



Great Barrier  
Reef Foundation

Great Barrier Reef Foundation

[Insert Delivery Partner name and ACN/ABN]

## Delivery Partner Agreement

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**40      Electronic Signing**

**34**

This Agreement is made on

## Parties

- 1 **Great Barrier Reef Foundation** (ABN 82 090 616 443) of Level 6, 88 Tribune Street, South Brisbane, QLD, 4101 (*GBRF*).
- 2 [**Delivery Partner**][ (ACN [\*])][ registered in [\*] | incorporated in [\*] ] of [\*] (the *Delivery Partner*).

## Recitals

- A The Crown of Thorns Starfish Control Innovation Program (**CCIP**) Bridging Program seeks the protection of the Great Barrier Reef ecosystems by supporting research that directly increases the efficiency of the Crown of Thorns Starfish (**COTS**) control program.
- GBRF is contracting the delivery of the Project to the Delivery Partner, as part of this Bridging Program. The Project will build on critical research conducted in the CCIP, maintaining and expanding Australia's capacity to deliver world-leading protection of coral from COTS outbreaks across the Great Barrier Reef.
- B The Delivery Partner represents that it has the requisite expertise and capabilities to complete the Project.
- C GBRF agrees to engage the Delivery Partner to undertake the Project in accordance with this Agreement, and the Delivery Partner accepts the engagement.

It is agreed as follows.

## 1 Definitions and Interpretation

### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**Adjustment Note** has the meaning given to it by the GST Law.

**Amount** has the meaning given to it in clause 3.2.

**Asset** means any item of tangible property, purchased, leased, hired, financed, created or otherwise brought into existence either wholly or in part with the use of the Project Funds and which has a GST exclusive value of \$10,000 or more.

**Australian Accounting Standards** refers to the standards made by the Auditing and Assurance Standards Board created by section 227A of the *Australian Securities and Investments Commission Act 2001* (Cth).

**Australian Privacy Principle** has the same meaning as it has in the Privacy Act.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Brisbane, Queensland.

**Cash Contributions** means all monetary contributions provided for the Project by a person other than GBRF.

**Child** means any individual under the age of 18 years and **Children** has a similar meaning.

**Commencement Date** has the meaning given in Item 2 - Schedule 1.

**Commonwealth** means the Commonwealth of Australia.

**Completion Date** means the earlier of:

- (a) the date specified in Item 2 - Schedule 1; and
- (b) the completion of the Project (as determined by GBRF acting reasonably).

**Conduct** has the meaning given to it in clause 34.

**Conflict** means any actual or perceived matter, circumstance, interest or activity involving or affecting the Delivery Partner, or its Personnel which does, or which may appear to impair the ability of the Delivery Partner to perform any part of the Project diligently and independently.

**Consequential Loss** means any:

- (a) consequential loss, indirect loss, loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business, loss of contract, loss of use, increase in financing costs and operating costs, loss of production and other economic loss; and
- (b) loss of goodwill, loss of business reputation or costs that are special, punitive or exemplary, whether arising in contract, tort (including negligence) or otherwise,

but excluding any liability referred to in paragraph (a) of this definition which arises directly and naturally in the ordinary course of things from the applicable breach.

**Consideration** has the meaning given by the GST Law.

**Core Commonwealth Functions** means the Commonwealth's inherent governmental (and non-commercial) activities, including:

- (a) internal and external Commonwealth reporting (including to a Minister and a House or Committee of Parliament);
- (b) dissemination and publication of reports and plans including on the Department's website;
- (c) development of Commonwealth policy; and
- (d) administration of Commonwealth programs;

**Data** means designs, models, drawings, diagrams, plans, prints, samples, transparencies, specifications, reports, manuscripts, working notes, documentation, manuals, photographs, negatives, tapes, discs, software (including calculations and logic or sequence overview diagrams), electronic data (including in native file format), and any other similar items.

**Deliverables** means the deliverables relevant to the Project as described in Item 4 - Schedule 1.

**Delivery Partner Confidential Information** means any confidential information agreed by the parties in writing from the Commencement Date is confidential information for the purposes of this Agreement but excluding any Project Material or Existing Material.

**Department** means the Commonwealth of Australia represented by the Department of Climate Change, Energy, the Environment and Water.

**Dispute** has the meaning given to it in clause 22.1.

**Due Dates** means any due dates specified in Item 4 - Schedule 1.

**Eligible Data Breach** has the same meaning as it has in the Privacy Act.

**Environment** means the physical, biological and social aspects and conditions of a particular area, including:

- (e) land, water, air, atmosphere, climate, living organisms and other matter, things made or altered by humans, ecosystems and social groupings;
- (f) the social, economic and cultural aspects of a thing specified in paragraph (a); and
- (g) the interaction of any 2 or more things specified in paragraphs (a) and (b),

and **Environmental** has a corresponding meaning.

**Existing Material** means all Material in existence prior to the Commencement Date that is:

- (a) incorporated in;
- (b) supplied with, or as part of; or
- (c) required to be supplied with, or as part of,

the Project Material.

**Fault** means any negligence or fraudulent or unlawful act or omission or wilful misconduct.

**Financial Year** means each period from 1 July to the following 30 June occurring during the Term, or any part of such a period occurring at the beginning or end of the Term.

**Funds Account** means a bank account established and maintained by the Delivery Partner in accordance with clause 4(a), including any replacement account.

**GBRF Code of Conduct** means the code of conduct adopted by GBRF, provided by GBRF to the Delivery Partner and as amended from time to time.

**GBRF Confidential Information** means without limiting its ordinary meaning, any formulae, technical information, plan, product specification, trade secret, or any other commercially sensitive or valuable information, whether oral, written or recorded electronically and including all copies or extracts relating to the affairs, transactions, donors, corporate and research partners, grantees, operations, employees, volunteers or other associates of GBRF or its associated entities, whether or not the same was originally supplied by GBRF or one of its associated entities.

**GBRF Material** means any Material, including Intellectual Property Rights:

- (a) provided by GBRF to the Delivery Partner for the purposes of this Agreement; or
  - (b) derived at any time from the Material referred to in paragraph (a),
- excluding Project Material.

**GBRF Policies** means GBRF's policies, as notified by GBRF to the Delivery Partner from time to time. As at the date of this Agreement, GBRF's policies include, but are not limited to, the:

- (a) GBRF Code of Conduct; and
- (b) Great Barrier Reef Foundation Communications Protocol.

**Governmental Authority** means a governmental, semi-governmental, administrative, fiscal or judicial body, responsible minister, department, office, commission, delegate, authority, instrumentality, tribunal, board, agency, entity or organ of government, whether federal, state, territorial or local, statutory or otherwise, anywhere in the world.

**Great Barrier Reef Foundation Communications Protocol** means the document of that name provided by GBRF to the Delivery Partner and as amended from time to time.

**Great Barrier Reef World Heritage Area** has the meaning given by the *Great Barrier Reef Marine Park Act 1975* (Cth).

**Greenwashing** means the practice of misrepresenting the extent of any Environmental, social or other benefits or outcomes related to a product or service.

**GST** has the meaning given by the GST Law.

**GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of that Taxable Supply.

**GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**ICIP** or **Indigenous Cultural and Intellectual Property** means, in relation to a particular Aboriginal or Torres Strait Islander group or territory, the rights of Australian Aboriginal and Torres Strait Islander peoples from that group or territory in relation to their tangible and intangible heritage. Heritage means all existing and future objects, sites, languages, stories and knowledge, the nature or use of which has been transmitted or continues to be transmitted from generation to generation, and which pertains to that Aboriginal or Torres Strait Islander group or its territory. Heritage includes:

- (c) cultural expressions, including artistic, literary and performance works (for example, songs, music, dances, stories, ceremonies, symbols, languages and designs);
- (d) traditional knowledge, including scientific, agricultural, technical and ecological knowledge (for example, cultigens, medicines and the phenotypes of flora and fauna);
- (e) all items of movable cultural property (for example, artefacts and artworks);

- (f) human remains and tissues;
- (g) immovable cultural property (such as significant sites and burial grounds);
- (h) secret or sacred information and material (such as information regarding significant sites and burial grounds); and
- (i) documentation of Indigenous peoples' heritage in all forms of media (such as archives, films, photographs, audio recordings and books).

**ICIP Material** means any materials that the Delivery Partner contributes to the Project or creates in relation to the Project (including Existing Material and Project Material) that comprises or contains any ICIP.

**Industry Best Practice** means the exercise of the degree of accuracy, quality, completeness, skill, care, prudence and foresight reasonably to be expected of highly skilled and experienced suppliers of services which are similar to the services to be provided by the Delivery Partner under this Agreement.

**Input Tax Credit** has the meaning given by the GST Law.

**Insolvency Event** means an event that occurs in respect of the Delivery Partner if:

- (a) the Delivery Partner stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (b) the Delivery Partner is insolvent within the meaning of section 95A of the Corporations Act;
- (c) a court is required by reason of section 459C(2) of the Corporations Act to presume that the Delivery Partner is insolvent;
- (d) the Delivery Partner fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act);
- (e) an administrator or small business restructuring practitioner is appointed over all or any of the Delivery Partner's assets or undertaking or any step preliminary to the appointment of an administrator or small business restructuring practitioner is taken;
- (f) a controller within the meaning of section 9 of the Corporations Act or similar officer is appointed to all or any of the Delivery Partner's assets or undertaking; or
- (g) an application or order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting or an application to a court or other steps are taken (other than frivolous or vexatious applications, proceedings, notices or steps) for the Delivery Partner's winding up or dissolution or for the Delivery Partner to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them,

or the closest equivalent to sub-clauses (a) to (g) above in any jurisdiction applicable to the Delivery Partner.

**Intellectual Property Rights** means any intellectual or industrial property rights, whether registered or unregistered, including:

- (h) all patents, trade marks, copyright, designs, trade secrets, knowhow, inventions, and rights in confidential information (including the right to enforce an obligation to keep information confidential);
- (i) all licences and other rights to use or grant the use of any of the foregoing or to be the registered proprietor or user of any of the foregoing;
- (j) all computer programs, data and software, including source code; and
- (k) all user manuals, technical information and other documentation relating to the use or operation of the computer programs and other relevant systems;

whether presently existing or as may arise in the future, anywhere in the world, but does not include:

- (l) Moral Rights; or
- (m) the rights of performers.



**Interest** means interest calculated at the 90-day bank-accepted bill rate (available from the Reserve Bank of Australia) on the due date for payment of an amount payable to GBRF under this Agreement plus 3 percent per annum, calculated on a daily compounding basis.

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

**Margin Scheme** has the meaning given by the GST Law.

**Material** means anything in relation to which Intellectual Property Rights arise.

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

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

**Notice** has the meaning given to it in clause 27.

**Open Access Licence** means a licence of Material on broad open access terms that allows any member of the public to perform a wide range of acts in respect of the Material subject to certain restrictions. An Open Access Licence includes any Australian Government open access licence and any 'Creative Commons Attribution' licence.

**Permitted Acts** means any of the following classes or types of acts or omissions in relation to the Project Material and any Existing Material:

- (d) using, reproducing, adapting or exploiting all or any part of that Material with or without attribution or authorship;
- (e) supplementing that Material with any other Material;
- (f) using that Material in a different context to that originally envisaged; and
- (g) releasing that Material to the public under an Open Access Licence,

but does not include false attribution of authorship.

**Personal Information** means "personal information" as defined in the Privacy Act and any other information relating to individuals that is subject to the operation of the Privacy Laws that either party has collected, received or otherwise has access to in connection with this Agreement.

**Participant** means individuals, organisations, communities or entities that contribute or benefit from (or are intended to benefit from) the Project activities, and can include experts, consultants or other contractors with whom the Delivery Partner shares or obtains information, or collaborates.

**Personnel** means:

- (a) in relation to the Delivery Partner – any natural person who is a director or other officer, employee, contractor, agent or professional advisor of the Delivery Partner; and
- (b) in relation to GBRF - any natural person who is a director or other officer, employee, contractor, agent or professional advisor of GBRF or a Delivery Partner.

**Privacy Act** means the *Privacy Act 1988* (Cth).

**Privacy Law** means:

- (a) the Privacy Act;
- (b) any legislation from time to time in force in any:
  - (i) Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia); and/or
  - (ii) non-Australian jurisdiction (to the extent that either party is subject to the laws of that jurisdiction),

affecting privacy, Personal Information or the collection, handling, storage, processing, protection, use or disclosure of data; and

- (c) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued by a Governmental Authority under an instrument identified in paragraphs (a) and (b),

as amended from time to time.

**Project** means the project, services and / or activity as described in Item 3 - Schedule 1.

**Project Co-Contributions** means all Cash Contributions and in-kind contributions provided for a Project by a person other than GBRF.

**Project Funds** means the amount specified in Schedule 1 which GBRF provides to the Delivery Partner to conduct the Project pursuant to this Agreement, and includes any interest and other income the Delivery Partner earns on that amount.

**Project Material** means any Material:

- (a) created by or on behalf of the Delivery Partner in the performance of the Delivery Partner's obligations relating to the Project; or
- (b) derived at any time from the Material referred to in paragraph (a).

**Project Objectives** means the objectives specified in Item 3 - Schedule 1 .

**Records** means all books of account, documents, accounts, records, information and data (of whatever kind) stored by any means and all copies and extracts of the same.

**Reef 2050 Plan** means the Reef 2050 Long-Term Sustainability Plan prepared by the Australian and Queensland Governments and the draft Reef 2050 Water Quality Improvement Plan 2017-2022, both as amended from time to time.

**Reef Catchment** means the Great Barrier Reef catchment area identified in the Reef 2050 Plan.

**Related Bodies Corporate** means, in relation to a body corporate, a body corporate that is related to it within the meaning of section 50 of the Corporations Act 2001 (Cth).

**Research Outputs** means any results of the Project in the form of reports, journal papers and conference publications, contributions to books and compiled articles.

**STOP/GO Decision Point** means, where a Deliverable is identified in Item 4 -Schedule 1 as being a STOP/GO Decision Point, the earlier of the date the relevant Deliverable's requirements are satisfied (to GBRF's reasonable satisfaction) and the Due Date for the relevant Deliverable.

**Subcontractor** means:

- (a) in relation to the Delivery Partner - any person engaged by the Delivery Partner to perform part of the Project; or
- (b) in relation to GBRF – any person engaged by GBRF to undertake part of the Project.

**Tax Invoice** has the meaning given by the GST Law.

**Taxable Supply** has the meaning given by the GST Law.

**Term** means, unless this Agreement is terminated earlier, the period between the Commencement Date and the Completion Date.

**Termination Event** has the meaning given to it in clause 24.2.

**Use** means to use, reproduce, adapt, modify, communicate and exploit, and **Using** has a corresponding meaning.

**Vulnerable Adult** means an individual aged 18 years and above who is, or may be, unable to take care of themselves, or is unable to protect themselves against harm or exploitation for any reason, including age,

physical or mental illness, trauma or disability, pregnancy, the influence, or past or existing use, of alcohol, drugs or substances or any other reason.

**Worker** means an individual engaged by the Delivery Partner or any of its Subcontractors (including via employment or contract, whether written or verbal) to provide their labor for or in support of the Project, including volunteers.

## 1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.
- (c) Nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or a relevant part of it.
- (d) The following rules apply unless the context requires otherwise.
  - (i) The singular includes the plural, and the converse also applies.
  - (ii) A gender includes all genders.
  - (iii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
  - (iv) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
  - (v) A reference to a clause or Schedule is a reference to a clause of, or Schedule to, this Agreement.
  - (vi) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document and includes the recitals and schedules to that agreement or document.
  - (vii) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
  - (viii) A reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
  - (ix) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
  - (x) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
  - (xi) A reference to an *agreement* includes any undertaking, Agreement, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
  - (xii) A reference to *dollars* or \$ is to Australian currency.
  - (xiii) A reference to a *right* or *obligation* of any two or more people comprising a single party confers that right, or imposes that obligation, as the case may be, on each of them severally and each two or more of them jointly. A reference to that party is a reference to each of those people separately (so that, for example, a representation or warranty by that party is given by each of them separately).
  - (xiv) A reference to an *asset* includes any real or personal, present or future, tangible or intangible property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived from the property or asset.

- (xv) A reference to time is to Brisbane, Queensland time.
- (xvi) A reference to an amount for which a person is contingently liable includes an amount that that person may become actually or contingently liable to pay if a contingency occurs, whether or not that liability actually arises.
- (xvii) A *month* means a calendar month.
- (xviii) A reference to year is a reference to each successive period of 12 months.

## **2 Duration of the Agreement and Performance**

### **2.1 Completion Date**

This Agreement commences on the Commencement Date and, unless terminated earlier, will conclude on the Completion Date.

### **2.2 Cooperation**

The Parties agree to adopt a cooperative approach when engaging with each other and any third party stakeholder engaged in connection with the Project. This includes communicating and cooperating on the basis of transparency and openness. Without limiting any other provision of this Agreement, in the exercise of its rights and the performance of its obligations under this Agreement, each party must act in good faith towards each other.

## **3 Delivery Partner's obligations**

### **3.1 Performance of the Project**

The Delivery Partner must, and must ensure that its Personnel must:

- (a) at all times carry out the Project with all due care and skill;
- (b) at all times comply with:
  - (i) this Agreement;
  - (ii) all applicable Laws;
  - (iii) GBRF's reasonable requests, directions and requirements from time to time in relation to the Project, to GBRF's satisfaction;
  - (iv) GBRF's Policies;
  - (v) the special conditions (if any) described in Item 9 - Schedule 1; and
  - (vi) the high standards of professional care and diligence of the industry to which the Delivery Partner belongs; and
- (c) obtain and maintain all necessary approvals, access and certifications to carry out this Agreement and comply with the conditions of such approvals, access and certifications;
- (d) not do anything or become involved in any situation which, in the reasonable opinion of GBRF:
  - (i) reflects unfavourably upon GBRF and / or the Project; or
  - (ii) might negatively impact the image or reputation of GBRF and /or the Project.
- (e) maintain and comply with all relevant permits, regulatory requirements and obtain appropriate ethical clearances (including as prescribed by the Delivery Partner's organisational research rules for the Project). Responsibility for ensuring that such clearances have been obtained remains with the Delivery Partner;
- (f) carry out the Project using suitably qualified personnel in a timely, safe, prudent and reasonable manner and with a level of accuracy, quality and completeness and degree of professional skill, care and diligence which meets or exceeds Industry Best Practice;

- (g) when requested by GBRF, provide information to GBRF about the delivery of the Project that may reasonably be required;
- (h) when requested by GBRF, engage with any GBRF funder of the Project where this is beneficial and relevant to the Project; and
- (i) provide the Project Co-Contributions as specified in Item 5 - Schedule 1.

### 3.2 Expenditure of the Project Funds

- (a) The Delivery Partner agrees to manage and spend the Project Funds efficiently, effectively, economically and ethically in accordance with this Agreement so as to achieve the Project Objectives.
- (b) The Project Funds specified in Schedule 1 may only be spent on the Project and in accordance with Schedule 1.
- (c) GBRF shall have no responsibility in respect of the application of Project Funds under this Agreement other than those expressly stated on its part in this Agreement.
- (d) The Delivery Partner may not use any part of the Project Funds for any of the following:
  - (i) to support terrorism, fund terrorist organisations or finance acts of terrorism;
  - (ii) costs incurred by the Delivery Partner before the Commencement Date except as authorised by GBRF in writing;
  - (iii) construction work or an acquisition of land or other real property unless that work or acquisition directly furthers the outcome of the Project and is agreed in writing by GBRF prior to the construction work or acquisition of land or other real property occurring;
  - (iv) legal assistance or advice relating to any actual or potential claim against, or the avoidance of any actual or purported obligation owed to GBRF;
  - (v) to conduct fundraising activities which involve the acquisition of items that are used as prizes for those fundraising activities;
  - (vi) to carry on or fund propaganda or attempt to influence legislation (including referendums) in any jurisdiction;
  - (vii) to influence or attempt to influence the outcome of any public election or to carry on, directly or indirectly, or fund, any voter registration drive (Politicking activities);
  - (viii) any activity that is likely to have an adverse environmental impact; or
  - (ix) the duplication of an activity that is already being undertaken for the benefit of the Great Barrier Reef World Heritage Area,(collectively, the ***Prohibited Purposes***).
- (e) If the Delivery Partner uses the Project Funds:
  - (i) for any of the Prohibited Purposes; or
  - (ii) for any purposes other than for the purposes of the Project in accordance with this Agreement,without prejudice to GBRF's other rights and remedies under this Agreement otherwise at law:
  - (iii) GBRF may, by written notice, require the Delivery Partner to refund the misapplied Project Funds including any Interest on it from the date of the notice until it is paid in full (***Amount***);
  - (iv) in any event the Delivery Partner must refund the Amount within 10 Business Days of receiving the notice given under clause 3.2(e)(iii); and
  - (v) if the Delivery Partner fails to refund the Amount in accordance with 3.2(e)(iv), GBRF may:

- (A) recover the Amount as a liquidated debt immediately due and payable to GBRF; and / or
  - (B) set the Amount off against any other amount payable by GBRF to the Delivery Partner whether under this Agreement or otherwise.
- (f) GBRF is not liable to the Delivery Partner or any other person for any costs overruns, or debts that the Delivery Partner incurs, in relation to the Project.
- (g) GBRF may terminate this Agreement in accordance with clause 24.2 for any breach of this clause 3.2.

### 3.3 Financial accounts

- (a) The Delivery Partner must:
  - (i) prepare a financial statement including all financial accounts and Records relating to the Project that identifies all receipts and payments related to the Project with receipts and payments for the Project Funds and Cash Contributions, and each Project (to the extent the Delivery Partner is performing separate Projects), shown separately;
  - (ii) generally, keep proper and adequate Records about the performance of the Project and whether time frames and performance requirements for the Project are met;
  - (iii) prepare financial statements for each Financial Year in accordance with Australian Accounting Standards, including:
    - (A) an income and expenditure statement for the Project for the Financial Year to date; and
    - (B) to the extent applicable, a register of Assets created, acquired, written-off or disposed of during the Financial Year to date; and
  - (iv) arrange for the audit of those accounts and Records by a qualified independent auditor (approved by GBRF acting reasonably) in accordance with applicable Australian Auditing Standards made under the *Corporations Act 2001* (Cth); and
  - (v) provide any of the documents described above in this clause 3.3(a) to GBRF upon reasonable request.
- (b) The financial statement described above in clause 3.3(a)(i) must be certified by the Delivery Partner's [Chairperson / CEO / CFO] that the Project Funds have been spent on the Project in accordance with this Agreement and must be provided to GBRF immediately upon completion of the Project (or at other intervals as reasonably requested by GBRF).
- (c) All financial accounts and Records described above must be kept in secure storage for at least 7 years (or such longer period required by law) after the end of the Term.

### 3.4 Reports

- (a) The Delivery Partner must submit the reports by the dates and containing the information described in Item 4 - Schedule 1.
- (b) The Delivery Partner must provide to GBRF any other information or material about the Delivery Partner, its Personnel, the Project, the Project Funds or any other matter in connection with this Agreement when requested in writing by GBRF within a reasonable time specified by GBRF in its request.

### 3.5 Reviews

- (a) The parties must conduct regular service and performance reviews of the Delivery Partner's performance of this Agreement at intervals communicated by GBRF in writing.

- (b) All reviews must be undertaken by representatives of both parties who have the authority, responsibility and relevant expertise in financial and operational matters appropriate to the nature of the review.

### 3.6 Due Dates

- (a) The Delivery Partner must meet all Due Dates relevant to the Project set out in this Agreement.
- (b) The Delivery Partner must notify GBRF if at any time it reasonably anticipates that a Due Date may not be met.
- (c) Upon receipt of such notification, or if a Due Date is not met:
  - (i) the parties must promptly meet to determine the cause of such anticipated or actual delay;
  - (ii) the Delivery Partner must take all reasonable steps to minimise or avoid the delay and its effects, including by way of alternate sources, additional resources, workaround or other means; and
  - (iii) the Delivery Partner must develop a rectification plan which addresses the delay to ensure that it does not impact other Due Dates and the Project generally, and the parties must comply with such plan once agreed.
- (d) The dates for compliance with a relevant Due Date will be extended by the length of delay where it is directly caused by any failure of GBRF to perform its obligations under this Agreement within the timeframe required by this Agreement or by any force majeure event described in clause 23, provided that the Delivery Partner:
  - (i) complies with its obligations under clause 3.6(c); and
  - (ii) advises GBRF as soon as practicable after the Delivery Partner becomes aware that a failure by GBRF to perform its obligations under this Agreement or a force majeure event may result in a delay to any Due Date.
- (e) The Delivery Partner acknowledges that:
  - (i) it is responsible for the Project and ensuring that each Due Date is completed by the time required for the relevant Due Date;
  - (ii) except as set out in clause 3.6(d), the Delivery Partner will bear the risk of all delays in the performance of the Projects and all costs, losses, expenses and payments arising from such delays, and will not be entitled to any extension to any Due Date; and
  - (iii) subject to clause 3.6(d), GBRF will be entitled to recover from the Delivery Partner on demand as a debt due and payable any costs incurred by GBRF arising out of or relating to any delay in the achievement of a Due Date.

### 3.7 Management of the Project and Project Funds

- (a) The Delivery Partner agrees that a person specified in this clause 3.7 may not have a role in the management of the Project or the Project Funds:
  - (i) a person who is an undischarged bankrupt;
  - (ii) a person who has in operation a composition, deed or arrangement or deed of assignment with his or her creditors under the law relating to bankruptcy;
  - (iii) a person who has suffered final judgment for a debt and the judgment has not been satisfied; or
  - (iv) subject to Part VIIC of the *Crimes Act 1914* (Cth), a person who has been convicted of an offence within the meaning of paragraph 85ZM(1) of that Act unless:
    - (A) that conviction is regarded as spent under paragraph 85ZM(2) (taking into consideration the application of Division 4 of Part VIIC);

- (B) the person was granted a free and absolute pardon because the person was wrongly convicted of the offence; or
  - (C) the person's conviction for the offence has been quashed
- (b) . Where a person falls or is discovered as falling within any of clauses 3.7(a)(i) to 3.7(a)(iv), the Delivery Partner will be in breach of clause 3.7(a) if the Delivery Partner does not immediately remove the person from his or her role in the management of the Project or the Project Funds.
- (c) The Delivery Partner agrees to notify GBRF if and / or when the removal of the person has occurred.

#### 4 Payment of the Project Funds

- (a) The Delivery Partner must maintain the Project Funds in a bank account in the Delivery Partner's name and in the Delivery Partner's sole control with an Australian authorised deposit taking institution approved by GBRF (*Funds Account*).
- (b) Subject to:
  - (i) the Delivery Partner's ongoing compliance with this Agreement; and
  - (ii) the Delivery Partner establishing and maintaining the Funds Account and complying with its obligations under clause 3,

GBRF will pay the Project Funds into the Funds Account on the dates and subject to the requirements specified in Item 4 - Schedule 1.
- (c) GBRF may in its absolute discretion, withhold payment of part or all of the Project Funds to the Delivery Partner until:
  - (i) the Delivery Partner has used all previously paid Project Funds to conduct the Project in accordance with this Agreement;
  - (ii) the Delivery Partner has issued a valid tax invoice, if applicable, to GBRF for the payment;
  - (iii) the Delivery Partner has completed/achieved (to GBRF's reasonable satisfaction) all Deliverables and satisfied all payment requirements due on or before the relevant payment date specified in Item 4 - Schedule 1;
  - (iv) the Delivery Partner has submitted to GBRF (in form and substance satisfactory to GBRF) all reports, Deliverables and other information due on or before the relevant payment date in Item 4 - Schedule 1; and
  - (v) GBRF is reasonably satisfied that the Delivery Partner is not otherwise in breach or has not otherwise failed to remedy any breach of, this Agreement or any Law.
- (d) Any payment into the Funds Account by GBRF is not an admission or acceptance by GBRF that the Delivery Partner has complied with this Agreement or performed any particular obligation under it.
- (e) If GBRF notifies the Delivery Partner that the funds to be paid under clause 4(b) are not available, then the parties agree that this Agreement will terminate with immediate effect. Clause 24.1 will apply in the event of termination under this clause 4(e).

#### 5 Assets

For each Asset that is created or acquired with the Project Funds, the Delivery Partner agrees to:

- (a) retain full legal and beneficial ownership of the Asset for the Term of this Agreement;
- (b) use the Asset for the duration of its useful life in accordance with this Agreement and solely for the purposes of the Project, or such other purpose as may be agreed in writing by GBRF from time to time;
- (c) hold the Assets securely and take all reasonable steps to safeguard them against theft, loss, damage, or unauthorised use;



- (d) maintain the Asset in good working order;
- (e) maintain all appropriate insurances for the Asset to its full replacement cost noting GBRF interest, if any, in the Asset under this Agreement;
- (f) if required by Law, maintain registration and licensing of all the Asset;
- (g) notify GBRF if the Asset is no longer viable for the Project, and to comply with any direction from GBRF regarding the transfer, repurposing or disposal of the Asset;
- (h) be fully responsible for, and bear all risks relating to, the use or disposal of the Asset; and
- (i) obtain GBRF's prior written consent to any proposed disposal, transfer or relinquishment of the Asset.

## **6 Acknowledgement and publicity**

### **6.1 *Great Barrier Reef Foundation Communications protocol***

- (a) The Delivery Partner will and must ensure that all persons for whom it is responsible or over whom it is capable of exercising control comply with the Great Barrier Reef Foundation Communications Protocol.
- (b) Despite anything included in the Great Barrier Reef Foundation Communications Protocol, the Delivery Partner must not issue any public statements or announcements concerning the Agreement, the transactions the subject of the Agreement or the Project without the prior written approval of GBRF.

### **6.2 Misleading statements**

The Delivery Partner represents and warrants to GBRF that as at the Commencement Date:

- (a) no representation, warranty, statement or conduct by or on behalf of the Delivery Partner is materially incorrect or misleading;
- (b) there is no prosecution, litigation, mediation, arbitration proceedings or any other form of dispute resolution (either current, pending or threatened) relating to a material breach by the Delivery Partner or its Related Bodies Corporate of any Law relating to the Environment; and
- (c) there is no investigation by any government agency (either current, pending or threatened) of the Delivery Partner or any of its Related Bodies Corporate relating to a material breach by the Delivery Partner or any of its Related Bodies Corporate of any Law relating to the Environment.

The Delivery Partner must notify GBRF as and when they become aware of any matters contemplated by paragraphs (a) to (c) arising during the Term.

### **6.3 Greenwashing**

- (a) The Delivery Partner agrees not to engage in any conduct that may involve Greenwashing and , where the Delivery Partner's conduct involves making any Environmental, social or other claims, the Delivery Partner must ensure such claims are accurate, verifiable, and in compliance with relevant Laws and regulations.
- (b) To the extent the Delivery Partner engages in any conduct that GBRF considers may involve Greenwashing or where the Delivery Partner makes any Environmental, social or other claims, the Delivery Partner must, on GBRF's request, provide proof (acceptable to GBRF) that such conduct is in compliance with paragraph (a).

## **7 Industrial Relations and Personnel Policies**

- (a) The Delivery Partner must comply with all the relevant labour Laws applicable to the Delivery Partner's Personnel, including Laws relating to their employment, discrimination, minimum wages and benefits, penalties, working hours (including overtime), health, safety, welfare, immigration and emigration, and must allow them all their legal rights.

- (b) The Delivery Partner must require its Personnel to obey all applicable Laws, including those concerning safety at work.
- (c) The Delivery Partner must not take any action seeking to join GBRF as a party to any industrial dispute arising out of or affecting the Project.

## 8 Modern Slavery

- (a) In this clause, modern slavery includes any conduct which constitutes modern slavery under any Law, including without limitation slavery, human trafficking, servitude, forced labour and forced marriage.
- (b) The Delivery Partner warrants and agrees that:
  - (i) it has not, and will not engage in any modern slavery practices;
  - (ii) it has taken all steps reasonably necessary to satisfy itself that the Delivery Partner's supply chains do not involve modern slavery practices or modern slavery risks;
  - (iii) it will comply with all laws relating to modern slavery;
  - (iv) it will keep all records that properly and accurately record all transactions, so as to be able to provide confirmation that the Delivery Partner is not engaging with people or entities that may involve modern slavery risks; and
  - (v) neither the Delivery Partner, nor any of its related entities, agents or employees, have been convicted of, or pleaded guilty to, an offence involving modern slavery.
- (c) The Delivery Partner must:
  - (i) establish and maintain procedures, training, policies and precautions to ensure its compliance with this clause;
  - (ii) ensure its Subcontractors comply with this clause;
  - (iii) give prompt notice and all applicable documentary evidence in writing to GBRF if at any time:
    - (A) the Delivery Partner (or any of its related entities, agents or employees) or any Subcontractor breaches this clause;
    - (B) the Delivery Partner becomes aware of any actual or potential modern slavery risk within any part of the Delivery Partner's supply chains; or
    - (C) the Delivery Partner becomes aware of, or has reasonable grounds to believe that, an actual or potential breach of this clause has occurred,
  - (iv) do all things necessary to immediately rectify or avoid any modern slavery risk, and provide written notice to GBRF of such rectification or avoidance, including supporting documentary evidence as reasonably required by GBRF;
  - (v) provide all information as may be reasonably required by GBRF to comply with any law or legal requirement to provide a public compliance statement in relation to modern slavery;
  - (vi) without limiting any other provision of this clause, provide to GBRF, within 3 days of a request from GBRF, all details (in a form reasonably required by GBRF) in relation to potential modern slavery risks, including without limitation details in relation to:
    - (A) the Delivery Partner's structure, operations and supply chains;
    - (B) the risk of modern slavery practices in the Delivery Partner's structure (including in respect of entities controlled by the Delivery Partner) and supply chains;
    - (C) actions taken by the Delivery Partner to assess and address any modern slavery risks, including due diligence and remediation processes, and details of the Delivery Partner's effectiveness of such actions;

- (D) policies, codes of conduct and training in relation to modern slavery;
  - (E) details of consultation with entities owned or controlled by the Delivery Partner;
  - (F) any other matters relating to modern slavery risks as may be reasonably required by GBRF for the purposes of GBRF's compliance statement; and
- (vii) do anything else otherwise reasonably required by GBRF in relation to compliance with all laws and legal requirements relating to modern slavery.
- (d) If the Delivery Partner commits a breach of any obligation in relation to modern slavery, including without limitation the obligations referred to in this clause, then, despite any other provision of the Agreement and without prejudice to any of GBRF's other rights under or in connection with the Agreement, GBRF may, immediately terminate this agreement in accordance with clause 24.2.

## 9 Sanctions, defence trade controls, foreign interference and influence

- (a) In this clause, Applicable Sanctions means any sanctions restrictions or designations imposed by Australia, the European Union, the United Kingdom, the United States of America or any other country with jurisdiction over the any aspect of the Project or Material provided in connection with this Agreement.
- (b) The Delivery Partner warrants that neither it nor any of its Personnel:
  - (i) is a designated, restricted or sanctioned person or entity for the purposes of the Applicable Sanctions, and is not owned or controlled (as defined within the Law of the applicable jurisdiction) by such a person; and
  - (ii) is, or has been, a citizen or resident of, or otherwise connected with, a country in respect of which country-wide or territory-wide sanctions apply under an Applicable Sanction.

## 10 Compliance with GBRF's requirements

### 10.1 Anti-corruption obligations

- (a)

In this clause:

- (i) ***Anti-Corruption Laws*** means any Law or legal requirement relating to bribery, corruption, money laundering, fraud or similar activities including but not limited to the United Kingdom, the United States of America, and Australia.
  - (ii) Associate means:
    - (A) each Related Bodies Corporate of the Delivery Partner;
    - (B) each officer, employee or agent of the Delivery Partner or any Related Bodies Corporate of the Delivery Partner; and
    - (C) any other persons for whom the Delivery Partner or any Related Bodies Corporate of the Delivery Partner (or their subcontractors) are legally responsible or with whom the Delivery Partner and any of its Related Bodies Corporate are in partnership, joint venture or any other form of business association.
  - (iii) ***Public Official*** includes a person who holds public office, a public servant, any commercial entity in which a government body has an ownership interest or exerts control over any employee or official of any such entity, a member of the executive or judiciary and officials, representatives, employees or contractors of public international organisations, a representative or employee of any political party or candidate for public office.
- (b)

- (i) The Delivery Partner warrants and agrees that it and its Associates: have not, and will not pay, offer, promise to pay or authorise the payment directly or indirectly of any monies or anything of value to any Public Official in connection with this Agreement;
  - (ii) will comply with all Anti-Corruption Laws;
  - (iii) will not request any service, action or inaction by any Public Official which could violate any Anti-Corruption Laws;
  - (iv) will keep Records that properly, fairly and accurately record and report all transactions; and
  - (v) will comply with all laws and legal requirements applicable to the requirements in this clause 10.1.
- (c) The Delivery Partner further warrants and agrees that:
  - (i) any payment made by GBRF to the Delivery Partner or by the Delivery Partner to GBRF under this Agreement is received by GBRF or the Delivery Partner as consideration for or in connection with performance of obligations under this Agreement; and
  - (ii) neither the Delivery Partner, nor any of its Associates, have been:
    - (A) convicted of or pleaded guilty to an offence involving fraud or corruption; or
    - (B) listed by any government agency as debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for government procurement programs.
- (d) The Delivery Partner must establish and maintain procedures, training, policies and precautions to ensure its compliance with this clause 10.1 and Anti-Corruption Laws.
- (e) The Delivery Partner must give prompt notice and all applicable documentary evidence in writing to GBRF if, at any time:
  - (i) the Delivery Partner breaches this clause 10.1;
  - (ii) the Delivery Partner or GBRF becomes aware of, or has reasonable grounds to believe that, an actual or potential breach of this clause 10.1 has occurred; or
  - (iii) there is any change in the direct or indirect ownership of the Delivery Partner that has or could have the effect of the Delivery Partner or any of its Associates becoming a Public Official.
  - (iv) The Delivery Partner must ensure its Subcontractors and subconsultants comply with the requirements of this clause 10.1.

## 10.2 Minimum requirements

Without limiting the Delivery Partner's other obligations under this Agreement, the Delivery Partner will comply with, and must ensure that all of its Subcontractors comply with, the following requirements:

- (a) **(Wages, Penalties and Working Hours)**
  - (i) Workers must, at a minimum, be paid wages and benefits (including overtime where relevant) at national legal standards or local industry benchmarks, whichever is higher. In nation states where no minimum wage laws or regulations exists, Workers must be paid a living wage that provides an adequate standard of living for them and their dependents.
  - (ii) A Worker's allowances and wages must not be deducted or withheld as a disciplinary measure or for any other reason that is not permitted by Law.
  - (iii) All Workers' rights to freedom of association and collective bargaining must respected.
  - (iv) Full payment of any Worker's wages and other entitlements must be made in a timely manner.

- (v) Working hours shall not exceed the national legal standards or local industry benchmarks, whichever provides the greater protection for the Worker.
- (b) **(Non-Discrimination and Diversity)**
  - (i) Workers and Participants must be treated fairly and without discrimination (including based on race, colour, gender, religion, national origin, age, disability, political beliefs, marital status, sexual orientation or family responsibilities).
- (c) **(Health, Safety and Security)**
  - (i) The health, safety and security of Workers and Participants must always be safeguarded.
  - (ii) This must include taking adequate steps to prevent accidents or injury and minimise exposure to hazards which may have negative impacts on physical and mental health.
- (d) **(Preventing Exploitation, Abuse and Harassment)**
  - (i) Workers and Participants must be treated with dignity. Threatening behaviour, violence, coercion, sexual exploitation or abuse, or verbal or psychological harassment or abuse must not be accepted.
- (e) **(Safeguarding Children and Vulnerable Adults)**
  - (i) The Project must not create or facilitate situations of harm, abuse, exploitation, maltreatment or neglect of Children or Vulnerable Adults.
  - (ii) Without limiting the foregoing or the requirements of any relevant Laws, all Workers and Participants who will have contact with Children or Vulnerable Adults as a result of, or in connection to, this Agreement must be subject to appropriate due diligence (including criminal background checks where permitted in the relevant jurisdiction), provided with training on Child and/or Vulnerable Adult (as relevant) protection and safeguarding, and be required to report any concerns regarding the impact of the Project on the wellbeing of any Child or Vulnerable Adult.
- (f) **(Participants and Community Interaction)**
  - (i) The human right of Workers and Participants must be respected, including cultural, Indigenous and environmental rights. The human rights of women, Indigenous people, Vulnerable Adults, and marginalised or at-risk people must be given particular attention, including in consultation and consent processes.

### 10.3 Child Labor

- (a) This clause only applies to the extent the Delivery Partner employs or engages a Child in respect of the Project.
- (b) For the purposes of this clause:
  - (i) ***Child-Related Personnel*** means officers, employees, contractors (including subcontractors), agents and volunteers of the Delivery Partner involved with the Project who as part of that involvement may interact with Children;
  - (ii) ***National Principles for Child Safe Organisations*** means the National Principles for Child Safe Organisations, which have been endorsed in draft form by the Commonwealth Government (available at: <https://humanrights.gov.au/our-work/childrens-rights/projects/child-safeorganisations>) and subsequently, from the time of their endorsement by the Council of Australian Governments, the final National Principles for Child Safe Organisations as published by the Australian Government;
  - (iii) ***Relevant Laws*** means any Law in force in any jurisdiction where any part of the Project may be carried out; and
  - (iv) ***Working With Children Check*** or ***WWCC*** means the process in place pursuant to Relevant Laws to screen an individual for fitness to work with Children.

- (c) The Delivery Partner must:
  - (i) comply with all Relevant Laws relating to the employment or engagement of Child-Related Personnel in relation to the Project, including all necessary Working With Children Checks however described; and
  - (ii) ensure that Working With Children Checks obtained in accordance with this clause remain current and that all Child-Related Personnel continue to comply with all Relevant Laws for the duration of their involvement in the Project.
- (d) The Delivery Partner agrees in relation to the Project to:
  - (i) implement the National Principles for Child Safe Organisations;
  - (ii) ensure that all Child-Related Personnel implement the National Principles for Child Safe Organisations;
  - (iii) complete and update, at least annually, a risk assessment to identify the level of responsibility for Children and the level of risk of harm or abuse to Children;
  - (iv) put into place and update, at least annually, an appropriate risk management strategy to manage risks identified through the risk assessment required by this clause; and
  - (v) provide training and establish a compliance regime to ensure that all Child Related Personnel are aware of, and comply with:
    - (A) the National Principles for Child Safe Organisations;
    - (B) the Delivery Partner's risk management strategy required by this clause and GBRF's risk management strategy as notified by GBRF to the Delivery Partner;
    - (C) Relevant Laws relating to requirements for working with Children, including Working With Children Checks; and
    - (D) Relevant Laws relating to mandatory reporting of suspected child abuse or neglect, however described.

#### **10.4 Survival**

The obligations contained in this clause 10.1 survive termination of this Agreement for any reason.

### **11 Intellectual Property Rights**

#### **11.1 Background Intellectual Property**

- (a) Each party acknowledges that all Background IP remains the sole property of its owner and that it acquires no right, title or interest in or to the Background IP of the other party by virtue of this Agreement other than as expressly set out in this Agreement.
- (b) Each party agrees not to Use and must ensure that its Personnel (and sub-licensee, if applicable), do not Use Background IP to the commercial, financial or competitive disadvantage of the party who contributed the Background IP.
- (c) Subject to clause 11.1(b) each party that contributes Background IP to the Project grants to, or must obtain for the other party a perpetual, irrevocable, worldwide, non-exclusive, non-transferable, royalty free, licence, including a right to sublicense to a party's Sub contractors only to Use its Background IP solely to the extent required for the Project Material to be Used in accordance with the licence in clause 11.2(b).
- (d) Subject to clause 11.1(c) each party that contributes Background IP grants to any member of the public who is a licensee of Project Material under clause 11.2(b) a perpetual, worldwide, non-exclusive, royalty-free, non-transferable licence to Use its Background IP to the extent necessary for the members of the public (licensee) to exercise their rights in the Project Material and any improvements in accordance with the licence in clause 11.2(b).

- (e) Use of Background IP is subject to any restrictions, conditions or instructions regarding Use in relation to that Background IP.

### **11.2 Intellectual Property in Project Material**

- (a) Subject to this clause 11, the parties hereby agree that all Intellectual Property Rights arising in the Project Material in the future, vest immediately in the Delivery Partner.
- (b) The Delivery Partner grants to GBRF or agrees to procure for GBRF and any member of the public, a perpetual, irrevocable, non-transferable, royalty-free, worldwide, non-exclusive licence (including a right of sublicense) to Use, the Intellectual Property Rights in the Project Material in the field of Crown of Thorns Starfish management for:
  - (i) Non-commercial purposes, educational and/or research purposes (including for the performance of Core Commonwealth by the Department); and/or
  - (ii) Commercial purposes, whether in Australia or elsewhere.

Each Party acknowledges that any licence granted to the Department for Core Commonwealth Functions will not be restricted to use in the field of Crown-of-Thorns Starfish management.

### **11.3 Project related Data and Research Outputs**

- (a) Within 6 months of the first collection of Project related Data, the Delivery Partner must provide the Project related Data to GBRF and take measures to make it possible for third parties to access, mine, exploit, reproduce and disseminate – free of charge for any non-commercial data user – all such Data collected in connection with the Project (except for any Data that GBRF agrees in writing from time to time is expressly excluded from the operation of this clause). Such Data must be in a standard format that is commonly available for other research of this nature, or in a format specified by the GBRF from time to time, as the case may be.
- (b) The Delivery Partner must make all Research Outputs publicly available on websites maintained by the GBRF, and other websites as specified by the GBRF in writing from time to time.

### **11.4 Dealing with Intellectual Property**

The Delivery Partner:

- (a) agrees, if requested by the GBRF to do so, to bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 11; and
- (b) warrants and represents to the GBRF that at the time the Project Material or Existing Material is made available to the GBRF that it is entitled to deal with the Intellectual Property Rights in the Project Material and Existing Material in accordance with this clause 11.

### **11.5 Third Party Licences**

Where a third party licence is required in order for GBRF to use the Project Material or any Intellectual Property Rights the Delivery Partner will use best endeavours to procure a licence on similar terms to that required under 11.2(b).

### **11.6 Moral Rights**

The Delivery Partner agrees to obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by GBRF or any other person claiming under or through GBRF (whether occurring before or after the consent is given) and, upon request, will provide the executed original and any such consent to GBRF.

## **12 Indigenous Cultural and Intellectual Property**

- (a) The parties acknowledge that under Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples, indigenous peoples (including Australian Aboriginal and Torres Strait Islander peoples) are the custodians of their ICIP and have the right to maintain, control, protect and

develop their ICIP, including from commercial exploitation and exploitation that is contrary to their customary laws.

- (b) The Delivery Partner must promptly:
  - (i) inform GBRF of any ICIP Material;
  - (ii) clearly identify to GBRF the ICIP that the ICIP Material comprises or contains;
  - (iii) clearly identify to GBRF any traditional owners or custodians to which that ICIP relates;
  - (iv) notify GBRF of any third party interests, restrictions and requirements relating to use of the ICIP; and
  - (v) assist GBRF with creating an ICIP notice of attribution to be used in relation to the ICIP Material and/or the Project, the final form of which shall be determined by GBRF in its sole discretion.
- (c) In relation to each ICIP Material, the Delivery Partner warrants that it has:
  - (i) consulted and will continue to consult with the relevant traditional owners or custodians of any ICIP that the ICIP Material comprises or contains;
  - (ii) obtained in writing all relevant free, prior and informed consents and permissions from such traditional owners or custodians in relation to the proposed use of the ICIP; and
  - (iii) observed and will continue to observe all relevant customary laws and traditions in relation to the ICIP and its use in relation to the Project.
- (d) Without limiting paragraph (c), the Delivery Partner must provide the traditional owners or custodians of any ICIP that forms part of the ICIP Material with a reasonable opportunity to view how the ICIP is intended to be used as part of the ICIP Material and the Project.

## **13 Confidential Information**

### **13.1 Confidential Information not to be disclosed**

The Delivery Partner agrees not to disclose any GBRF Confidential Information to a third party without the prior written consent of GBRF.

### **13.2 Written undertakings with respect to Confidential Information**

The Delivery Partner agrees, on request by GBRF, to arrange for:

- (a) the Delivery Partner's Personnel and any of its Subcontractors; or
- (b) any person with legal or equitable right, interest, power or remedy in favour of any person other than GBRF or the Delivery Partner in connection with this Agreement, including, without limitation, any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest,

to give a written undertaking in a form acceptable to GBRF relating to the use and non-disclosure of GBRF Confidential Information.

### **13.3 Exceptions to obligations relating to GBRF Confidential Information**

- (a) The obligations on the parties under this clause 13 will not be taken to have been breached to the extent that the GBRF Confidential Information:
  - (i) is disclosed by the Delivery Partner to its Personnel solely in order to comply with obligations, or to exercise rights, under this Agreement;
  - (ii) is disclosed to the Delivery Partner's internal management Personnel, solely to enable effective management or auditing of Agreement-related activities;
  - (iii) is authorised or required by Law to be disclosed; or



- (iv) is in the public domain otherwise than due to a breach of this clause 13.
- (b) Where the Delivery Partner discloses GBRF Confidential Information to another person pursuant to paragraphs (i) and (ii) above, the Delivery Partner:
  - (i) agrees to notify the receiving person that the information is confidential; and
  - (ii) agrees not to provide the information unless the receiving person agrees to keep the information confidential.
- (c) The Delivery Partner agrees to secure all of the GBRF Confidential Information against loss and unauthorised access, use, modification and disclosure.

#### **13.4 Exceptions to obligations relating to Delivery Partner Confidential Information**

The Delivery Partner acknowledges that GBRF does not breach any obligation of confidence under this clause 13, at general law or otherwise when:

- (a) GBRF discloses Delivery Partner Confidential Information:
  - (i) to its Personnel solely in order to comply with obligations, or to exercise rights, under this Agreement;
  - (ii) to its internal management Personnel, solely to enable effective management or auditing of Agreement-related activities;
  - (iii) as required or permitted under any contractual arrangements, including any funding agreements GBRF is a party too.
- (b) the Delivery Partner Confidential Information is:
  - (i) authorised or required by law to be disclosed; or
  - (ii) is in the public domain otherwise than due to a breach of this clause.

#### **13.5 Period of confidentiality**

The obligations under this clause 13 will continue, notwithstanding the expiry or termination of this Agreement in perpetuity unless and until the relevant confidential information enters the public domain otherwise than due to a breach of this Agreement.

#### **13.6 No reduction in privacy obligations**

This clause 13 does not detract from any of the Delivery Partner's obligations under the Privacy Act or under clause 14.

### **14 Privacy**

- (a) The Delivery Partner undertakes that it will and will ensure that its Personnel and any of its Subcontractors will in conducting the Project:
  - (i) comply with its obligations under the Privacy Act and not to otherwise do any act or engage in any practice which, if done or engaged in by GBRF, would be a breach of an Australian Privacy Principle under the Privacy Act; and
  - (ii) comply with any directions, guidelines, determinations or recommendation of the GBRF in relation to any Personal Information, to the extent that they are consistent with the obligations referred to in clause 14(a)(i).
- (b) The Delivery Partner agrees to notify GBRF immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 14.
- (c) If the Delivery Partner becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal Information held by the Delivery Partner, the Delivery Partner agrees to:
  - (i) notify GBRF in writing as soon as possible, which must be no later than within 3 days; and

- (ii) carry out an assessment in accordance with the requirements of the Privacy Act.
- (d) Where the Delivery Partner is aware that there are reasonable grounds to believe that there has been, or where GBRF notifies the Delivery Partner that there has been, an Eligible Data Breach in relation to any Personal Information held by the Delivery Partner, the Delivery Partner agrees to:
  - (i) take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom it relates; and
  - (ii) take all other action necessary to comply with the requirements of the Privacy Act.
- (e) Where the Delivery Partner makes available any Personal Information to GBRF, it warrants and represents that it has obtained the consent of the relevant individual to the collection of that individual's Personal Information by GBRF, and any other third parties to whom such information may be disclosed in connection with the Project.

## 15 Conflict of Interest

- (a) The Delivery Partner warrants that, to the best of its knowledge after making diligent inquiry, at the Commencement Date no Conflict exists or is likely to arise in the performance of the Delivery Partner's obligations under the Agreement.
- (b) If during the Term a Conflict arises, the Delivery Partner agrees to:
  - (i) notify GBRF immediately;
  - (ii) make full disclosure to GBRF of all relevant information relating to the Conflict; and
  - (iii) after consultation with GBRF, take any steps necessary to resolve or otherwise deal with that Conflict.

## 16 Compliance with Laws

- (a) The Delivery Partner agrees to comply with all Laws applicable to its performance of this Agreement including, without limitation:
  - (i) the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth); and
  - (ii) the *Great Barrier Reef Marine Park Act 1975* (Cth).
- (b) Without limiting clause 16(a), the Delivery Partner agrees to ensure all relevant permits are obtained before any part of the Project is undertaken in the Great Barrier Reef World Heritage Area or Reef Catchments.

## 17 Work Health and Safety

### 17.1 WHS requirements

- (a) Without limiting any other provision of this Agreement, the Delivery Partner must, and must ensure that the Delivery Partner's Personnel, at all times take all precautions to maintain the health and safety of the Delivery Partner's Personnel and to ensure any applicable work health and safety Laws are complied with.
- (b) The Delivery Partner must send to GBRF details of any accident as soon as practicable after its occurrence. The Delivery Partner must maintain such records and make such reports concerning health, safety and welfare of persons, and damage to property, as GBRF reasonably requires.

### 17.2 GBRF's rules

- (a) The Delivery Partner must ensure that all persons for whom it is responsible or over whom it is capable of exercising control, whilst they are upon any site any site owned, occupied or controlled by GBRF or any contractor engaged by GBRF, comply, where applicable, with the following:
  - (i) GBRF's health, safety and environmental regulations, systems, standards, policies and procedures as notified to the Delivery Partner from time to time;

- (ii) GBRF's safety and other standards as notified to the Delivery Partner by GBRF from time to time; and
  - (iii) the directions, demands or orders of any person duly authorised by GBRF to make or give the same.
- (b) GBRF will make available to the Delivery Partner at reasonable times, on request, copies of such rules and policies in effect from time to time. The Delivery Partner will at all times be deemed to be and must ensure that all persons to whom this clause 17.2 applies are familiar with the rules.
- (c) The Delivery Partner must ensure that its subcontracts contain provisions similar to the obligations in this clause 17.

## 18 Warranties

- (a) Each party represents and warrants that:
  - (i) it is a body corporate and it is duly incorporated in accordance with the Laws of the place of incorporation, validly exists under those Laws and has the capacity to sue and be sued in its own name and to own its property and conduct its business as it is being conducted;
  - (ii) it has full power and authority to enter into, perform and observe its obligations under this Agreement;
  - (iii) the execution, delivery and performance of this Agreement has been duly and validly authorised by its board;
  - (iv) this Agreement imposes valid and legally binding obligations on it and is enforceable against it by the other party in accordance with its terms;
  - (v) the unconditional execution and delivery of, and compliance with its obligations under, this Agreement does not:
    - (A) contravene any Law to which it or any of its property is subject or any order or directive from a government agency binding on it or any of its property;
    - (B) contravene its constitution or other constituent documents;
    - (C) contravene any agreement or instruments to which it is a party;
    - (D) contravene any obligation of it to any other person; and
    - (E) require it to make any payment or delivery in respect of any financial indebtedness before the scheduled date for that payment or delivery;
  - (vi) no litigation, arbitration, mediation, conciliation or administrative proceedings (excluding in the case of GBRF, the senate inquiry which is public knowledge as at the Commencement Date) are taking place, pending, or to the knowledge of any of its officers after due inquiry, are threatened which, if adversely decided, could have a material adverse effect on its ability to perform its obligations under this Agreement;
  - (vii) except in relation to any underlying equitable interest in the Project Funds created by or in connection with this Agreement, it is not entering into this Agreement as trustee of any trust or settlement;
  - (viii) it has not made any false declaration in respect of any current or past dealings with any Commonwealth or other government agency, including in any proposal, tender or application process or in any agreement; and
  - (ix) it has no significant deficiency in the performance of any substantive requirement or obligation under any prior agreement with any Commonwealth or other government agency which would adversely affect its ability to perform this Agreement.

- (b) The Delivery Partner acknowledges that, in entering into this Agreement, GBRF is relying on the accuracy and truth of the Delivery Partner's warranties and representations contained in this Agreement.

## **19 Audit and access**

- (a) During the Term and for 7 years after the end of the Term, upon reasonable notice from GBRF, the Delivery Partner will allow GBRF or its representatives (including nominated auditors and Governmental Authorities) to conduct an audit or inspection of its Records, and Materials, or to attend the Delivery Partner's premises, inspect and take copies of any Records and Material relevant to the Project and interview the Delivery Partner's Personnel for the purpose of confirming the Delivery Partner's compliance with this Agreement and applicable Laws. The Delivery Partner will cooperate with GBRF or its representative's reasonable requests during the audit or inspection.
- (b) If an audit or inspection under this clause 19 reveals that the Delivery Partner is not complying with this Agreement, the Delivery Partner must, and must ensure that its relevant Personnel:
  - (i) take such actions as are necessary to promptly remedy the non-compliance; and
  - (ii) comply with any reasonable directions or instructions from GBRF as to the manner (including timing) in which such non-compliance must be remedied.
- (c) Each party will bear its own costs associated with audits or inspections conducted under this clause 19, unless such audits or inspections reveal non-compliance with this Agreement by the Delivery Partner, in which case the costs shall be borne by the Delivery Partner.

## **20 Liability**

### **20.1 Indemnity**

- (a) The Delivery Partner indemnifies GBRF and its Personnel from and against any:
  - (i) cost and liability incurred by GBRF and its Personnel;
  - (ii) loss of or damage to the property of GBRF and its Personnel; or
  - (iii) loss or expense incurred by GBRF and its Personnel in dealing with any claim against it, including legal costs and expenses on a solicitor / own client basis and the cost of time spent, resources used, or disbursements paid by GBRF,arising from:
  - (iv) any breach of the Agreement by the Delivery Partner (which may be due to an act or omission of its Personnel or a Subcontractor);
  - (v) any act or omission involving Fault by the Delivery Partner or its Personnel or a Subcontractor in connection with this Agreement;
  - (vi) use of the Assets; or
  - (vii) the use by GBRF of the Project Material or Existing Material and their right to undertake Permitted Acts as described in clause 11.5, including any claims by third parties about the ownership or right to use Intellectual Property Rights or Moral Rights in the Project Material or Existing Material.
- (b) The Delivery Partner's liability to indemnify GBRF and its Personnel under clause 20.1(a) will be reduced proportionately to the extent that any act or omission involving Fault on the part of GBRF or its Personnel contributed to the relevant cost, liability, loss, damage or expense.
- (c) The right of GBRF and its Personnel to be indemnified under this clause 20.1 is in addition to, and not exclusive of, any other right, power or remedy provided by Law, but GBRF is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

## 20.2 The Delivery Partner's assumption of risk and release of GBRF

The Delivery Partner agrees to deliver the Project at its own risk and agrees that neither GBRF nor any of its Personnel are liable to the Delivery Partner (or the Delivery Partner's Personnel or Subcontractors) (each a **Releasing Party**) for any loss or damage a Releasing Party suffers, howsoever occasioned, in connection to the delivery of the Project or this Agreement, save in relation to any negligent or unlawful act or omission or wilful misconduct caused by GBRF or its Personnel, in which case the aggregate liability of GBRF and its Personnel will not exceed the amount of the Project Funds.

## 20.3 No consequential loss

GBRF will not be liable to the Delivery Partner (whether arising under an indemnity, warranty (whether express or implied), in contract, tort (including negligence), equity, common law or otherwise) for any Consequential Loss suffered or incurred by the Delivery Partner arising out of or in connection with this Agreement.

## 21 Insurance

- (a) The Delivery Partner agrees to:
  - (i) maintain the insurance specified in Item 7 - Schedule 1; and
  - (ii) on request, provide proof of insurance acceptable to GBRF.
- (b) The Delivery Partner must immediately notify GBRF in writing if:
  - (i) any policy required under this clause 21 is cancelled, not renewed, or lapses; or
  - (ii) there is a significant change to the terms of any such policy.
- (c) This clause shall survive termination of this Agreement.

## 22 Dispute Resolution

### 22.1 Escalation

If there is a dispute or difference (**Dispute**) between the parties arising out of or in connection with this Agreement, then within 10 Business Days of a party notifying the other party in writing of the Dispute, a senior representative from each party must meet and use all reasonable endeavours acting in good faith to resolve the Dispute by joint discussions.

### 22.2 Mediation

- (a) If the Dispute is not settled within 10 Business Days of notification under clause 22.1, the parties will, if mutually agreed, submit the Dispute to mediation administered by the Australian Disputes Centre.
- (b) The mediator will be an independent person agreed between the parties.
- (c) Any mediation meetings and proceedings under this clause must be held in Brisbane, Queensland.

### 22.3 Court proceedings and other relief

A party may not start court proceedings in relation to a Dispute until it has exhausted the procedures in this clause, unless the party seeks urgent injunctive or other interlocutory relief.

### 22.4 Continuation of rights and obligations

- (a) Despite the existence of a dispute or difference each party must continue to perform this Agreement.
- (b) This clause 22 shall survive termination of this Agreement.

## 23 Force majeure events

### 23.1 Occurrence of force majeure event

- (a) The Delivery Partner is excused from performing its obligations under this Agreement to the extent it is prevented by circumstances beyond its reasonable control (other than a lack of Cash Contributions for any reason or any strike, lockout or labour disputes that only applies to the Delivery Partner), including but not limited to acts of God, natural disasters, acts of war, epidemic (for the avoidance of doubt, this excludes the disease known as 'COVID-19', which is an Excluded Event), riots and strikes outside that party's organisation, but not including any Excluded Event.
- (b) For the purposes of this clause 23, an **Excluded Event** means the virus known as 'COVID-19', or any events, circumstances or conditions that may result therefrom, including any associated public health emergency, and any resulting governmental actions including any mandatory business, service or workplace restrictions, quarantines, border closures and travel restrictions.

### 23.2 Notice of a force majeure event

When the circumstances described in clause 23.1 arise or are reasonably perceived by the Delivery Partner as an imminent possibility, the Delivery Partner agrees to give notice of those circumstances to GBRF as soon as possible, identifying the effect they will have on its performance. The Delivery Partner agrees to make all reasonable efforts to minimise the effects of such circumstances on its performance of this Agreement.

### 23.3 Cessation of use of Project Funds

Except for the payments that the Delivery Partner is legally obliged to make, the Delivery Partner agrees to cease making payments from the Project Funds whilst the circumstances under clause 23.1 exist.

### 23.4 Termination

If non-performance or diminished performance by the Delivery Partner due to the circumstances under clause 23.1 continues for a period of more than 30 consecutive days, GBRF may terminate this Agreement immediately by giving the Delivery Partner written notice under clause 24.2.

## 24 Termination, step-in or reduction in scope of the Agreement

### 24.1 Termination by GBRF

- (a) If there is a material change in Law that is inconsistent with the continued operation of this Agreement, or GBRF receives notice under any funding agreement that is specifically providing funding for this Project, terminating or reducing the scope of the relevant funding agreement, GBRF may by notice terminate this Agreement or reduce the scope of the Agreement immediately.
- (b) The Delivery Partner agrees, on receipt of a notice of termination or reduction under clause 24.1(a), to:
  - (i) stop or reduce the performance of the Delivery Partner's obligations as specified in the notice;
  - (ii) take all available steps to minimise loss resulting from that termination or reduction;
  - (iii) continuing performing any part of the Project not affected by the notice, if requested to do so by GBRF; and
  - (iv) subject to clauses 24.1(c) and 24.1(d), return to GBRF some or all of the Project Funds in accordance with clause 25 or otherwise deal with the Project Funds as directed by GBRF.
- (c) In the event of termination under clause 24.1(a), the Delivery Partner is only entitled to retain the amount of the Project Funds necessary to cover any reasonable costs that the Delivery Partner unavoidably incurs that relate directly to the termination of the Agreement. The Delivery Partner is not entitled to be paid any other amounts in respect of the termination.

- (d) In the event of a reduction in the scope of the Agreement under clause 24.1(a), the Delivery Partner's entitlement to the Project Funds will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Project. The Delivery Partner may retain any Project Funds attributable to the removed part of the Project that is required to cover reasonable costs that the Delivery Partner unavoidably incurs and that relate directly to the reduction in scope of the Agreement.
- (e) The Delivery Partner's entitlement to compensation for its reasonable termination costs under or in relation to this clause 24.1 is subject to:
  - (i) the Delivery Partner's compliance with this clause 24.1; and
  - (ii) the Delivery Partner's substantiation of any amount claimed under paragraphs (c) and (d).
- (f) In no circumstances will the Delivery Partner be entitled to compensation for loss of prospective profits, loss of donations or loss of any benefits that would have been conferred on the Delivery Partner.

## 24.2 Termination for fault

GBRF may by notice terminate this Agreement immediately if:

- (a) the Delivery Partner breaches this Agreement and GBRF considers that the breach cannot be rectified;
- (b) the Delivery Partner does anything which, in the reasonable opinion of GBRF, might negatively impact the image or reputation of GBRF or the Project;
- (c) the Delivery Partner breaches this Agreement and does not rectify the breach within 10 Business Days after receiving notice to do so from GBRF;
- (d) an Insolvency Event occurs in relation to the Delivery Partner;
- (e) there is a change in the Delivery Partner's control (as defined in section 50AA of the Corporations Act), constitution, structure, management or operations that the Delivery Partner reasonably believes is likely to materially adversely affect the Delivery Partner's ability to perform the Project in accordance with this Agreement;
- (f) the Delivery Partner breaches a Law relating to the performance of a Project;
- (g) at any time on or after a STOP/GO Decision Point, GBRF reasonably believes that the Delivery Partner is unlikely to be able to deliver the Project in accordance with this Agreement or that the Project is unlikely to achieve the Project Objectives;
- (h) the Delivery Partner advises that it wishes to withdraw from this Agreement; or
- (i) another clause of this Agreement allows for a termination under this clause 24.2:

(each, a *Termination Event*).

## 24.3 Preservation of other rights

This clause 24 does not limit or exclude any of GBRF's other rights under this Agreement or otherwise at Law.

## 25 Repayment of the Project Funds

### 25.1 Suspension and repayment of the Project Funds

- (a) If:
  - (i) a Termination Event in clause 24.2 occurs;
  - (ii) GBRF terminates or reduces the scope of this Agreement under clause 24.1;
  - (iii) the Delivery Partner advises that it does not require some or all of the Project Funds; or

- (iv) the Completion Date expires,

GBRF may, in its absolute discretion, do one or more of the following:

- (v) direct the Delivery Partner to immediately cease expenditure of some or all of the Project Funds (which may, depending on the circumstances, be for a specified period, permanently or until GBRF advises otherwise);
- (vi) obtain information about the Project Funds amount in the possession or control of the Delivery Partner;
- (vii) where GBRF terminates the Agreement under clauses 24.1 or 24.2 (and subject to 24.1(c), if applicable), recover from the Delivery Partner any part of the Project Funds attributable to the removed part of the Project which:
  - (A) is not legally committed for expenditure by the Delivery Partner in accordance with this Agreement and due and payable by the Delivery Partner by the date that the termination notice is issued; or
  - (B) has not, in GBRF's reasonable opinion, been spent by the Delivery Partner in accordance with this Agreement; and
- (viii) where GBRF reduces the scope of the Agreement under clause 24.1 (and subject to clause 24.1(d), if applicable), recover from the Delivery Partner any part of the Project Funds attributable to the removed part of the Project which:
  - (A) is not legally committed for expenditure by the Delivery Partner in accordance with this Agreement and due and payable by the Delivery Partner by the date that the termination notice is issued; or
  - (B) has not, in GBRF's reasonable opinion, been spent by the Delivery Partner in accordance with this Agreement; and
- (ix) where the Completion Date has expired, recover from the Delivery Partner any part of the Project Funds which:
  - (A) was not committed for expenditure by the Delivery Partner in accordance with the Agreement to the end of the Term; or
  - (B) has not, in GBRF's reasonable opinion, been spent by the Delivery Partner in accordance with this Agreement.
- (b) Any amount that GBRF notifies the Delivery Partner is required to be repaid under this clause 25.1 must be repaid to GBRF by the Delivery Partner within 20 Business Days after the date on which GBRF issued that notice.

## **25.2 Debt and Interest**

- (a) The Delivery Partner must pay Interest to GBRF on any amount due but unpaid under this Agreement calculated from the due date for payment until the amount is paid. Interest on any unpaid amount will be capitalised monthly and will itself thereafter bear interest.
- (b) The Delivery Partner must pay any amount owed or payable to GBRF or which the Delivery Partner is entitled to recover from the Delivery Partner under this Agreement, including any interest, as a debt due to GBRF by the Delivery Partner without further proof of the debt by GBRF being necessary.
- (c) The Delivery Partner agrees that the Interest represents a reasonable pre-estimate of the loss incurred by GBRF.

## **25.3 Recovery of the overpayment**

GBRF may recover any part of the Project Funds and any Cash Contributions that are overpaid to, incorrectly claimed or spent by, or not required by, the Delivery Partner.



## 26 Subcontracting

- (a) Except as set out in Item 8 - Schedule 1, the Delivery Partner must seek the prior written consent of GBRF if it wishes to subcontract the whole, or any part, of the Delivery Partner's obligations under this Agreement. GBRF may give or withhold its consent in its absolute discretion and, if consent is granted, GBRF may in its absolute discretion impose any terms and conditions it thinks fit to the granting of its consent including requiring the Delivery Partner to impose on its Subcontractor terms and conditions which are (at a minimum) consistent with the terms and conditions of this Agreement.
- (b) The Delivery Partner acknowledges that GBRF or its funder may publicly disclose the names of any subcontractors engaged in the provision of services in respect of the Project.
- (c) The Delivery Partner is and remains liable under this Agreement at all times for all acts and omissions of any Subcontractor (including each of their directors or other officers, employees, contractors, agents or professional advisors) engaged at any time during the Term in relation to the Project, as if they were the acts or omissions of the Delivery Partner.

## 27 Notices

Any notice, demand, consent or other communication (a **Notice**) given or made under this Agreement:

- (a) must be in writing and signed by the sender or an authorised office of the sender (or in the case of email, set out the full name and position or title of the sender or authorised office of the sender);
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand, fax or email to the address, fax number or email address specified in Item 1 - Schedule 1, fax number or email address last notified by the intended recipient to the sender;
- (c) will be conclusively taken to be duly given or made and received:
  - (i) in the case of delivery in person, when delivered;
  - (ii) in the case of delivery by express post, to an address in the same country, two Business Days after the date of posting;
  - (iii) in the case of delivery by any other method of post, six Business Days after the date of posting (if posted to an address in the same country) or 10 Business Days after the date of posting (if posted to an address in another country);
  - (iv) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax number or name of recipient and indicating that the transmission has been made without error; and
  - (v) in the case of email, at the earliest of:
    - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
    - (B) the time that the intended recipient confirms receipt of the email by reply email; and
    - (C) three hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that three-hour period, an automated message that the email has not been delivered,

but if the result is that a Notice would be taken to be given or made and received:

- (vi) in the case of delivery by hand, post or fax, at a time that is later than 5pm;
- (vii) in the case of delivery by email, at a time that is later than 7pm; or
- (viii) on a day that is not a business day,

in the place specified by the intended recipient as its postal address under clause 27(b), it will be conclusively taken to have been duly given or made and received at the start of business on the next business day in that place.

## **28 GST**

### **28.1 GST to be added to amounts payable**

If GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive.

### **28.2 Tax Invoice and Adjustment Note**

No payment of any amount pursuant to clause 28.1, and no payment of the GST Amount where the Consideration for a Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.

### **28.3 Liability net of GST**

Any reference in the calculation of Consideration or of any indemnity, or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.

### **28.4 Fees and costs exclusive of GST**

- (a) Any reference in this Agreement to price, value, sales, revenue or a similar amount (*Fees*), is a reference to that fee exclusive of GST.
- (b) Any reference in this Agreement to cost, expense or other similar amount, is a reference to that cost exclusive of GST.

## **29 No Agency or Partnership**

Nothing in this Agreement is to be construed as constituting an agency, partnership, joint venture, or any other form of association between the parties in which one party may be liable for the acts or omissions of any other party. No party has the authority to incur any obligation or make any representation or warranty on behalf of, or to pledge the credit of, any other party.

## **30 Assignment**

The Delivery Partner cannot assign, charge, create a security interest over, encumber or otherwise deal with any of its rights or obligations under this Agreement, or attempt or purport to do so, without the prior written consent of GBRF. The consent of GBRF may be withheld in its absolute discretion without giving any reason for doing so.

## **31 Change of Control**

- (a) For the purposes of paragraphs (b) and (c) below:
  - (i) a change of control occurs if the Delivery Partner comes under the control of a third party who did not Control the Delivery Partner at the commencement of this Agreement; and
  - (ii) **Control** has the meaning given to it in section 50AA of the Corporations Act.
- (b) The Delivery Partner must notify GBRF immediately in writing if a change of control of the Delivery Partner occurs.
- (c) If a change of control of the Delivery Partner occurs without the prior written consent of GBRF, GBRF will have the right to terminate the Agreement if:

- (i) it is reasonably satisfied that the change of control will diminish, fetter, limit or otherwise restrict the ability of the Delivery Partner to fulfil its obligations under the Agreement; or
- (ii) a direct competitor of the Delivery Partner gains Control of the Delivery Partner.

## **32 Costs and Duty**

Each party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement. All duty (including stamp duty and any fines, penalties and interest) payable on or in connection with this Agreement and any instrument executed under or any transaction evidenced by this Agreement must be borne equally by the parties.

## **33 Counterparts**

This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

## **34 Entire Agreement**

This Agreement contains the entire agreement between the parties with respect to its subject matter. It sets out the only conduct, representations, warranties, covenants, conditions, agreements or understandings (collectively **Conduct**) relied on by the parties and supersedes all earlier Conduct by or between the parties in connection with its subject matter. Neither party has relied on or is relying on any other Conduct in entering into this Agreement.

## **35 Further Assurances**

The Delivery Partner must do anything necessary or desirable (including executing agreements and documents) to give full effect to this Agreement.

## **36 Governing Law and Jurisdiction**

This Agreement is governed by the laws of the State of Queensland. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.

## **37 No Merger**

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Agreement. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

## **38 No Waiver**

A failure to exercise or a delay in exercising any right, power or remedy under this Agreement does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

## **39 Severability of Provisions**

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

## **40 Electronic Signing**

- (a) A party may (if required) sign this Agreement, and bind themselves accordingly, by electronically incorporating their signature:

- (i) using a digital transaction management platform (such as DocuSign);
  - (ii) using a stylus or finger to sign a pdf on a laptop, tablet or other electronic device; or
  - (iii) pasting an image of their signature into the Agreement.
- (b) The parties agree that it is their mutual intention to print this Agreement after all parties signing electronically have done so and that print-out will constitute an original counterpart of this Agreement.
- (c) Each signatory confirms that their signature appearing in this Agreement, including any such print-out (irrespective of which party printed it), is their personal signature authenticating it.

## Schedule 1

### Item 1 -Party Details

#### GBRF

Party Name:	Great Barrier Reef Foundation
ABN:	82 090 616 443
Street Address:	Level 6, 88 Tribune Street, South Brisbane, QLD, 4101
Contact Name:	[Relevant GBRF contact]
Contact Postal Address:	GPO Box 1362, Brisbane QLD 4000
Contact Telephone:	07 3252 7555
Contact Email (not to be used for giving notices under clause 27(b))	[Relevant GBRF contact's email]
Notice Email (for giving notices under clause 27(b))	<a href="mailto:pmo@barrierreef.org">pmo@barrierreef.org</a>

#### Delivery Partner

Party Name:	[*]
ABN:	[*]
Street Address:	[*]
Contact Name:	[*]
Contact Postal Address:	[*]
Contact Telephone:	[*]
Contact Email (not to be used for giving notices under clause 27(b))	[*]
Notice Email (for giving notices under clause 27(b))	[*]

### Item 2 -Term

Commencement Date:	The date this Agreement is executed by GBRF.
Proposed Project Start Date:	[Insert proposed start date]
Completion Date	[Insert Completion Date]

### Item 3 -Project

Project name:	[Insert Project name]
Project identifier:	[Insert Project identifier]
Portfolio	[Specify the portfolio this Project sits within]

Project Context	[Specify the broader portfolio to which the project relates. Add a short description of the context of the project in the portfolio]
Project Objectives	[Specify the specific outcomes and the operational objectives of the Project] <i>Note, please ensure these objectives are clearly defined. In accordance with clause 4.2, Project Funds can only be spent by the Delivery Partner in order to achieve these Project Objectives</i>
Project partners	[Insert details of any partners where relevant or note as N/A]
Project activities	[Summary of the activities to be undertaken by the Delivery Partner as specified in the Project Work Plan in Annexure A]

#### Item 4 -Project Deliverables and Due Dates/Payment Milestones and Project Funds

DELIVERABLE	DESCRIPTION OF DELIVERABLE/MILESTONE PAYMENT	DELIVERABLE DUE DATE/PAYMENT DUE DATE	MILESTONE PAYMENT AMOUNT (EXCL GST)
<b>1.</b> [Insert relevant event giving rise to any payments. For example, on signature of agreement or acceptance of progress report or on a specific Deliverable being achieved.  Specify any other specific requirements GBRF may have before it will make this payment.  Insert any STOP/GO decision dates here.  [For specific Deliverables – include Deliverable Title and description of Deliverable]  [Where supporting Material is required – include description of supporting Material]  [For Reports – include reporting title, reporting period, From- To, report type and requirements here. Include required date of submission]			\$xx
<b>2.</b> Progress Payment	[Progress Report ]		\$xx
<b>3</b> Final Payment	[Final Report and Financial Acquittal]		\$xx
<b>Total Project Funds</b>			[Total amount that is payable if all milestones are met]

**Item 5 -Funding and Co-Contributions**

Expense Item	Total Funding Requested	Total co-contribution
Personnel Salaries	\$0	\$0
Facilities	\$0	\$0
Fieldwork	\$0	\$0
Project management	\$0	\$0
Consumables / equipment	\$0	\$0
Contractors / consultants	\$0	\$0
<b>TOTAL (AUD), excl. GST</b>	<b>\$0</b>	<b>\$0</b>

Further budget details may be included in the Work Plan document in Annexure A.

**Item 6 -Reporting Metrics**

*To be included as relevant to the Project.*

Metric	Unit of measurement	Reporting Period Result	Life to date or cumulative Result
<b>Planet</b> [example region]			
[Example metric] Area of reefs/ coastal habitats/ Traditional Owner Country protected and/or restored	ha		
Area of reefs/ coastal habitats/ Traditional Owner Country protected and/or restored	ha		

**Item 7 -Insurance**

TYPE	MINIMUM VALUE INSURED	PERIOD TO BE HELD
Workers' Compensation	As required by law	During the Term
Public Liability	[\$20,000,000]	During the Term
Professional Indemnity	[\$10,000,000]	During the Term and for 7 years after the end of the Term
[Other insurance]	[Other insurance]	[Other insurance]

Item 8 -Approved Subcontractors

Party Name	Description of services subcontracted	Date consent lapses
[insert]	[insert]	Completion Date

Item 9 -Special Conditions



**Signed for Great Barrier Reef Foundation ABN 82  
090 616 443** by its authorised representatives:

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Authorised Representative Signature 1

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Print Name

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Position

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Authorised Representative Signature 2

---

Print Name

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Position

## Delivery Partner Agreement

**Executed** in accordance with section 127 of the *Corporations Act 2001* (Cth) by **[insert Delivery Partner]**:

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Director Signature

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Director/Secretary Signature

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Print Name

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Print Name

**Annexure A**

**Project Work Plan**