perform any tasks in relation to this Agreement upon request.

15.3 The Grantee must remove a subcontractor from the Activity at the reasonable request of the Commonwealth and at no additional cost to the Commonwealth.

[Drafting Note: Additional requirements may be included in Schedule 3 in connection with the Australian Industry Participation Policy. See clause 8.2].

16 Construction standards

16.1 The Grantee must ensure that:

- a) all aspects of the Capital Works are carried out by qualified tradespeople or professionals who:
 - (i) use workmanship of a standard consistent with the best Australian industry standards for work of a similar nature carried out within Australia; and
 - (ii) are registered with the relevant Australian state, territory or national accreditation bodies that regulate the activities of members of that particular trade or profession in each jurisdiction where the Capital Works are carried out;
- b) all activity relating to the Capital Works is carried out in accordance with, and the Capital Works comply with, all relevant legal requirements and all relevant Australian or international standards (including all relevant standards of Standards Australia) applicable to the Capital Works being undertaken; and
- c) all materials used in the Capital Works comply with any requirements set out in this Agreement and are of merchantable quality, fit for their purpose and consistent with the nature and character of the Capital Works.

17 Minor changes to the Capital Works

17.1 The Grantee may make minor changes to the Capital Works of a Project, including Site Locations. A change to the Capital Works of a Project will be a **minor change** if the change will have no effect on:

- a) the timeframes for completing the Capital Works;
- b) the fitness of the completed Capital Works for the Designated Use;
- c) the ability for the Grantee to obtain all necessary Approvals to carry out the Capital Works or Activity generally; or
- d) the community that will benefit from the completed Assets in that Project.

17.2 A change will have no effect on the community that will benefit from the completed Assets in that Project if:

- a) at least 90% of the original Asset Coverage Footprint will still receive coverage from the Asset; and
- b) the change will result in a less than 10% reduction in each of the following:
 - (i) Asset coverage area (sq km) as specified in Schedule 1;
 - (ii) the number of premises covered as specified in Schedule 1; and
 - (iii) the Backhaul (Mbps), as specified in Schedule 1, of the Asset.

18 Material changes to the Capital Works

18.1 The Grantee may request, in writing and substantially in the form of Schedule 6, the Commonwealth approve a material change to the Capital Works of a Project. A change to the Capital Works of a Project will be a **material change** if it is not a minor change within the meaning of clause 17.

- 18.2 To avoid doubt, a material change includes the following types of changes:
- a) a change to the number of Assets within the Project;
 - b) a change to the Infrastructure Characteristics or Technology Characteristics of an Asset or to the type of Backhaul;
 - c) a change that will result in less than 90% of the original Asset Coverage Footprint receiving coverage from the Asset; or
 - d) a change that will result in a more than 10% reduction in any of the following:
 - (i) Asset coverage area (sq km) as specified in Schedule 1; or
 - (ii) the number of premises covered;
 - (iii) the Backhaul (Mbps), as specified in Schedule 1, of the Asset.
- 18.3 The Commonwealth may, at its sole discretion, approve a material change to the Capital Works of a Project or decide not to approve a material change to the Capital Works of a Project. If the Commonwealth:
- a) approves a material change to the Capital Works of a Project – the Commonwealth must notify the Grantee of the approval in writing and include details of the approved material changes to the Project; or
 - b) decides not to approve a material change to the Capital Works of a Project – the Commonwealth must notify the Grantee of the decision not to approve the changes to the Capital Works of the Project.

19 Site Conditions that disrupt Capital Works

- 19.1 Prior to the commencing the Capital Works for a Project, the Grantee agrees to ensure that:
- a) the Site is suitable for carrying out the Capital Works at that Site; and
 - b) the Grantee has made reasonable enquiries to ascertain there are no site conditions that may affect the Grantee's ability to perform or complete the Capital Works in accordance with this Agreement or otherwise comply with this Agreement.
- 19.2 If, at any time while carrying out Capital Works, the Grantee discovers a condition at a Site that may affect the performance or completion of the Capital Works at that Site, the Grantee agrees to:
- a) immediately notify the Commonwealth;
 - b) give the Commonwealth any details it reasonably requires about the condition, its causes, and its anticipated effect on the Capital Works;
 - c) allow the Commonwealth, and any person the Commonwealth nominates, access to the Site at all reasonable times to inspect and investigate the condition; and
 - d) take all steps necessary to avoid (or, if the condition cannot be avoided, to mitigate) the impacts of the condition on the performance and completion of the Capital Works.
- 19.3 The Grantee agrees that all steps the Grantee takes of its own accord under clause 19.2d) (and that any third party takes on the Grantee's behalf) to avoid or mitigate the impacts of the site condition are entirely at the Grantee's own risk and expense and will not be paid for using any of the Grant. This clause does not apply to variations to the Capital Works on the direction of the Commonwealth under clause 19.4
- 19.4 If, in the Commonwealth's reasonable opinion, a condition notified to it under clause 19.2 would or may adversely affect the Grantee's ability to perform or complete the Capital Works

in accordance with this Agreement or otherwise comply with this Agreement, the Commonwealth may direct the Grantee to vary the Capital Works to overcome the notified condition. Any such direction does not limit the Commonwealth's rights under clause 19.5.

- 19.5 The Commonwealth may, at any time following the identification of the Latent Condition or Other Site Condition, reduce the scope of this Agreement under clause 56 if the Commonwealth reasonably considers that:
- a) the impacts of the Latent Condition or Other Site Condition cannot be avoided or mitigated cost effectively in a way that will enable the Capital Works to be completed by the Asset Completion Due Date and in accordance with this Agreement; or
 - b) the Grantee failed to avoid or mitigate the impacts of the Latent Condition or Other Site Condition in accordance with clause 19.2d) within a reasonable time.

20 Achieving Asset Practical Completion

- 20.1 To achieve Practical Completion of an Asset:
- a) the Asset must be complete in accordance with this Agreement and fit for the Designated Use, and the Service Offering and Retail Services (if applicable) must be able to be provided from that Asset;
 - b) the Asset must generally be free of defects, other than minor defects that do not impede the use of the Asset for the Designated Use; and
 - c) the Grantee has obtained written certification by a registered and qualified builder, architect or engineer that has inspected the completed Asset, certifying that:
 - (i) the Asset meets the Infrastructure Characteristics and Technology Characteristics specified in Schedule A in all material respects,
 - (ii) the Asset is fit for the Designated Use; and
 - (iii) the Grantee has complied with all relevant statutory requirements in relation to the Asset.

21 Property

- 21.1 For the purpose of this clause 21:
- a) **Property** means any item of property obtained or brought into existence wholly, or in part, with the use of the Grant, excluding Reporting Material, Intellectual Property Rights and Real Property (including any property once it becomes part of Real Property); and
 - b) **Real Property** means any land, buildings or fixtures occupied by the Grantee in connection with the performance of the Capital Works for a Project.
- 21.2 The Grantee must ensure that it owns all Property in its own right, or if any Property is owned by a third party, the terms of the arrangement for the Grantee's use of that Property is sufficient to allow the Grantee to perform its obligations under this Agreement.
- 21.3 The Grantee must ensure that the Grantee's legal right or interest in any Real Property permits the Grantee's use of the Real Property to carry out the Capital Works and use the Assets for the Designated Use during the Operational Period.
- 21.4 The Grantee must pay all rents, rates, taxes, levies and other outgoings of any nature in relation to the Real Property and must not use the Grant to cover those costs.

Operational Period

22 Designated Use and Service Offering

- 22.1 The Grantee must use the completed Assets in a Project:
- for the Designated Use for the full duration of the Operational Period for that Project; and
 - to provide the Service Offering for the period specified in Table 2 of Schedule 1 for that Project.
- 22.2 Subject to clause 22.4 but in addition to any other rights available to the Commonwealth, if the Grantee fails to comply with clause 22.1 the Commonwealth may, at its sole discretion:
- give the Grantee a notice to remedy which must be complied with within the reasonable time specified in that notice; and
 - if the Grantee does not comply with a notice issued under clause 22.2(a), give the Grantee further notice terminating this Agreement under clause 58 or reduce the scope of this Agreement under clause 56 to remove the affected Assets.
- 22.3 Notwithstanding clause 58.2, if the Commonwealth terminates or reduces the scope of this Agreement in accordance with clause 22.2(b), the Grantee must repay all or part of the amount of the Grant that has been paid relating to the affected Assets, as determined by the Commonwealth and set out in the notice issued under clause 22.2(b).
- 22.4 The Commonwealth agrees not to rely upon clause 22.2 if the non-compliant use was for a limited time only and the Commonwealth is satisfied that:
- the situation did not arise through any substantial failure by the Grantee;
 - the Grantee used all reasonable efforts to resolve the situation to the Commonwealth's satisfaction;
 - the Grantee complied with all reasonable directions the Commonwealth gave to resolve the situation; and
 - the situation is resolved to the Commonwealth's satisfaction.

23 Protecting and Maintaining the Assets

- 23.1 Throughout the Operational Period for each Project, the Grantee must:
- maintain registration and licensing of all Property that is required by law to be registered or licensed;
 - use reasonable endeavours to safeguard all Assets against theft, loss, damage and unauthorised use;
 - use best endeavours to maintain all Assets in good working order; and
 - if an Asset is lost, damaged or destroyed, or fails or is found to be defective such that it cannot be used for the Designated Use, and cannot be repaired, the Grantee must as soon as practicable notify the Commonwealth and replace the Asset at its own cost.

PART D - REPORTING

24 Reporting

- 24.1 The Grantee must create, and submit to the Commonwealth Representative, the Reporting Material identified in Item D.5 of the Grant Details and this Part D in accordance with the requirements specified below.
- 24.2 The reports provided by the Grantee to the Commonwealth must be true and correct to the best of the Grantee's knowledge.
- 24.3 The Grantee acknowledges that the giving of false or misleading information to the Commonwealth is a serious offence under the *Criminal Code Act 1995* (Cth).
- 24.4 The Grantee must provide each Report within the timeframe specified above in Item D.5 of the Grant Details.
- 24.5 Subject to clause 24.6, the Commonwealth must, acting reasonably, either accept the Report provided under this clause 24 or request that the Grantee make changes to the Report prior to providing its acceptance. The Grantee must amend the Report, or provide additional information to the Commonwealth, to meet the Commonwealth's reasonable requirements.
- 24.6 The Grantee acknowledges that the Commonwealth is not required to accept a AAA Statement for any Project until the Commonwealth has received and accepted the Stakeholder Engagement Plan, Project Management Plan and Risk Management Plan.

25 Additional Reports

- 25.1 In addition to the obligations in clause 24.1, the Grantee must provide further information relating the Grantee's performance of the Activity (**Additional Reports**) as reasonably requested by the Commonwealth by written notice setting out the information required and the date it is required.
- 25.2 The Grantee is not obliged by this clause 25 to provide the Commonwealth with the Grantee's or a third party's Confidential Information not otherwise required to be provided to the Commonwealth under this Agreement.

Intellectual Property

26 Intellectual Property in Activity Material

- 26.1 Subject to clause 26.2, the Grantee owns the Intellectual Property Rights in all Activity Material created by the Grantee in carrying out the Activity.
- 26.2 Clause 26.1 does not affect the ownership of Intellectual Property Rights in any Existing Material incorporated by the Grantee into the Activity Material.

27 Intellectual Property in Reporting Material

- 27.1 Subject to clause 27.2, the Grantee owns the Intellectual Property Rights in Reporting Material created by the Grantee in the performance of the Activity.

27.2 Clause 27.1 does not affect the ownership of Intellectual Property Rights in any Existing Material incorporated by the Grantee into the Reporting Material.

28 Licence of Reporting Material

- 28.1 The Grantee grants to the Commonwealth (or must procure for the Commonwealth) a permanent, non-exclusive, irrevocable, royalty-free licence to use, modify, communicate, reproduce, publish, adapt and sub-licence the Reporting Material for any non-commercial purpose.
- 28.2 The licence in clause 28.1 includes a right for the Commonwealth to licence the Reporting Material to the public under a Creative Commons Attribution licence (CC BY licence).
- 28.3 The Grantee must not incorporate any Existing Material into the Reporting Material unless the Grantee has sufficient rights in that Material to grant the Commonwealth a licence to use that Material on the terms required by clause 28.1.
- 28.4 The Grantee warrants that the Commonwealth's use of the Reporting Material, including any Existing Material incorporated into the Reporting Material, in accordance with the terms of the licence granted in clause 28.1 will not infringe on any third party's Intellectual Property Rights.
- 28.5 The Grantee will obtain written moral rights consents (other than in relation to acts of false attribution) from all authors of Reporting Material to the use of that Reporting Material by the Commonwealth in accordance with this Agreement, prior to that Reporting Material being provided to the Commonwealth.
- 28.6 The licence in clause 28.1 does not apply to Activity Material or any additional information or reports provided under clause 25.

29 Licence of Additional Reports

- 29.1 The Grantee grants to the Commonwealth (or must procure for the Commonwealth) a non-exclusive, irrevocable, royalty-free licence to use, communicate, reproduce, copy and adapt any Additional Reports provided by the Grantee to the Commonwealth under clause 25, but only for the purposes of:
- this agreement
 - evaluating the Regional Connectivity Program; or
 - developing public policy.
- 29.2 The Grantee warrants that the Commonwealth's use of the Additional Reports in accordance with the terms of the licence granted in clause 29.1 will not infringe on any third party's Intellectual Property Rights.

Reports

30 Stakeholder Engagement Plan

- 30.1 The Stakeholder Engagement Plan must include, but is not limited to, the following:
- for each Project specified in Schedule 1, a summary of planned engagement with relevant stakeholders including the local community; and

- b) proposed engagement strategies to ensure that the community receives regular progress updates, including on:
 - (i) the specific location of Sites and Assets;
 - (ii) any changes, delays, reduction in scope or termination of the Project, and the reasons for the changes, delays, reduction in scope or termination; and
 - (iii) the anticipated timing of Asset Practical Completion.

30.2 Once the Stakeholder Engagement Plan has been accepted by the Commonwealth, the Grantee must update the Stakeholder Engagement Plan regularly to ensure that the Plan remains up-to-date and accurate. If requested in writing by the Commonwealth, the Grantee must provide an up-to-date version of the Stakeholder Engagement Plan to the Commonwealth within the time requested by the Commonwealth.

31 Project Management Plan and Risk Management Plan

31.1 The Project Management Plan must include, but is not limited to, the following information in relation to all Projects included in the Activity:

[Drafting Note: the following requirements are indicative and may be tailored by the Commonwealth to the types of Asset funded under an Agreement, and may be deleted or replaced if not applicable]

- a) the resources the Grantee will deploy to deliver the Capital Works for each project, including (as relevant):
 - (i) organisational and management structure;
 - (ii) utilisation of Grantee employees; and
 - (iii) subcontracting arrangements;
- b) the Approvals required to undertake the Capital Works for each Project;
- c) a description of the final location, design and engineering for the Capital Works for each Project, including (as relevant):
 - (i) locations for Assets to be constructed;
 - (ii) specifications and/or plans for Assets to be constructed; and
 - (iii) construction method; and
- d) confirmation of the costs associated with each Project;
- e) a schedule for delivery of Assets and for Projects as a whole, including anticipated dates for obtaining necessary Approvals and for achieving Practical Completion for Assets and for Projects as a whole; and
- f) the policies and procedures the Grantee has in place to manage delivery of the Capital Works and ensure compliance with relevant legislation, including (as relevant) in relation to:
 - (i) work health and safety;
 - (ii) emergency procedures;
 - (iii) environmental compliance;
 - (iv) industry and employee relations;
 - (v) procurement planning;

- (vi) financial management; and
- (vii) governance arrangements.

31.2 The Risk Management Plan must be compliant with relevant risk standards and must include, but is not limited to, the following information in relation to all Projects included in the Activity:

- a) the Grantee's risk management, monitoring and review procedures;
- b) a completed Risk Register covering the Capital Works for all Projects; and
- c) an outline of any issues that the Grantee considers could cause a Project to be delayed by 3 months or more, and advice on action taken to remedy the issue and/or mitigate further delays.

32 Capital Works Progress Reports

32.1 The Capital Works Progress Report must include, but is not limited to, the following;

- a) a summary of the work completed for the Capital Works to date for each Project (certified in writing by the Grantee's project manager, quantity surveyor, or similar);
- b) an Acquisitions, Approval and Access (**AAA**) Statement for each Project for which, since the previous Capital Works Progress Report, the Grantee has obtained all necessary Approvals to commence and perform the Activity;
- c) a Project Completion Statement for each Project for which, since the previous Capital Works Progress Report, all Assets have achieved Practical Completion;
- d) an outline of any minor changes that have been made to the Capital Works of a Project during the period covered by the Report, and the reasons for those changes;
- e) an outline of any material changes to the Capital Works of a Project that have been requested by the Grantee, and any that have been approved by the Commonwealth, during the period covered by the Report;
- f) any updates to the schedule for delivery of Assets and Projects provided as part of the Project Management Plan, as mentioned in clause 10;
- g) identification of Projects for which the Grantee anticipates providing a AAA Statement or Project Completion Statement in the next Capital Works Progress Report; and
- h) an outline of any emerging risks associated with the Capital Works, and associated mitigations or contingencies.

32.2 The AAA Statement for a Project must include:

- a) written certification and sign-off by the Grantee's representative (who has the relevant oversight and/or delegation) that the Grantee has obtained all necessary Approvals required to commence and perform the Activity in relation to all Assets that form part of the Project; and
- b) confirmation of the finalised location of all Assets that form part of the Project, including the latitude and longitude of the Site where each Asset will be located.

32.3 A Project Completion Statement must include, but is not limited to, the following information as applicable:

- a) a statement that all Assets in the Project have achieved Practical Completion;

- b) written certification, for all Assets in the Project, that satisfies the requirements in paragraph 20.1(c);
- c) a description of each Asset in the completed Project including, but not limited to, the latitude and longitude of the Site where each Asset in the Project is located;
- d) a statement showing the final expenditure on each Asset that forms part of the Project, as well as Other Contributions provided/received;
- e) a detailed breakdown of the work undertaken to complete each Asset that forms part of the Project (certified by the Grantee's project manager, quantity surveyor, or similar);
- f) copies of all certifications obtained in accordance with clause 20.1(c);
- g) a description of the improvement of the quality of services as a result of the Project being completed;
- h) a description of services to First Nations communities provided as a result of the Project being completed;
- i) the operational coverage mapping data depicting coverage from each Asset that forms part of the Project provided in ArcGIS Feature class, GeoDatabase, ESRI Shapefile or in Google Earth Compatible KIML/KMZ formats;
- j) a statement given by the Grantee that warrants, as at the date the statement is made, that coverage for the Assets that form part of the Project is as set out in an operational coverage map calculated according to the Grantee's desktop predictive methodology. The statement must be made and signed by a person duly authorised to make such a statement on behalf of the Grantee and who occupies a senior executive position within the Grantee's organisation;
- k) an approximation of the number of incremental addresses with new or improved services as a result of the Project being completed;
- l) the number of square kilometres of land mass covered by new or improved coverage as a result of the Project being completed;
- m) length of major transport routes, including national or state highways, arterial roads and passenger rail corridors to receive new handheld coverage and external antenna coverage (km's);
- n) confirmation that Retail Services are able to be provided from each Asset in the Project;
- o) confirmation that the specified Service Offerings are able to be provided;
- p) the type and capacity of backhaul provided at, or in relation to, each Asset in the Project;
- q) the amount (in hours) of Auxiliary Back up Power Supply to each Asset in the Project in the event of the loss of external power to the Site; and
- r) an 'as built' drawing of each Asset in the Project.

33 Capital Works Completion Report

33.1 The Capital Works Completion Report must include, but is not limited to, the following information:

- a) a statement confirming that all things the Grantee was required to do to comply with its obligations under this Agreement have been achieved, including the deployment of infrastructure, and the provision and delivery of Retail Services; and

- b) an independently audited financial acquittal report meeting the requirements of clause 34.

34 Financial Acquittal Report

34.1 The financial acquittal report submitted by the Grantee with the Capital Works Completion Report must set out the following details:

- a) verification the grant has been spent in accordance with this Agreement;
- b) the actual expenditure on each Asset, including expenditure funded by Other Contributions (and identifying each contributor);
- c) the in-kind Other Contributions set out in clause 2.1 received;
- d) the actual expenditure on each Project; and
- e) **[Drafting note: other requirements may be inserted by the Commonwealth relevant to the funded Projects].**

34.2 The financial acquittal report must be audited by:

- a) a Registered Company Auditor under the *Corporations Act 2001* (Cth); or
- b) a certified Practising Accountant; or
- c) a member of the National Institute of Accountants; or
- d) a member of the Institute of Chartered Accountants;

who is not a principal member, shareholder, officer or employee of the Grantee or a related body corporate.

35 Operational Period Reports

35.1 The Operational Period Report must include, but is not limited to, the following information, as applicable:

- a) a statement confirming which Assets the Grantee is providing Retail Services from;
- b) the volume of data transferred at an Asset that has achieved Practical Completion aggregated across each Project;
- c) details on the delivery of the specified Service Offerings across each Project;
- d) the number of unique device connections at an Asset that has achieved Practical Completion aggregated across each region; and
- e) the number of 000 calls made from each Asset that has achieved Practical Completion aggregated across each region.

PART E - GRANT CONDITIONS

36 Performance of Grantee Obligations

- 36.1 The Grantee is fully responsible for the Activity and for ensuring the performance of all its obligations under this Agreement in accordance with all relevant laws. The Grantee will not be relieved of that responsibility because of:
- a) the grant or withholding of any approval or the exercise or non-exercise of any right by the Commonwealth; or
 - b) any payment to, or withholding of any payment from, the Grantee under this Agreement.

37 Acknowledgements

- 37.1 The Grantee must not make any media releases or public announcements, including by social media, in connection with the awarding of the Grant or the Capital Works without the Commonwealth's prior written approval, which will not be unreasonably withheld.
- 37.2 The Grantee must provide a draft of all proposed media releases or public announcements in connection with the awarding of the Grant or the Capital Works to the Commonwealth for written approval at least 10 Business Days prior to the proposed release.
- 37.3 The Grantee must acknowledge the Commonwealth's support in all publications, promotional and advertising materials, and signage published or erected in connection with this Agreement. The Commonwealth may notify the Grantee of the form of acknowledgement that the Grantee is to use.
- 37.4 The Grantee must not use the Commonwealth Coat of Arms in connection with the Grant or the Activity without the Commonwealth's prior written approval.

38 Work health and safety

- 38.1 The Grantee must ensure that it complies at all times with all applicable work health and safety legislative and regulatory requirements and any additional work health and safety requirements set out in the Grant Details.
- 38.2 If requested by the Commonwealth, the Grantee must provide copies of its work health and safety management plans and processes and such other details of the arrangements it has in place to meet the requirements referred to in clause 38.1.
- 38.3 When using the Commonwealth's premises or facilities, the Grantee must comply with all reasonable directions and procedures relating to work health and safety and security in effect at those premises or in regard to those facilities, as notified by the Commonwealth or as might reasonably be inferred from the use to which the premises or facilities are being put.

39 Privacy

- 39.1 In this clause 39:
- a) **Personal Information** has the same meaning as in the *Privacy Act 1988* (Cth).
- 39.2 When dealing with Personal Information in carrying out the Activity, the Grantee must:
- a) comply with the requirements of the *Privacy Act 1988* (Cth);

- b) ensure that any of the Grantee's subcontractors or personnel who deal with Personal Information for the purposes of this Agreement are aware of the requirements of the *Privacy Act 1988* (Cth) and the Grantee's obligations under this clause; and
 - c) immediately notify the Commonwealth if the Grantee becomes aware of an actual or possible breach of this clause by the Grantee or any of the Grantee's subcontractors or personnel.
- 39.3 In carrying out the Activity, the Grantee must not to send any Personal Information outside Australia without the Commonwealth's prior written approval. The Commonwealth may impose any conditions it considers appropriate when giving its approval.

40 Record Keeping

- 40.1 The Grantee must keep financial accounts and other records that:
- a) detail and document the conduct and management of the Activity;
 - b) identify the receipt and expenditure of the Grant and any Other Contributions separately within the Grantee's accounts and records so that at all times the Grant is identifiable; and
 - c) enable all receipts and payments related to the Activity to be identified and reported.
- 40.2 The Grantee must keep the records for seven years after the Capital Works Completion Date or such other time specified in the Grant Details and provide copies of the records to the Commonwealth upon request.

41 Access/Monitoring/Inspection

- 41.1 The Grantee must give the Commonwealth, or any persons authorised in writing by the Commonwealth:
- a) access to premises where the Activity is being performed and/or where Material relating to the Activity is kept within the time period specified in a Commonwealth notice; and
 - b) permission to inspect and take copies of any Records relevant to the Activity.
- 41.2 The Auditor-General and any Information Officer under the *Australian Information Commissioner Act 2010* (Cth) (including their delegates) are persons authorised for the purposes of clause 41.1.
- 41.3 This clause 41 does not detract from the statutory powers of the Auditor-General or an Information Officer (including their delegates).

42 Confidentiality

- 42.1 The Parties agree not to disclose each other's Confidential Information without the other Party's prior written consent unless required or authorised by law or Parliament to disclose.
- 42.2 The Commonwealth may disclose the Grantee's Confidential Information where;
- a) the Commonwealth is providing information about the Activity or Grant in accordance with Commonwealth accountability and reporting requirements;
 - b) the Commonwealth is disclosing the information to a Minister of the Australian Government, a House or Committee of the Commonwealth Parliament; or
 - c) the Commonwealth is disclosing the information to its personnel or another Commonwealth agency where this serves the Commonwealth's legitimate interests.

43 Conflict of interest

- 43.1 Other than those which have already been disclosed to the Commonwealth, the Grantee warrants that, to the best of its knowledge, at the date of this Agreement neither it nor its officers have any actual, perceived or potential conflicts of interest in relation the Activity.
- 43.2 If during the term of the Agreement, any actual, perceived or potential conflict arises or there is any material change to a previously disclosed conflict of interest, the Grantee must:
- a) notify the Commonwealth promptly and make full disclosure of all relevant information relating to the conflict; and
 - b) take any steps the Commonwealth reasonably requires to resolve or otherwise deal with that conflict.

44 Insurance

- 44.1 The Grantee must effect and maintain for as long as any obligations remain in connection with this Agreement:
- a) workers compensation insurance as required by law;
 - b) adequate and appropriate public liability insurance;
 - c) insurance against any loss or damage to an Asset for its full replacement cost including where relevant the costs of demolition and removal of debris and the cost of architects, engineers and other consultants; and
 - d) any other additional insurance specified in the Grant Details.
- 44.2 The Grantee must provide proof of insurance to the Commonwealth upon request and within the time specified in the request.

45 Indemnity

- 45.1 The Grantee indemnifies the Commonwealth, its officers, employees and contractors against any claim, loss or damage arising in connection with the Activity, arising from either:
- a) a breach by the Grantee of this Agreement;
 - b) non-compliance with a work health and safety law applicable to the Activity, by the Grantee or its officers, employees, agents and subcontractors;
 - c) negligent or unlawful acts or omissions, or acts of wilful misconduct, by the Grantee or its officers, employees, agents, subcontractors or professional advisors;
 - d) loss of, or damage to property of any third party and personal injury (including illness) or death of any person arising out the of the Grantee's performance of the Activity; or
 - e) the Commonwealth's use of the Reporting Material in accordance with this Agreement, including any claims from third parties for breach of Intellectual Property Right in that Reporting Material.
- 45.2 The Grantee's obligation to indemnify the Commonwealth is reduced proportionally to the extent any act or omission involving fault on the part of the Commonwealth contributed to the claim, loss or damage.
- 45.3 The Grantee is not liable to the Commonwealth in respect of any Consequential Loss which may be suffered or incurred arising out of or in connection with this Agreement.

45.4 For the purpose of clause 45.3, **Consequential Loss** means

- a) loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of investment return, loss of business opportunity, loss of contract with a third party, loss of goodwill, loss of use or loss of production (whether the loss is direct or indirect);
- b) increase in direct or indirect financing costs; or
- c) any loss, damage, cost, expense or liability that is:
 - (i) special;
 - (ii) not a loss, damage, cost, expense or liability that may be fairly and reasonably be considered to arise naturally (being according to the usual course of things) from the breach or relevant matter giving rise to the loss, damage, cost expense or liability; or
 - (iii) not fairly and reasonably contemplated by both the Commonwealth and the Grantee at the commencement of this Agreement as the probable result of the breach or relevant matter, whether present or future, fixed or unascertained, actual or contingent.

46 Dispute resolution

46.1 The Parties agree not to initiate legal proceedings in relation to a dispute arising under this Agreement unless they have first tried and failed to resolve the dispute by negotiation.

46.2 Unless clause 46.3 applies, the Parties agree to continue to perform their respective obligations under this Agreement when a dispute exists.

46.3 The Parties may agree to suspend performance of the Agreement pending resolution of the dispute.

46.4 Failing settlement by negotiation in accordance with clause 46.1, the Parties may agree to refer the dispute to an independent third person with power to intervene and direct some form of resolution, in which case the Parties will be bound by that resolution. If the Parties do not agree to refer the dispute to an independent third person, either Party may initiate legal proceedings.

46.5 Each Party will bear their own costs in complying with this clause 46, and the Parties will share equally the cost of any third person engaged under clause 46.4.

46.6 The procedure for dispute resolution under this clause does not apply to any action relating to termination, cancellation or urgent interlocutory relief.

47 Corporate governance

47.1 In this Agreement, **Constitution** means (depending on the context):

- a) a company's or incorporated association's constitution, or equivalent documents, which (where relevant) includes rules and any amendments that are part of the constitution;
- b) in relation to any other kind of body;
 - (i) the body's charter or memorandum; or
 - (ii) any instrument or law constituting or defining the constitution of the body or governing the activities of the body or its members.

47.2 The Grantee warrants that nothing in its Constitution conflicts with its obligations under this Agreement.

47.3 The Grantee must provide a copy of its Constitution to the Commonwealth upon request and inform the Commonwealth whenever there is a change in the Grantee's Constitution, structure or management.

48 Compliance with Legislation and policies

48.1 In this Agreement, Legislation means a provision of a statute or subordinate legislation of the Commonwealth, or of a State, Territory or local authority.

48.2 The Grantee must comply with all Legislation applicable to its performance of this Agreement.

48.3 The Grantee agrees, in carrying out its obligations under this Agreement, to comply with any of the Commonwealth's policies as notified, referred or made available by the Commonwealth to the Grantee (including by reference to an internet site).

49 Environmental obligations

49.1 In performing the Activity, the Grantee must ensure that:

- a) the Grantee complies with all the Grantee's obligations under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), its associated legislative instruments, and all applicable state or territory legislation relating to the Environment;
- b) the Grantee does not contaminate or otherwise damage the Environment; and
- c) the Grantee's officers, employees, subcontractors and agents comply with the requirements set out in this clause 49.

49.2 The Grantee must make good any Contamination or damage to the Environment arising out of or in connection with the Activity, regardless of whether the Grantee has complied with all applicable laws regarding the protection of the Environment.

49.3 Unless the Commonwealth specifically notifies the Grantee otherwise or approves in writing, the Grantee agrees not to use the Grant for rectification in accordance with clause 49.2.

49.4 Without detracting from the Grantee's obligations under this Agreement, the Commonwealth may take any action necessary to protect:

- a) the Activity;
- b) the Site or other property;
- c) the Environment; or
- d) third parties,

from Contamination or damage to the Environment arising out of or in connection with the Activity.

49.5 The Commonwealth may recover as a debt due from the Grantee to the Commonwealth all costs, expenses and liabilities that the Commonwealth incurs as a result of taking action under clause 49.4.

49.6 For the purpose of this clause 49:

- a) **Environment** means components of the earth, including:
 - (i) land, air and water;
 - (ii) any layer of the atmosphere;
 - (iii) any organic or inorganic matter and living organism; and

- (iv) human-made or modified structure and areas,
and includes interacting natural ecosystems that include components referred to in paragraphs (i) to (iv).
- b) **Contamination** means the presence in, on or under the land, air or water of a substance (whether solid, liquid, gas, odour, heat, sound, vibration or radiation) at a concentration above the concentration at which the substance is (or should be) normally present in, on or under (respectively) land, air or water in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment, or could otherwise give rise to a risk of non-compliance or breach of any statutory requirements relating to the Environment.

50 Fraud

- 50.1 In this Agreement, **Fraud** means dishonestly obtaining a benefit, or causing a loss, by deception or other means, and includes alleged, attempted, suspected or detected fraud.
- 50.2 The Grantee must take all reasonable steps to ensure its personnel and subcontractors do not engage in any Fraud in relation to the Activity.
- 50.3 If the Grantee becomes aware of:
- a) any Fraud in relation to the performance of the Activity; or
 - b) any other Fraud that has had or may have an effect on the performance of the Activity;
- then it must within five Business Days report the matter to the Commonwealth and all appropriate law enforcement and regulatory agencies.
- 50.4 The Grantee must, at its own cost, investigate any Fraud referred to in clause 50.3, and comply with any reasonable request made by the Commonwealth in relation to that investigation.
- 50.5 The Commonwealth may, at its discretion, investigate any Fraud in relation to the Activity, whether notified to the Commonwealth under clause 50.3. The Grantee must co-operate and provide all reasonable assistance at its own cost with any such investigation.
- 50.6 This clause survives the termination, cancellation or expiry of the Agreement.

51 Anti-corruption

- 51.1 In this Agreement, **Illegal or Corrupt Practice** means directly or indirectly:
- a) making or causing to be made, any offer, gift, payment, consideration or benefit of any kind to any party; or
 - b) receiving or seeking to receive, any offer, gift, payment, consideration or benefit of any kind from any party, as an inducement or reward in relation to the performance of the Activity, which would or could be construed as an illegal or corrupt practice.
- 51.2 The Grantee warrants that the Grantee, its officers, employees, contractors, agents and any other individual or entity involved in carrying out the Activity have not, engaged in an Illegal or Corrupt Practice.
- 51.3 The Grantee agrees not to, and to take all reasonable steps to ensure that its officers, employees, contractors, agents and any other individual or entity involved in carrying out the Activity do not:
- a) engage in an Illegal or Corrupt Practice; or

- b) engage in any practice that could constitute the offence of bribing a foreign public official contained in section 70.2 of the *Criminal Code Act 1995* (Cth).

51.4 The Grantee must inform the Commonwealth within five Business Days if the Grantee becomes aware of any activity as described in clause 51.3 in relation to the performance of the Activity.

52 Step-in rights

52.1 If:

- a) the Commonwealth issues a notice under clause 1.2;
- b) the Grantee becomes bankrupt or insolvent, enters into a scheme of arrangement with creditors, or comes under any form of external administration; or
- c) the Grantee requests that the Commonwealth exercise its rights under this clause, the Commonwealth may, at its discretion, give a notice to the Grantee that the Commonwealth intends to exercise its rights under this clause 52 and the date from which this notice will take effect (**Step-in Notice**).

52.2 From the date specified in the Step-in Notice:

- a) other than as directed by the Commonwealth, the Grantee will cease being responsible for the performance of the Activity;
- b) the Commonwealth may, acting on its own behalf or through a nominee, take any step to manage the Activity that is reasonably necessary as determined by the Commonwealth and having regard to the trigger event(s) giving rise to the relevant Step-in Notice;
- c) the Commonwealth's obligation to pay the Grant is suspended; and
- d) the Grantee must provide all reasonable assistance and comply with any direction of the Commonwealth to enable the Commonwealth to exercise its rights under this clause and manage the Activity.

52.3 The Commonwealth may withdraw the Step-in Notice if in the Commonwealth's reasonable opinion:

- a) the circumstances giving rise to the trigger event have ceased or are able to be appropriately managed by the Grantee; and
- b) the Grantee will otherwise be able to comply with its obligations under this Agreement.

52.4 The Commonwealth will by written notice advise the Grantee of:

- a) the date when the Step-in Notice will be withdrawn and the Grantee will resume responsibility for the Activity; and
- b) the amount by which the Grant will be reduced, which will be proportionate to the costs incurred by the Commonwealth in exercising its rights under this clause.

53 Management Adviser

53.1 If the Commonwealth issues a notice under clause 1.2, the Commonwealth may, at its discretion and at its own cost, appoint an adviser to perform functions as determined by the Commonwealth (**Management Adviser**), which may include:

- a) advising the Grantee on:
 - (i) the Grantee's operations and corporate governance arrangements;

- (ii) the management of the Activity;
 - (iii) the management of the Grantee's personnel;
 - b) with the Grantee's consent, assisting the Grantee with any of the matters specified in the Grant Details;
 - c) cooperating with any Grant Administrator appointed in respect of the Grantee under this Agreement; and
 - d) providing any other advice to the Grantee that the Commonwealth requires.
- 53.2 The Commonwealth will give the Grantee notice of its intention to appoint a Management Adviser that specifies:
- a) the proposed period of the appointment;
 - b) the proposed roles and responsibilities of the Management Adviser; and
 - c) if the Commonwealth considers it practicable and appropriate, a summary of reasons why the Commonwealth intends to make the appointment.
- 53.3 Without limiting the Commonwealth's discretion to appoint a Management Adviser and where practicable, the Grantee shall have 10 Business Days after the Grantee receives the Commonwealth's notice of intention given pursuant to clause 53.2 to provide the Commonwealth with reasons why a Management Adviser should not be appointed.
- 53.4 Upon appointment of a Management Adviser, the Commonwealth shall inform the Grantee of the scope of the appointment and its duration and of any extensions to the period of appointment.
- 53.5 The Grantee must cooperate with a Management Adviser and comply with any directions and recommendations given by the Management Adviser in relation to the performance of this Agreement.
- 53.6 A Management Adviser who provides a report to the Commonwealth in relation to the Grantee:
- a) does so independently of the Grantee; and
 - b) does not reduce the Grantee's obligations to provide Reports to the Commonwealth under this Agreement.
- 53.7 A Management Adviser is not an employee, officer, director, agent or contractor of the Grantee, nor an agent of the Commonwealth, and is not appointed to act, and does not act, in any such capacity. A Management Adviser is not appointed to act, and does not act, as a member or shadow member of the Grantee's governing board. A Management Adviser cannot enter into agreements for or on behalf of the Grantee or otherwise incur debts or other obligations on the Grantee's behalf.

54 Grant Administrator

- 54.1 If the Commonwealth issues a notice under clause 1.2, the Commonwealth may appoint an administrator to oversee the performance of the Activity and the management of the Grant (**Grant Administrator**).
- 54.2 The Commonwealth can appoint a Grant Administrator for any period and on any terms and conditions that the Commonwealth considers appropriate.

54.3 The Commonwealth will give the Grantee notice of the appointment of a Grant Administrator that specifies:

- a) the proposed period of the appointment;
- b) the roles and responsibilities of the Grant Administrator; and
- c) a summary of reasons why the Commonwealth has made the appointment, if the Commonwealth considers that providing such a summary is practicable and appropriate.

54.4 The Commonwealth may appoint more than one Grant Administrator at the same time.

54.5 The Grantee must:

- a) consider, in a timely manner and in good faith, all advice given to the Grantee by a Grant Administrator;
- b) co-operate actively, fully and in good faith with, and provide all assistance, material and facilities reasonably required by a Grant Administrator; and
- c) comply with all directions given by a Grant Administrator relating to the administration of the Grant.

54.6 A Grant Administrator that provides a report to the Commonwealth:

- a) does so independently of the Grantee; and
- b) does not reduce the Grantee's obligations to provide reports under this Agreement.

54.7 A Grant Administrator is not an employee, officer, director, agent or contractor of the Grantee, nor an agent of the Commonwealth, and is not appointed to act, and does not act, in any such capacity. A Grant Administrator cannot enter into agreements for or on behalf of the Grantee or otherwise incur debts or other obligations on the Grantee's behalf.

55 Variation, assignment and waiver

55.1 This Agreement may be varied in writing only, signed by both Parties.

55.2 The Grantee cannot assign its obligations, and agrees not to assign its rights, under this Agreement without the Commonwealth's prior written approval.

55.3 The Grantee must not novate, transfer or assign its rights or obligations under this Agreement without the Commonwealth's prior written approval.

55.4 A waiver by a Party of any of its rights under this Agreement is only effective if it is in a signed written notice to the other Party and then only to the extent specified in that notice.

55.5 If, at any time, a Party reasonably believes that the Activity is unlikely to fully meet the objectives or intended outcomes of the Program (Items A.4 and A.5 of the Grant Details), or there are Activity risks that need to be addressed, that Party may provide written notice to the other Party setting out its reasons for that belief and proposing steps that could be taken to better achieve that purpose or address those risks. The Parties agree to work co-operatively to:

- a) consider, and negotiate in good faith, any change proposed under this clause 55; and
- b) implement any such change that is agreed by the Parties by executing a variation to this Agreement under clause 55.1.

55.6 Except to the extent the Parties agree a variation under clause 55.1, clause 55.4 does not limit any of a Party's other rights under this Agreement.

56 Reduction in scope of agreement

- 56.1 The Commonwealth may, at its sole discretion, by written notice reduce the scope of this Agreement if:
- the Grantee reasonably requests that the scope of the Agreement be reduced and provides supporting information for the request to the satisfaction of the Commonwealth;
 - the Grantee has failed to comply with a notice to remedy;
 - the Grantee has failed to comply with an obligation under this Agreement and the Commonwealth reasonably believes that the non-compliance is incapable of remedy; or
 - another provision of this Agreement providing for the Commonwealth to reduce the scope of this Agreement applies.
- 56.2 The Grantee agrees, on receipt of the notice of reduction, to:
- stop or reduce the performance of the Grantee's obligations as specified in the notice;
 - take all reasonable steps to minimise loss resulting from the reduction;
 - continue performing any part of the Activity or obligations under the Agreement not affected by the notice unless requested to do so by the Commonwealth; and
 - report on any amount of the Grant paid to the Grantee connected with the reduced scope, to be included in the financial acquittal report specified in clause 34.
- 56.3 In the event of reduction under this clause 56, the amount of the Grant will be reduced in proportion to the reduction in the scope of the Agreement.

[Drafting Note:

Example 1: Project RCP-R3-XYZ is withdrawn/terminated under this clause 56. The Total Project Budget for Project RCP-R3-XYZ, as set out in Schedule 2, is \$200,000. The Grantee has already spent or Legally Committed \$12,000 towards the Project prior to the withdrawal/termination of the Project. The Commonwealth's Relative Contribution to Total Project Budget for Project RCP-R3-XYZ is 50%.

For the purposes of this clause 56.3, the amount that the Grantee has already spent or Legally Committed towards the Project is disregarded. Therefore, the amount of the Grant is reduced by \$100,000.

Example 2: Project RCP-R3-MNO has 4 associated assets: A, B, C and D. Assets A, B and C are able to be completed as per the Capital Works Particulars. However, the Grantee is unable to complete Asset D. The Commonwealth reduces the scope of Project RCP-R3-MNO under this clause to remove Asset D. The Total Asset Budget for Asset D, as set out in Schedule 2, is \$100,000. The Commonwealth's Relative Contribution to Total Project Budget for Project RCP-R3-MNO is 75%.

The amount of the Grant is reduced by \$75,000.]

- 56.4 The amount by which the Grant is reduced is considered additional to the requirements of the Activity, must be repaid or dealt with in accordance with clause 7.1 and may not be used for the purpose of clause 4.

57 Suspension

- 57.1 If:
- the Grantee does not comply with an obligation under this Agreement and the Commonwealth reasonably believes that the non-compliance is capable of remedy;
 - the Commonwealth reasonably believes that the Grantee is unlikely to be able to perform the Activity or manage the Grant in accordance with this Agreement; or

- c) the Commonwealth reasonably believes that there is a serious concern relating to the Grantee or this Agreement that requires investigation;

the Commonwealth may by written notice:

- d) immediately suspend the Grantee from further performance of the Activity (in whole or in part, including expenditure of the Grant); and/or
- e) require that the non-compliance or inability be remedied, or the investigation be completed, within the time specified in the notice.

57.2 If the Grantee:

- a) remedies the non-compliance or inability specified in the notice to the Commonwealth's reasonable satisfaction, or the Commonwealth reasonably concludes that the concern is unsubstantiated, the Commonwealth may direct the Grantee to recommence performing the Activity; or
- b) fails to remedy the non-compliance or inability within the time specified, or the Commonwealth reasonably concludes that the concern is likely to be substantiated, the Commonwealth may reduce the scope of the Agreement in accordance with clause 56 or terminate the Agreement immediately by giving a second notice in accordance with clause 58.

58 Termination for fault

58.1 The Commonwealth may terminate this Agreement by written notice where the Grantee has:

- a) failed to comply with an obligation under this Agreement and the Commonwealth reasonably believes that the non-compliance is incapable of remedy or where clause 57.2(b) applies; or
- b) in the Commonwealth's reasonable opinion provided false or misleading statements in relation to the Grant; or
- c) become bankrupt or insolvent, entered into a scheme of arrangement with creditors, or come under any form of external administration.

58.2 The Grantee agrees, on receipt of the notice of termination, to:

- a) stop the performance of the Grantee's obligations;
- b) take all reasonable steps to minimise loss resulting from the termination; and
- c) provide the Commonwealth, within the reasonable time specified in the notice, an independently audited financial acquittal report in the form set out in clause 34, verifying that the amount of the Grant paid to the Grantee in accordance with this Agreement, and identifying any part not spent or Legally Committed as at the date the notice of termination is received, which must be repaid or dealt with in accordance with clause 7.1.

59 Cancellation or reduction for convenience

59.1 The Commonwealth may cancel or reduce the scope of this Agreement by notice, due to:

- a) a change in government policy; or
- b) a change in any person(s) who directly exercise effective control over Grantee, which the Commonwealth reasonably believes will negatively affect the Grantee's ability to comply with this Agreement.

59.2 On receipt of a notice of reduction or cancellation under this clause, the Grantee agrees to:

- a) stop or reduce the performance of the Grantee's obligations as specified in the notice;
- b) take all available steps to minimise loss resulting from that reduction or cancellation;
- c) continue performing any part of the Activity or the Agreement not affected by the notice unless requested to do so by the Commonwealth; and
- d) in the event of:
 - (i) reduction, report on any amount of the Grant paid to the Grantee not yet spent or Legally Committed, and such amounts must be repaid or dealt with in accordance with clause 7.1; or
 - (ii) cancellation, provide the Commonwealth, within the reasonable time specified in the notice, an independently audited financial acquittal report in the form set out in clause 34, verifying that the amount of the Grant paid to the Grantee in accordance with this Agreement, and identifying any part not spent or Legally Committed as at the date the written notice of cancellation is received, which must be repaid or dealt with in accordance with clause 7.1.

59.3 In the event of reduction or cancellation under this clause, the Commonwealth will be liable only to:

- a) pay any part of the Grant due and owing to the Grantee under this Agreement at the date of the notice; and
- b) reimburse any reasonable and substantiated expenses the Grantee unavoidably incurs that relate directly and entirely to the reduction in scope or cancellation of the Agreement.

59.4 In the event of reduction, the amount of the Grant will be reduced in proportion to the reduction in the scope of the Agreement.

59.5 The Commonwealth's liability to pay any amount under this clause is:

- a) subject to the Grantee's compliance with this Agreement; and
- b) limited to an amount that when added to all other amounts already paid under the Agreement will not exceed the total amount of the Grant.

59.6 The Grantee will not be entitled to compensation for loss of prospective profits or benefits that would have been conferred on the Grantee but for the cancellation or reduction in scope of the Agreement under clause 59.1.

59.7 The Commonwealth will act reasonably in exercising its rights under this clause 59.

60 Notices

60.1 Each Party agrees to promptly notify the other Party of anything reasonably likely to adversely affect the undertaking of the Activity, management of the Grant or its performance of any of its other requirements under this Agreement.

60.2 A notice given by a Party under this Agreement must be in writing and addressed to the other Party's representative as set out in the Grant Details or as most recently updated by notice given in accordance with this clause.

60.3 A notice is deemed to be effected:

- a) if delivered by hand - upon delivery to the relevant address;
- b) if sent by post - upon delivery to the relevant address; or

- c) if transmitted electronically - upon actual receipt by the addressee.
- 60.4 A notice received after 5.00 pm, or on a day that is a Saturday, Sunday or public holiday, in the place of receipt, is deemed to be effected on the next day that is not a Saturday, Sunday or public holiday in that place.
- 60.5 The Commonwealth may, by notice, advise the Grantee of changes to the Agreement that are minor or of an administrative nature, provided that any such changes do not increase the Grantee's obligations under this Agreement. Such changes, while legally binding, are not variations for the purpose of clause 55.

61 Relationship between the Parties

- 61.1 A Party is not by virtue of this Agreement the employee, agent or partner of the other Party and is not authorised to bind or represent the other Party.

62 Jurisdiction

- 62.1 This Agreement is governed by the law of New South Wales.

63 Entire Agreement

- 63.1 This Agreement contains the entire agreement between the parties with respect to their subject matter.

64 Counterparts

- 64.1 This Agreement may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument. A Party may execute this Agreement by signing any counterpart.

65 Electronic execution

- 65.1 A Party may execute this Agreement (and any variation of this Agreement) with a digital signature generated by DocuSign or Adobe Sign, or by any other generally accepted technology which the parties agree satisfies applicable requirements for execution by digital signature of the document (including requirements of the *Electronic Transactions Act 1999* (Cth) and any equivalent State or Territory legislation). A Party who receives such a digital signature may assume that such execution was validly and lawfully performed by the other Party.

66 Survival

- 66.1 The following clauses survive termination, cancellation or expiry of this Agreement:
- a) clause 3 (Spending the Grant);
 - b) clause 7 (Repayment);
 - c) clauses 24 and 25 (Reporting);
 - d) clauses 26, 27, 28 and 29 (Intellectual property);
 - e) clause 39 (Privacy); clause 40 (Record keeping);
 - f) clause 41 (Access/Monitoring/Inspection);
 - g) clause 42 (Confidentiality);

- h) clause 44 (Insurance);
- i) clause 45 (Indemnity);
- j) clause 50 (Fraud);
- k) clause 51 (Anti-corruption);
- l) clauses 56, 57, 58 and 59 (Reduction in scope, Suspension, Termination for fault, Cancellation or reduction for convenience);
- m) clause 66 (Survival);
- n) clause 67 (Definitions); and
- o) any other clause which expressly or by implication from its nature is meant to survive.

67 Definitions

67.1 In this Agreement, unless the contrary appears:

- **AAA and AAA Statement:** see clause 32.
- **Activity** means the activity described in the Grant Details and includes the provisions of the Reporting Material.
- **Activity Material** means any Material, other than Reporting Material, created or developed by the Grantee as a result of the Activity and includes any Existing Material that is incorporated into the Activity Material.
- **Agreement** means this Agreement including any Schedules and Annexures, and any other document referenced or incorporated by this Agreement.
- **Agreement End Date** means the date or event specified in the Grant Details.
- **Approvals** means any licence, permit, consent, approval, determination, certificate or other requirement of any authority, body or other organisation having any jurisdiction in connection with the carrying out of the Activity or under any applicable statutory requirement, as well as any access rights from third parties, which must be obtained or satisfied to perform the Activity.
- **Asset** means the component of the Activity to be constructed (or upgraded) by the Grantee at (or in connection to) a Site.
- **Asset Completion Due Date** has the meaning given to it in Item D.1 of the Grant Details.
- **Asset Coverage Footprint** of an Asset means the specific area of land that is expected to receive coverage from the Asset, having regard to both the Site Location of the Asset and the Coverage Area of the Asset specified in Table 1 of Schedule 1.
- **Business Day** means a day on which banks are open for business in New South Wales, other than a Saturday, Sunday or public holiday in that State.
- **Capital Works** means the construction or installation of the Assets specified in the Capital Works Particulars.
- **Capital Works Completion Date** means the date by which the Grantee must complete the Capital Works, as specified in the Grant Details.
- **Capital Works Particulars** means the particulars set out in Schedule 1.

- **Commonwealth** means the Commonwealth of Australia as represented by the Commonwealth entity specified in the Agreement and includes, where relevant, its officers, employees, contractors and agents.
- **Confidential Information** means information (whether or not owned by a Party) that has been notified as confidential by the Party supplying that information, but does not include information that:
 - a) is or becomes public knowledge other than by a breach of this Agreement; or
 - b) has been independently developed or acquired by the receiving Party.
- **Designated Use** means the use specified in the Capital Works Particulars set out in Schedule 1.
- **Existing Material** means Material developed independently of this Agreement that is incorporated in or supplied as part of Reporting Material or additional reports and information.
- **Force Majeure Event** means a circumstance or event which was not contemplated by the Grantee and which could not reasonably have been foreseen by the Grantee at the commencement of this Agreement, and/or is beyond the Grantee's reasonable control, including acts of God, war, terrorism or other hostility, natural or international disaster, pandemic (including government action and other consequences as a direct result of a pandemic), fire, explosion, power failure, strike or lockout, but does not include circumstances caused by acts or omissions of the Grantee or its officers, employees, subcontractors or agents.
- **Goods and Services Tax or GST** means the goods and services tax chargeable under *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- **Grant** means the money, or any part of it, payable by the Commonwealth to the Grantee for the Activity as specified in the Grant Details and includes any interest earned by the Grantee on that money once the Grant has been paid to the Grantee.
- **Grantee** means the legal entity other than the Commonwealth specified in the Agreement and includes, where relevant, its officers, employees, contractors and agents.
- **Grant Details** means the Part of this document titled Grant Details that forms part of this Agreement.
- **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 under the *Copyright Act 1968* (Cth)).
- **Legally Committed** means irrevocably committed under a legally binding contract between the Grantee and a third party, other than the Commonwealth.
- **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.
- **Material change** to the Capital Works of a Project: see clause 18.
- **Minor change** to the Capital Works of a Project: see clause 17.
- **Operational Period** for a Project has the meaning given in Item D.4 of the Grant Details.

- **Party** means the Grantee or the Commonwealth.
- **Practical Completion** has the meaning given in clause 20.1.
- **Project** means a project listed in Table 1 of Schedule 1.
- **Project Completion Date** for a Project has the meaning given in Item B.4 of the Grant Details.
- **Project Completion Statement:** see clause 32
- **Project Frustration Event** means an event or circumstance which:
 - a) prevents the Grantee from completing construction of the Project;
 - b) causes a material delay in completing the construction of the Project; or
 - c) causes, or will cause, a material increase in the cost of constructing the Project.
- **Records** includes documents, information and data stored by any means and all copies and extracts of the same.
- **Retail Services** means the supply of telecommunications services to retail customers.
- **Reporting Material** means all Material which the Grantee is required to provide to the Commonwealth for reporting purposes as specified in the Grant Details and includes any Existing Material that is incorporated in or supplied with the Reporting Material.
- **Risk Register** means a document that identifies the risks associated with completing the Activity and outlines the risk mitigation strategies undertaken by the Grantee.
- **Service Offering** means the services and offerings specified in in the Capital Works Particulars set out in Table 2 of Schedule 1.
- **Site, or Site Locations,** means the location where the Activity is carried out, and includes the site/s described in the Capital Works Particulars in Schedule 1 where the Capital Works are to be carried out.
- **Tax Invoice** has the meaning given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

67.2 In this Agreement, unless the contrary intention appears:

- a) words in the singular number include the plural and words in the plural number include the singular;
- b) words importing a gender include any other gender;
- c) words importing persons include any company, partnership, joint venture, association, corporation or other body whether corporate or otherwise, as well as an individual;
- d) a reference to any clause, Party or Schedule is a reference to a clause of, and a Party or a Schedule to, this Agreement;
- e) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- f) all references to dollars are to Australian dollars;
- g) a reference to any Law or provision of any Law includes any modification, substitution or re-enactment of that Law or provision of that Law;
- h) a reference to a document includes all amendments or supplements to, or replacement or novations of, that document;

- i) a reference to a party to a document includes that party's successors and permitted assignees and that party's employees, agents, consultants and contractors;
- j) the words 'include', 'including', 'for example' or 'such as' are not used as, nor are they to be interpreted as, words of limitation and, when introducing an example, do not limit the meaning of the words to which the example relates to examples of a similar kind;
- k) an uncertainty or ambiguity in the meaning of a provision of this Agreement will not be interpreted against a Party just because that Party prepared the provision;
- l) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- m) a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form;
- n) any reference to any agreement or other document is to that agreement, or other document as amended, novated, restated or replaced from time to time; and
- o) if a day on which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

Schedule 1 - Capital Works Particulars

Table 1

Project		Asset Details				Infrastructure Characteristics			Technology Characteristics					Asset Completion Due Date
Project Identifier	Project Name	Asset Identifier	Site Name	State	Site Location (Lat/Long)	Structures to be built/upgraded	Structure Height (Metres)	Backup Power Supply (Hours)	Access Technology	Coverage area (sq km)	Premises Covered (#s)	Type of Backhaul (M: Microwave, F: Fibre, S: Satellite)	Backhaul (Mbps)	

Table 2

Project		Designated Use	Service Offering	Period of Service Offering
Project Identifier	Project Name			

Schedule 2 - Activity Budget, Milestone Payments and Other Contributions

Table 1: Activity Budget and Milestone Payments														
Project				Activity Budget (all dollar values GST inclusive)					Milestone Payments (all dollar values GST inclusive)					
Project Identifier	Project Name	Asset Identifier	Site Name	Commonwealth Grant	Grantee Other Contribution	Third Party Other Contribution	Total Asset Budget	Commonwealth's Relative Contribution to Total Project Budget	Mobilisation	Commonwealth acceptance of Project Management Plan and Risk Management Plan	Commonwealth acceptance of Acquisition, Approvals and Access Statement	Commonwealth acceptance of Project Completion Statement	Commonwealth acceptance of Capital Works Completion Report	
RCP-R3-XXX		RCP-R3-XXX-A												
		RCP-R3-XXX-B												
		RCP-R3-XXX-C												
		RCP-R3-XXX-D												
		RCP-R3-XXX-E												
		Project Totals:												
RCP-R3-XXX		RCP-R3-XXX-A												

Table 2: Other Contributions			
Contributor	Nature of Contribution	Amount	Timing
Grantee	Cash/In kind	Insert	Insert
Insert	Cash/In kind	Insert	Insert
Insert	Cash/In kind	Insert	Insert
Insert	Cash/In kind	Insert	Insert

Schedule 3 - Additional Capital Works Requirements

1 Work Health and Safety Accreditation Scheme

[Drafting Note: This clause will be included in Agreements where the Grant is either at least:

A. \$6,000,000 (GST inclusive) and represents at least 50% of the total funding; **or**

B. \$10,000,000 (GST inclusive)

Further information at [https://www.fsc.gov.au/useful-documents-](https://www.fsc.gov.au/useful-documents-downloads?s=Guidance+for+Australian+Government+Agencies+and+Funding+Recipients#s)

[downloads?s=Guidance+for+Australian+Government+Agencies+and+Funding+Recipients#s](https://www.fsc.gov.au/useful-documents-downloads?s=Guidance+for+Australian+Government+Agencies+and+Funding+Recipients#s)

Note that this model clause may be updated prior to execution on the direction of the Office of the Federal Safety Commissioner]

1.1 In this clause:

- a) **builder** has the meaning given in section 43(8) of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).
- b) **building work** has the meaning given in section 6 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

1.2 Building work undertaken as part of the Projects funded under this Agreement may be covered by the *Work Health and Safety Accreditation Scheme (WHS Accreditation Scheme)*.

Note: The WHS Accreditation Scheme is established under the *Building and Construction Industry (Improving Productivity) Act 2016* and specified in the *Building and Construction Industry (Improving Productivity) (Accreditation Scheme) Rules 2019*.

1.3 If the Grantee proposes to enter into a subcontract for building work related to the performance of the Activity with a value of \$4 million or more (GST inclusive), the Grantee must:

- a) notify the Office of the Federal Safety Commissioner when approaching the market; and
- b) ensure the subcontract contains a requirement that the builder:
 - (i) is accredited under the WHS Accreditation Scheme*; and
 - (ii) maintains their accreditation while carrying out the building work.

* Paragraph 26(g) of the *Building and Construction Industry (Improving Productivity) (Accreditation Scheme) Rules 2019* outlines provisions applying to joint venture arrangements that include accredited and unaccredited builders.

2 Australian Industry Participation Plan

[Drafting Note: This clause will be included in Agreements with a Grant of \$20 million (GST inclusive) or more]

2.1 **[Drafting Note:** The *Australian Industry Participation Policy* requires Grantees receiving Commonwealth funding of \$20 million (GST incl) or more to ensure full, fair and reasonable opportunity for Australian industry to compete for work arising from that grant. Where an awarded RCP Round 3 Grant meets the relevant threshold the Department of Infrastructure, Transport, Regional Development, Communications and the Arts will liaise with the Department of Industry, Science, Energy and Resources (DISER) who will make a determination on the obligations required under this clause. Successful applicants awarded a grant above the threshold will be required to provide further information about their

subcontractors and suppliers for consideration by DISER. Further information available at <https://www.industry.gov.au/regulations-and-standards/australian-industry-participation>

Schedule 4 – Extension of Time (EOT) Request – Capital Works Completion Date

Regional Connectivity Program

[Grantee Name]

[Round X Agreement]

Request Details				
Current Capital Works Completion Date:		Requested Capital Works Completion Date:		
<p>Note: For requests to move the Capital Works Completion Date into a new Financial year, the request will not only be considered on its merits, but also in accordance with and subject to the Commonwealth's budgetary rules that apply from time to time which may delay the Commonwealth response.</p>				
Cause of delay and mitigation strategies <i>(Include details of key activities including dates, and steps the Grantee has taken to mitigate the delay)</i>	Key Action / Consultations / Evidence of Delay		Mitigation Steps	
Project / Asset Details relevant to the extension request				
Project Identifier	Asset Identifier	Original Target Completion Date	Proposed Target Completion Date	Status (AAA not achieved / AAA Achieved, Construction Commenced, Completed)
RCP-RX-XXX				
	RCP-RX-XXX-XX			
	RCP-RX-XXX-XX			
	RCP-RX-XXX-XX			
	RCP-RX-XXX-XX			
RCP-RX-XXX				
	RCP-RX-XXX-XX			
	RCP-RX-XXX-XX			
Financial Information				
Provide details of each remaining Milestone Payment under the Agreement, including identifying any milestone payment expected to be invoiced in the next Financial Year (if applicable).				
<p>Note: Ensure this information is listed by Project / Asset / payment milestone / payment amount. This can be provided as an attachment if required.</p>				
Next Steps – Outline the remaining milestones and steps to be achieved in order for the Asset to be completed by the requested Capital Works Completion Date				
Milestones and/or Steps	Associated Risks and Likelihood	Risk Controls and Ratings	Mitigation to prevent further delays	

Certification of Extension of Time Request by Grantee

This statement certifies that the information provided in this Extension of Time Request is accurate and does not omit any fact or other consideration.

Signature:

Position title:

Printed name:

Date:

Approval on behalf of the Commonwealth

This extension of time is: Approved
 Not Approved

Signature:

Position title:

Printed name:

Date:

Comments:

Schedule 5 – Project Frustration Notification

Regional Connectivity Program

[Grantee Name]

[Round X Agreement]

Project Details		
Project Identifier	Target Completion Date	Project Status (AAA not achieved / AAA Achieved, Construction Commenced, Completed)
RCP-RX-XXX		
RCP-RX-XXX		
RCP-RX-XXX		
RCP-RX-XXX		
Project Frustration Event Details		
<p>Project Frustration Event means an event or circumstance which:</p> <ol style="list-style-type: none"> prevents the Grantee from completing construction of the Project; causes a material delay in completing the construction of the Project; or causes a material increase in the cost of constructing the Project. 		
<p><i>(Insert comprehensive detail of the event or circumstance relevant to this notification, including appropriate supporting evidence.)</i></p>		
Attachments:		
<p><i>(List any attachments to this notification to support the claims outlined above).</i></p>		
Financial Impact		
<p><i>(Detail relevant information on financial impact, including but not limited to outlining the eligible costs incurred to date toward this Project. This can be provided as an attachment if required).</i></p>		

Note: In the event this notification is submitted to the Commonwealth without adequate information to justify the issues raised, additional information may be sought or the notification may be rejected and will require resubmission.

Grantee Certification: Project Frustration Notification

This statement certifies that the information provided in this Project Frustration Notification is accurate and does not omit any fact or other consideration.

Signature:	Position title:
Printed name:	Date:

Approval on behalf of the Commonwealth

The Project Frustration notification is: Accepted
 Rejected

Signature:	Position title:
Printed name:	Date:

Comments:

Schedule 6 – Material Variation Request

[Grantee Name]

[Round X Agreement]

[Note: Please only complete sections relevant to your request]

Material Variation Request: Site Variation			
Project Identifier: RCP-RX-XXX			
Asset details of Site Variation Request			
Asset Identifier	RCP-RX-XXX-XX	RCP-RX-XXX-XX	RCP-RX-XXX-XX
Asset Name			
Reason for site variation request			
Original location			
Proposed Location			
Original Latitude / Longitude			
Proposed Latitude / Longitude			
Distance of movement proposed			
Is the movement within the existing LGA / Project footprint?			
Will movements be required for other Assets as a result of this movement request?			
Original coverage area (sq km)			
Proposed new coverage area (sq km)			
Difference (%)			
Original Premises Covered (#s)			
Premises covered by proposed Asset location (#s)			
Difference (%)			
Additional Information			
<p>Note: Ensure that information provided details the impact of the movement in context of the entire Project, and not just the Asset as applicable. i.e. when providing mapping for a proposed movement, this should cover the entire Project (all Assets) and not just the Asset/s the move relates to.</p>			
Attachments:			
Location Map (e.g. Google Earth)	<input type="checkbox"/> Provided	<input type="checkbox"/> Not Applicable	
Original Coverage Map	<input type="checkbox"/> Provided	<input type="checkbox"/> Not Applicable	
Proposed Coverage Map	<input type="checkbox"/> Provided	<input type="checkbox"/> Not Applicable	
Other:	<input type="checkbox"/> Provided	<input type="checkbox"/> Not Applicable	

Material Variation Request: Other (including scope reduction, change of Asset specifications)	
Asset details of Site Variation Request	
Project Identifier: RCP-RX-XXX	
Asset details of Site Variation Request	
Asset Identifier	RCP-RX-XXX-XX
Asset Name	
Is this proposal seeking to remove this Asset?	
Is this proposal seeking to alter technical specifications of this Asset?	<i>(If yes, please provide detail, ensuring the difference proposed from the contracted solution is comprehensively detailed).</i>
Reason for request:	<i>(Please provide significant detail, including supporting evidence to allow consideration)</i>
Impact on overall Project outcome:	<i>(Please provide detail, ensuring the difference to the contracted Project level outcome is comprehensively detailed).</i>
Additional Information	
Financial Information	
<i>(Outline the impact of the request on the total project budget, as well as any expenditure or contributions to date for the specific Asset/s).</i>	
Attachments:	
Location Map (e.g. Google Earth)	<input type="checkbox"/> Provided <input type="checkbox"/> Not Applicable
Original Coverage Map	<input type="checkbox"/> Provided <input type="checkbox"/> Not Applicable
Proposed Coverage Map	<input type="checkbox"/> Provided <input type="checkbox"/> Not Applicable
Other:	<input type="checkbox"/> Provided <input type="checkbox"/> Not Applicable
Note: In the event this request is submitted to the Commonwealth without adequate information to support assessment and consideration, the request may be rejected and will require resubmission.	

Grantee Certification: Material Variation Request

This statement certifies that the information provided in this Material Variation Request is accurate and does not omit any fact or other consideration.

Signature:

Position title:

Printed name:

Date:

Approval on behalf of the Commonwealth

This Material Variation Request is: Approved
 Not Approved

Signature:

Position title:

Printed name:

Date:

Comments: