



Great Barrier  
Reef Foundation

## Independent Contractor Agreement

Great Barrier Reef Foundation

and

[Contractor]

SAMPLE



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This Agreement is made on

## Parties

- 1 **Great Barrier Reef Foundation** (ABN 82 090 616 443) of Level 11, 300 Ann Street, Brisbane QLD 4000 (the *Foundation*);
- 2 **[Contractor Name – Company or Individual]** (ABN [\*]) of **[Address]** (the *Contractor*);

## Recitals

- A The Contractor is engaged in the business of providing the types of services that the Foundation requires.
- B The parties have agreed that the Contractor will provide the Services to the Foundation on the terms and conditions set out in this Agreement.

It is agreed as follows.

## 1 Definitions and Interpretation

### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**Background IP** means any Intellectual Property Rights created prior to the commencement of the Term which are incorporated into, or used in connection with, the Services or the Materials by the Contractor or a Nominated Person.

**BHP Charitable Grant** means the funding agreement between the Foundation and the BHP Billiton Foundation executed on 27 March 2018.

**Commencement Date** means the date set out in Item 1 of **Error! Reference source not found..**

**Confidential Information** includes, 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, known to or in the possession or control of the Contractor or a Nominated Person, relating to the Services, affairs, transactions, customers, business or employees of the Foundation or its Related Bodies Corporate, whether or not the same was originally supplied by the Foundation or one of its Related Bodies Corporate.

**Contractor's Fee** means the fee referred to in Item 2 of **Error! Reference source not found..**

**Department** means the department, agency or authority of the Commonwealth which is from time to time responsible for administering the Grant Agreement between the Foundation and the Commonwealth of Australia.

**Expiry Date** means the date referred to in Item 4 of **Error! Reference source not found..**

**Intellectual Property** means all Intellectual Property Rights, whether arising presently or in the future, created by the Contractor or a Nominated Person as a direct result of the provision of the Services and the Materials.

**Intellectual Property Rights** means all rights conferred by statute, at common law or in equity, and subsisting anywhere in the world in relation to registered and unregistered copyright, inventions (including patents and innovation patents), confidential information (including the right to enforce an obligation to keep information confidential), trade secrets, technical data, know-how, designs (whether or not registrable), registered and unregistered trademarks, circuit layout

designs and rights in relation to circuit layouts, and any other rights resulting from intellectual activity in the industrial, commercial, scientific and related fields which may subsist now or in the future, but excluding non-assignable moral rights and similar non-assignable personal rights of an author.

**Grant Agreement** means the Reef Trust Grant and / or the BHP Charitable Grant (as the circumstances require).

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

**Materials** means anything created, provided, produced or reproduced by the Contractor or a Nominated Person in providing the Services.

**Nominated Person** means each employee of the Contractor who has been nominated by the Contractor and approved in writing by the Foundation to deliver the Services under this Agreement. Each person named in Schedule 1 will be a Nominated Person as at the Commencement Date.

**Personal Information** means personal information and sensitive information as those terms are defined in the Privacy Act.

**Privacy Act** means the *Privacy Act 1988* (Cth) and includes any guidelines issued by the Privacy Commissioner.

**Privacy Law** means any Law that applies to either or both of the parties, Australian or otherwise, and as amended from time to time, which affects privacy or any Personal Information (including its collection, storage, use or processing) including without limitation:

the Privacy Act and corresponding Australian State privacy laws; and

any code of conduct, directives, principles or orders made under the legislation referred to in (a) above.

**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).

**Reef Trust Grant** means the grant agreement between the Foundation and the Commonwealth of Australia represented by the Department of the Environment and Energy executed on 27 June 2018.

**Services** means the services specified in Item 3 of **Error! Reference source not found.**

**Special Conditions** means the additional terms and conditions in Schedule 2.

**Term** means the period during which the Contractor provides the Services, as provided in clause 2.

**Termination Date** means the date on which this Agreement is terminated, whether on the Expiry Date, or under clauses 13.2 or 13.3, or otherwise. To avoid doubt, if this Agreement is terminated prior to the Expiry Date, the *Termination Date* is the date this Agreement terminates and not the Expiry Date.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:

- (a) the singular includes the plural, and the converse also applies;
- (b) a gender includes all genders;

- (c) a reference to a clause or schedule is a reference to a clause of or schedule to this Agreement;
- (d) a reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns; and
- (e) a reference to **currency** is to Australian currency.

## **2 Appointment and Term**

The Foundation appoints the Contractor to provide the Services to the Foundation from the Commencement Date and concluding on the Expiry Date, subject to earlier termination under clauses 13.2, 13.3 or otherwise.

## **3 Relationship of parties**

### **3.1 Independent contractor**

- (a) The Contractor is engaged by the Foundation as an independent contractor.
- (b) Nothing in this Agreement constitutes or deems the Contractor or a Nominated Person to be an employee, agent, partner, joint venture partner or trustee of the Foundation.
- (c) The remuneration, expenses and financial benefits referred to in this Agreement are the only remuneration, expenses and financial benefits to which the Contractor is entitled. Neither the Contractor nor any Nominated Person is entitled to receive from the Foundation any other remuneration, expenses or financial benefits, including those which the Foundation's employees have received, or may be entitled to receive, and including (without limitation) any of the following:
  - (i) government taxes (including payroll tax), duties, levies or charges;
  - (ii) personal, annual, parental or long service leave;
  - (iii) redundancy payments;
  - (iv) superannuation contributions;
  - (v) workers compensation insurance coverage;
  - (vi) public liability, motor vehicle or life insurance;
  - (vii) loans or leases given by the Foundation to its employees; or
  - (viii) bonuses or distributions of cash or shares given by the Foundation to its employees.

### **3.2 No authority to bind the Foundation**

- (a) The Contractor and the Nominated Persons are not authorised or empowered to act as agent for the Foundation for any purpose.
- (b) The Contractor and the Nominated Persons must not, either jointly or separately, incur any liability on behalf of the Foundation or purport to enter into any contract, warranty or representation that would be binding on the Foundation regarding any matter.

## **4 Performance of the Services**

### **4.1 Obligations**

- (a) The Contractor shall provide the Services to the Foundation under the terms of this Agreement and:

- (i) in a thorough, professional, timely and competent manner, and with the degree of skill, care and diligence expected of a contractor experienced in providing the same or similar services;
  - (ii) so that the Services are fit for their intended purpose;
  - (iii) [in accordance with the Special Conditions]; and
  - (iv) in accordance with all reasonable instructions of the Foundation.
- (b) The Contractor shall:
- (i) at all times comply with, and ensure that each Nominated Person complies with, all policies of the Foundation from time to time; and
  - (ii) when requested by the Foundation, report in a full, comprehensive and timely manner to the Foundation about the provision of the Services.
- (c) The Contractor must comply with, and ensure that each Nominated Person complies with all applicable Laws in performing the Services, including:
- (i) the *Competition and Consumer Act 2010* (Cth) and any applicable State or Territory Fair Trading Acts; and
  - (ii) the Privacy Laws.
- (d) The Contractor must, and must ensure that each Nominated Person must not do anything or become involved in any situation which, in the reasonable opinion of the Foundation:
- (i) reflects unfavourably upon the Foundation, the Department and/or the Services;
  - (ii) might negatively impact the image or reputation of the Foundation; or
  - (iii) is in conflict with the Reef Trust Partnership.

#### **4.2 Availability**

- (a) The Contractor must be available and shall keep itself available to provide the Services as and when required by the Foundation during the Term.
- (b) The Contractor must not and must ensure that each Nominated Person must not:
  - (i) engage in conduct; or
  - (ii) refrain from engaging in conduct,if to do so would limit, interfere with or prejudice the proper performance of the Contractor's obligations under this Agreement.
- (c) The Contractor undertakes that all Nominated Persons will be actively engaged in providing the Services.
- (d) The Contractor undertakes to procure the availability of all Nominated Persons to be available for the Term to ensure the Contractor complies with the undertaking in paragraph (c).

#### **4.3 Foundation property**

- (a) The Contractor must exercise care for any Foundation property in the Contractor's control, and will be responsible for the return of the Foundation property in that condition (except for fair wear and tear).
- (b) If any Foundation property is damaged while it is in the control of the Contractor, the Contractor must pay the cost of repairing or replacing the property.

- (c) The Contractor must ensure that any plant, tools, equipment and substances that they supply for use in providing the Services under this Agreement are provided in a safe and serviceable condition and are used in accordance with their operating instructions.

#### **4.4 Nominated Persons**

- (a) The Contractor may delegate work to any Nominated Person.
- (b) The Contractor must not engage any person other than a Nominated Person to perform the Services in its place or on its behalf.
- (c) The Foundation may by written notice require the Contractor to cease involving a Nominated Person in the delivery of the Services. The Contractor must immediately comply with that direction.
- (d) The Contractor must immediately replace any Nominated Person whose involvement in the Services is ceased in accordance with paragraph (c) so as to prevent any disruption to the delivery of the Services from occurring.
- (e) The Contractor may propose to replace any Nominated Person and/or include an additional Nominated Person at any time (the **New Nominated Person**). The Foundation may accept or reject the appointment of the New Nominated Person acting reasonably. The Foundation may request details from the Contractor as to the suitability of the New Nominated Person prior to accepting their appointment which may include (but is not limited to) details of academic qualifications and employment history.

#### **4.5 Qualifications**

The Contractor undertakes that the Contractor and each Nominated Person will be qualified, competent and able to perform the Services.

#### **4.6 Health and Safety**

- (a) The Contractor shall ensure that it complies with, and ensure that each Nominated Person complies with, all relevant work health and safety legislation and any work health and safety practices or policies of the Foundation.
- (b) The Contractor will immediately notify the Foundation upon becoming aware of any health and safety incidents that occur in connection with the provision of the Services, or of any involvement by relevant health and safety authorities in matters relating to the provision of the Services.
- (c) If any Nominated Person engages in conduct that, in the Foundation's reasonable opinion, causes a serious risk to health and safety, the Foundation may direct the Contractor to remove that person from the Foundation's premises and the Contractor must immediately comply with that direction.
- (d) The parties will consult, cooperate and coordinate their activities with each other with respect to health and safety matters.

### **5 Payment**

#### **5.1 Contractor's Fees**

Subject to clause 5.2, the Foundation will pay to the Contractor the Contractor's Fees for the Services that the Contractor provides in accordance with the terms of this Agreement.

#### **5.2 Tax invoice**

- (a) At the conclusion of each month after the Commencement Date, the Contractor must submit to the Foundation a tax invoice, quoting the Contractor's ABN, for Contractor's

Fees with respect to the Services performed by the Contractor during the previous month and for any expenses incurred during that period that may be reimbursed under clause 5.3.

- (b) The Foundation will pay the amount owing in respect of each tax invoice it receives from the Contractor within [30] days of its receipt, to the extent the account is correctly calculated and supplied in accordance with this clause 5.2 provided that the invoice is approved by one of the Foundation's authorised personnel.
- (c) The Contractor will be reimbursed for out-of-pocket expenses reasonably and properly incurred in providing the Services. Those expenses must be evidenced in a manner that the Foundation reasonably requires.

### **5.3 Payment of Nominated Persons**

- (a) The Contractor warrants that:
  - (i) it employs the Nominated Persons; and
  - (ii) it will at all times comply with all Laws, regulations and the terms and conditions of employment that apply to the employment of each Nominated Person, including without limitation immigration Laws, employment Laws, applicable modern awards or enterprise agreements, and work health and safety Laws.
- (b) The Contractor acknowledges its liability for and further warrants that it will pay:
  - (i) each Nominated Person all of the remuneration, payments and other benefits that they are entitled to by Law, including those payable in accordance with the *Fair Work Act 2009* (Cth), any applicable modern awards or enterprise agreements, the Nominated Person's employment agreement and any other terms and conditions of the Nominated Person's employment;
  - (ii) any income tax and payroll tax payable under any other statute imposing any liability for taxation in respect of the Contractor or a Nominated Person;
  - (iii) any superannuation contributions payable on behalf of a Nominated Person to discharge its obligations under the *Superannuation Guarantee (Administration) Act 1992* (Cth).
- (c) The Contractor consents to the Foundation providing the Commissioner of Taxation with the Contractor's name and address and all details of payments made to the Contractor by the Foundation.
- (d) As and when requested by the Foundation, the Contractor must provide the Foundation with a statutory declaration signed by a director or duly authorised representative of the Contractor that declares that the Contractor has complied with each warranty in this clause 5.3.
- (e) The Contractor agrees that the Contractor's Fee includes and has been calculated to be sufficient for the Contractor to pay each of the liabilities in paragraph (b). If for any reason the Foundation is deemed to have any separate liability for those amounts, the Foundation may, to the extent necessary to fulfil its liability, deduct those amounts from the Contractor's Fees and use that deduction to comply with its obligations.

## **6 Indemnity**

The Contractor indemnifies the Foundation, its Related Bodies Corporate and their directors, officers and employees from and against all losses (including consequential losses), claims, expenses, damages and liabilities incurred or sustained by the Foundation (including without

limitation any taxes, fees, costs, levy, charge, fines, penalties and interest) arising from or connected with:

- (a) any breach of this Agreement by the Contractor;
- (b) any breach of any warranty given by the Contractor in this Agreement;
- (c) the Contractor taking or adopting a legal or tax position inconsistent with its legal status as a contractor;
- (d) the Contractor or any Nominated Person being determined or deemed to be an employee of the Foundation or any of its Related Bodies Corporate at common law or under any statute;
- (e) any negligent or wilful act or omission by the Contractor or any Nominated Person;
- (f) any infringement of third party rights in intellectual property by the Contractor or a Nominated Person; or
- (g) any unauthorised use of disclosure by the Contractor or a Nominated Person of confidential information in breach of the rights of any third party.

## **7 Liability**

### **7.1 Foundation Liability**

To the extent permitted by Law, the aggregate liability of the Foundation for any loss, expense or damage suffered or incurred by the Contractor, its Related Bodies Corporate and its personnel in connection with this Agreement (whether under statute, in contract or in tort, including for negligence, or otherwise) is limited to the value of any outstanding Contractor's Fees which are then due and payable and unpaid by the Foundation pursuant to clause 5.1 of this Agreement.

### **7.2 Contractor Liability**

- (a) Subject to the exclusions listed in clause 7.2(b) (below), the liability of the Contractor to the Foundation for any liability, loss, expense or damage suffered or incurred by the Foundation in connection with this Agreement (whether in contract, tort, statute or otherwise) shall be in total limited to \$[#].
- (b) Clause 7.2(a) does not apply in respect of any liability, loss, expense or damage arising under or in connection with:
  - (i) the indemnities set out in clauses 6(c), 6(d), 6(f) or 6(g);
  - (ii) any fraudulent or wilful act or omission by the Contractor or any Nominated Person;
  - (iii) any act or omission taken by the Contractor or any Nominated Person which results in the personal injury or death of a person; or
  - (iv) any act or omission taken by the Contractor or any Nominated person which results in damage to tangible property.

## **8 Conflicts of interest**

### **8.1 No obligations or restrictions**

The Contractor warrants that it and each Nominated Person is not, nor will they come, under any obligation or restriction during the Term that would in any way interfere or conflict with providing the Services.

## **8.2 Freedom to do other work**

The Contractor and the Nominated Persons may engage in any other work and consulting assignments during the Term provided that the work or assignments do not:

- (a) interfere with the ability of the Contractor to perform their obligations under this Agreement; or
- (b) create a conflict of interest for the Contractor.

## **8.3 Conflicts of interest**

- (a) The Contractor must immediately and fully disclose to, and account to the Foundation for, all benefits, gifts or commissions promised to or received by the Contractor or a Nominated Person from any person in connection with the Services.
- (b) The Contractor must immediately and fully disclose to the Foundation any agreement to which it or a Nominated Person is a party or any obligation or interest that the Contractor or a Nominated Person may have that may conflict with the Contractor's obligations to the Foundation under this Agreement.
- (c) If the Foundation is satisfied that a conflict of interest exists or is likely to exist, the Contractor must comply with, and ensure that each Nominated Person complies with, any direction or request of the Foundation about resolving the conflict.

## **9 Confidentiality**

### **9.1 Confidential Information**

- (a) The Contractor recognises that it may have access to Confidential Information in the course of providing the Services under this Agreement. The Contractor must not, and ensure that each Nominated Person must not, either during or after the Term, use or disclose, cause or permit to be used or disclosed, or allow or assist to make it possible for any person to observe or have access to, any Confidential Information, except:
  - (i) with the prior written consent of the Foundation;
  - (ii) in the proper course of providing the Services under this Agreement; or
  - (iii) to the extent required by Law.
- (b) The Contractor will use its best endeavours to prevent the unauthorised use or disclosure of any Confidential Information by a third party.
- (c) The Contractor must immediately notify the Foundation of any suspected or actual unauthorised use, copying or disclosure of Confidential Information.
- (d) The Contractor must provide all reasonable assistance to the Foundation both during and after the Term to assist the Foundation in preventing any unauthorised use or disclosure of the Confidential Information and in taking action to prevent or prosecute the unauthorised use or disclosure.
- (e) The Contractor must provide assistance reasonably requested by the Foundation in relation to any proceedings the Foundation may take against any person for unauthorised use, copying or disclosure of Confidential Information.
- (f) The Contractor will ensure that each Nominated Person who will have access to the Confidential Information has agreed to be bound by obligations of confidentiality and non-use that are at least as protective as those which apply to the Contractor under this Agreement.

## 9.2 Return and Destruction of Confidential Information

The Contractor must, and must ensure that each Nominated Person must, on the termination of this Agreement, or immediately on demand by the Foundation:

- (a) return (at their own expense) to the Foundation anything containing or relating in any way to the Confidential Information;
- (b) permanently delete all Confidential Information (including any information that relates to any Confidential Information) from any electronic storage device of any type; and
- (c) despite anything else in this Agreement, cease to make use of Confidential Information, and confirm promptly when they have done so.

## 9.3 Exceptions

Clauses 9.1 and 9.2 do not apply to the following:

- (a) information after it becomes generally available to the public other than because of:
  - (i) a breach of this Agreement; or
  - (ii) any other misuse or unauthorised disclosure by the Contractor or a Nominated Person of any Confidential Information;
- (b) the disclosure of information in compliance with any applicable Law or legally binding order of any court, government, semi-government authority or administrative or judicial body or the applicable rules of any stock exchange; or
- (c) the use, copying, reproduction, recording or disclosure of information after the Contractor receives it from a third person (other than a Nominated Person) legally entitled to possess the information and to provide it to the Contractor, if that use, copying, reproduction, recording or disclosure accords with the rights or permission lawfully granted to the Contractor by that third person.

## 9.4 Obligations additional

The undertakings in this clause 9 are in addition to and in no way derogate from the obligations on the Contractor and each Nominated Person in respect of secret and confidential information at Law or under any statute.

## 10 Personal Information

### 10.1 Collection, use and disclosure of Personal Information

To the extent that the Contractor handles Personal Information in relation to performing the Services, the Contractor must, and ensure that each Nominated Person must:

- (a) comply with the Privacy Laws;
- (b) in respect of Personal Information that is disclosed from the Foundation to the Contractor, comply at all times with the Privacy Laws as though it were the person subject to the *Privacy Act 1988* (Cth) and any subordinate legislative instruments or regulations; and
- (c) without limiting clause 10.1(a):
  - (i) comply with any other Privacy Law applying to the Contractor or the Foundation; or
  - (ii) if directed by the Foundation, comply with any other Privacy Law as though the Contractor were a person subject to that Privacy Law.

## **10.2 Warranty**

Where the Contractor discloses any Personal Information to the Foundation in the course of providing the Services, it warrants and represents that it has obtained the consent of the relevant individual to the collection of that individual's Personal Information by the Foundation and the Department, and any other third parties to whom such information may be disclosed in connection with the Services and the administration of this Agreement and the Reef Trust Grant.

## **10.3 Reasonable directions**

The Contractor must, and ensure that each Nominated Person must, comply with any privacy policy of the Foundation or any reasonable directions of the Foundation notified to the Contractor in connection with such policies or the collection, use or disclosure of any Personal Information.

## **11 Protection of Intellectual Property and Materials**

### **11.1 Assignment of Intellectual Property and Materials**

- (a) The Contractor hereby assigns to the Foundation upon creation all of the Contractor's rights in the Intellectual Property and Materials (and any Background IP comprised in, or otherwise required to use, the Intellectual Property and Materials).
- (b) The Contractor acknowledges that, because of the assignments under paragraph (a), the Foundation owns and will own all right, title and interest to the Intellectual Property and Materials.
- (c) The Foundation grants a non-transferable, exclusive license to the Contractor to use Intellectual Property and Materials created by the Contractor under this Agreement for any non-commercial purpose.

### **11.2 Assistance**

- (a) During and after the Term and at the request of the Foundation, the Contractor must execute any documents and take such action (and must ensure that any Key Person executes such documents and takes such action) as the Foundation considers necessary or desirable to:
  - (i) assist or allow the Foundation to perfect, enforce, assert or defend its interest in and rights to use, reproduce, publish, perform, exhibit, transmit, communicate or adapt the Intellectual Property and the Materials;
  - (ii) generally give effect to this clause 13; and
  - (iii) assist or allow the Foundation to comply with its obligations under clause 12.2.3 of the Reef Trust Grant which requires the Foundation to provide (or procure) a licence to the Department of Intellectual Property and Material where such Intellectual Property and Material is 'Activity Material' (as that term is defined in the Reef Trust Grant).

including assisting in relation to any litigation commenced by or brought against the Foundation.

### **11.3 Improvements to the Intellectual Property and Materials**

Any improvement to or development of any Intellectual Property or Materials made by or for the Foundation after the Term will be the sole property of the Foundation. The Foundation may apply for, in its name and at its cost, any rights in respect of the improvement or development.

### **11.4 Warranties**

The Contractor and the Key Person warrant the following in relation to the Intellectual Property and Materials:

- (a) the Contractor (and not the Key Person) is the only owner of any Intellectual Property and Materials (including any Background Intellectual Property) assigned under clause 11.1(a) before that assignment;
- (b) no use, disclosure, publication, exhibition, performance, transmission, communication, adaptation or reproduction of any Materials by the Foundation will infringe any intellectual property or other rights of any third person or give rise to any obligation on the Foundation to pay compensation or royalty to any other person;
- (c) the exercise of the rights to any Intellectual Property and Materials by the Foundation will not infringe any intellectual property or other rights of any third person nor give rise to any obligation on the Foundation to pay compensation or royalty to any other person; and
- (d) the Intellectual Property and Materials are not nor will be the subject of the grant of any interest by way of licence to anyone other than the Foundation.

### **11.5 Publications**

Without limitation to the above:

- (a) to the extent that the Intellectual Property and Materials constitute or are incorporated into any 'Investment Strategy', 'Annual Work Plan' or 'Report' (as those terms are defined in the Reef Trust Grant), the Contractor consents to the Department and / or the Foundation publishing the Intellectual Property and Materials on their websites under an 'Open Access Licence' as described in clauses 12.2.4 and 12.2.5 of the Reef Trust Grant; and
- (b) the Contractor otherwise consents to the Department and / or the Foundation publishing any reports, publication or data set (including any location data) produced in the course of providing the Services on the Foundation's website (excluding any Personal Information) or other websites or publicly available sources as notified to the Contractor from time to time.

### **11.6 Present and Future Rights**

The Contractor acknowledges that:

- (a) the assignments in this clause 13 include, as far as possible, all rights in Intellectual Property and Materials that come into existence in the future; and
- (b) the warranties and undertakings in this clause 13 apply to all Intellectual Property and Materials in existence at the date of this Agreement and that come into existence in the future.

### **11.7 Moral rights**

To the full extent permitted by Law:

- (a) the Contractor consents to, and will procure that the relevant author(s) consent(s) to:
  - (i) any use of a Deliverable in accordance with, or as contemplated by, this Agreement without the need to make any identification of the Contractor or the author; and
  - (ii) the Foundation doing anything in relation to a Deliverable that (but for the consents provided in this Agreement) would otherwise infringe any moral rights or similar non-assignable, personal rights that the Contractor or relevant author might otherwise have; and

the Contractor must obtain all necessary consents or waivers from authors of any moral rights which may subsist in any Deliverable to permit the Foundation to exercise its full rights of use and quiet enjoyment to that Deliverable.

## 11.8 Assistance

During and after the Term and at the request of the Foundation, the Contractor must execute any documents and take such action (and must ensure that each Nominated Person executes such documents and takes such action) as the Foundation considers necessary or desirable to:

- (a) assist or allow the Foundation to perfect, enforce, assert or defend its interest in and rights to use, reproduce, publish, perform, exhibit, transmit, communicate or adapt the Intellectual Property and the Materials; or
- (b) generally give effect to this clause 11,

including assisting in relation to any litigation commenced by or brought against the Foundation.

## 11.9 Improvements to the Intellectual Property and Materials

Any improvement to or development of any Intellectual Property or Materials made by or for the Foundation after the Term will be the sole property of the Foundation. The Foundation may apply for, in its name and at its cost, any rights in respect of the improvement or development.

## 11.10 Warranties

The Contractor warrants the following in relation to the Background IP, Intellectual Property and Materials:

- (a) the Contractor (and not any other Nominated Person) is the only owner of any Intellectual Property and Materials licensed under clause 11.2.
- (b) the Contractor is either:
  - (i) the only owner of any Background IP licensed under clause 11.2;
  - (ii) where that Background IP is owned by a third party, the Contractor has the full unencumbered right to provide the licence under clause 11.2 without further action by the Foundation;
- (c) no use, disclosure, publication, exhibition, performance, transmission, communication, adaptation or reproduction of any Materials by the Foundation will infringe any intellectual property or other rights of any third person or give rise to any obligation on the Foundation to pay compensation or royalty to any other person;
- (d) the exercise of the rights to any Background IP, Intellectual Property and Materials by the Foundation will not infringe any intellectual property or other rights of any Nominated Person or any third person nor give rise to any obligation on the Foundation to pay compensation or royalty to any other person;
- (e) the Contractor has procured the consent of any authors of the Background IP, Intellectual Property and Materials for the Foundation, its licensees, contractors, assignees and successors (and any other person authorised by them) to do anything that would otherwise infringe the moral rights of those authors in the Background IP, Intellectual Property and Materials; and
- (f) the Contractor in procuring the required consent under paragraph (e) has complied in all respects with the *Copyright Act 1968* (Cth).

## 11.11 Present and Future Rights

The Contractor acknowledges that the warranties and undertakings in this clause 11 apply to all Background IP, Intellectual Property and Materials in existence at the date of this Agreement and all Background IP, Intellectual Property and Materials that come into existence in the future.

## 12 Insurance

- (a) The Contractor must effect and maintain for the Term:
  - (i) a professional indemnity policy to a minimum value of \$[10,000,000] for any one originating cause for any liability arising from a breach of professional duty, whether owed in contract or otherwise, by reason of any negligent act or omission of the Contractor in providing the Services. The Contractor must maintain the professional indemnity policy for a period of 1 year after the expiry of the Term;
  - (ii) a third party legal liability insurance policy to a minimum value of \$[10,000,000] for any one originating cause for any property damage, bodily injury and death caused by any negligent act or omission of the Contractor in providing the Services; and
  - (iii) workers' compensation insurance in a form prescribed or approved under any workers' compensation legislation applicable to the Contractor.
- (b) In relation to the insurance required by paragraph (a), the Contractor will, if requested by the Foundation, deliver to it:
  - (i) certificates that the insurance is in force;
  - (ii) the insurance policy or policies; and
  - (iii) receipts for payment of the current premiums.

## 13 Termination

### 13.1 Automatic termination on the Expiry Date

This Agreement will terminate automatically on the Expiry Date without the need for further notice by any party.

### 13.2 Termination by Foundation without notice

The Foundation may terminate this Agreement immediately by giving written notice to the Contractor if:

- (a) Any Nominated Person ceases to be actively engaged in the provision of the Services;
- (b) the Contractor or any Nominated Person commits any serious or persistent breach of the provisions of this Agreement;
- (c) the Contractor or any Nominated Person is in default or breach of this Agreement and the Contractor does not remedy that default or breach within 7 days after receiving written notice from the Foundation specifying the default or breach and requiring it to be remedied;
- (d) the Foundation considers that the Services provided were not of a satisfactory standard;
- (e) a Nominated Person is convicted of a criminal offence involving fraud or dishonesty or an offence which, in the opinion of the Foundation, affects the Contractor's obligations under this Agreement;
- (f) the Contractor or a Nominated Person has a conflict of interest that cannot be resolved to the satisfaction of the Foundation;
- (g) the Contractor or a Nominated Person engages in conduct which in the Foundation's opinion would bring the Foundation into disrepute, might negatively impact the image or reputation of the Foundation or is in conflict with the Reef Trust Partnership.

### **13.3 Termination by the Foundation without notice for cessation of funding and / or the termination of a Grant Agreement**

The Foundation may terminate this Agreement immediately by giving written notice to the Contractor, if:

- (a) any grant monies relevant to the provision of the Services cease to be made available to the Foundation under a Grant Agreement for any reason;
- (b) any termination event is triggered under a Grant Agreement relevant to the provision of the Services.

For the avoidance of any doubt, termination under this clause or clause 13.2 above shall be without penalty or the payment of any early termination fee of any kind, but all Contractor's Fees properly due and payable for Services already provided at the time at which this Agreement is terminated under these clauses remain due and payable by the Foundation.

### **13.4 General termination**

- (a) The Contractor may, at any time, terminate this Agreement for any reason by giving the Foundation [30 days] notice.
- (b) Subject to clause 13.2 and 13.3, the Foundation may terminate this Agreement at any time and for any reason by giving the Contractor [30 days] notice.

### **13.5 Payment in lieu of notice**

The Foundation may, at its discretion, pay the Contractor the equivalent amount of the Contractor's Fee in lieu of notice of termination under this Agreement.

## **14 Consequences of termination**

### **14.1 Accrued rights**

Termination of this Agreement does not affect any accrued rights or remedies of either party.

### **14.2 Consequences**

- (a) No party will be entitled to any compensation or damages on the lawful termination of this Agreement.
- (b) On termination of this Agreement, the Contractor must hand over to the Foundation:
  - (i) all materials and information used or produced by the Contractor or a Nominated Person in relation to the Services; and
  - (ii) any motor vehicle, keys and any other property of the Foundation that are or ought to be in the Contractor's possession, custody or control.

### **14.3 Continuing Clauses**

Clauses 6, [7,] 9 and 11 of this Agreement and this clause 14 will continue to apply after termination of this Agreement for any reason.

## **15 GST**

### **15.1 Recovery of GST**

If GST is payable, or notionally payable, on a supply made under or in connection with this Agreement, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the **GST Amount**). Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided. If a tax invoice is

not received prior to the provision of that other consideration, the GST Amount is payable within 10 days of the receipt of a tax invoice. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

## **15.2 Liability net of GST**

Where any indemnity, reimbursement or similar payment under this Agreement is based on any cost, expense or other liability, it shall be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability.

## **15.3 Adjustment events**

If an adjustment event occurs in relation to a supply made under or in connection with this Agreement, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.

## **15.4 Definitions**

Unless the context requires otherwise, words and phrases used in this clause that have a specific meaning in the GST law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) shall have the same meaning in this clause.

## **16 Entire agreement**

This Agreement contains the entire agreement between the parties with respect to its subject matter and supersedes all prior conduct, agreements and understandings between the parties in connection with it.

## **17 Inconsistency**

In the event of any inconsistency between the Special Conditions and this Agreement, the terms in the Special Conditions will prevail, to the extent of the inconsistency.

## **18 Amendment and waiver**

No amendment or variation of, or waiver of a right created under, this Agreement is valid or binding on a party unless made in writing executed by the party or parties to be bound.

## **19 Assignment and subcontracting**

Subject to this Agreement, the Contractor must not without the prior written permission of the Foundation assign, subcontract, transfer, mortgage, charge or encumber all or any part of its rights, benefits or obligations under this Agreement.

## **20 Governing law and jurisdiction**

This Agreement is governed by the laws of the State of Queensland. Each party submits to the exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Agreement.

## **21 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.

SAMPLE

**Executed** as an agreement in [insert city].

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

\_\_\_\_\_  
Authorised Representative Signature 1

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Position

\_\_\_\_\_  
Authorised Representative Signature 2

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Position

**Executed** in accordance with section 127 of  
the *Corporations Act 2001* (Cth) by the **Great  
Barrier Reef Foundation ABN 82 090 616  
443**:

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

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

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

---

Print Name

---

Print Name

---

Date

**[Note to the Foundation:** If the Contractor is an individual, use this execution clause. Otherwise, this can be removed.]

**Signed by [Contractor]** in the presence of:

---

Witness Signature

---

Signature

---

Print Name

---

Print Name

---

Date

## Schedule 1

<b>Item 1</b>	<b>Commencement Date</b>	[*]
<b>Item 2</b>	<b>Contractor's Fees</b>	[*]
<b>Item 3</b>	<b>Services</b>	(a) [*] (b) [*]
<b>Item 4</b>	<b>Expiry Date</b>	[*]
<b>Item 5</b>	<b>Nominated Persons at the Commencement Date</b>	[*]

## Schedule 2

### 1 Acknowledgement

- (a) The Contractor acknowledges that the arrangements under this Agreement are funded at least in part by grant monies received by the Foundation under the Reef Trust Grant.
- (b) The Reef Trust Grant contains a number of obligations that must be flowed through to any Contractor providing goods and services to the Foundation, where monies obtained from the Reef Trust Grant will be expended.

### 2 WHS Requirements and Notifiable Incidents

- (a) Prior to undertaking any of the Services, the Contractor must:
  - i. develop and implement appropriate and comprehensive WHS policies and procedures for the performance of the Services;
  - ii. conduct a WHS risk assessment for the Services;
  - iii. identify the WHS risks arising from the Services and how those risks will be managed;
  - iv. take all reasonable steps to manage those identified WHS risks before the Services commence;
  - v. identify any specific training or qualifications that the Contractor, or Nominated Person of the Contractor, require to perform the Services to the Foundation and the Contractor has verified that they have the required training and qualifications before they commence the Services; anddocument the Contractor's conduct of each of the steps in paragraphs i to v.
- (b) In this paragraph 2, **Notifiable Incident** has the meaning given by section 35 of the *Work Health and Safety Act 2011* (Cth) and includes the death of a person, a serious injury or illness of a person, or dangerous incident.
- (c) The Contractor agrees to report to the Foundation any significant WHS risks that it identifies, including as a result of conducting the process in paragraphs i to v, as well as any Notifiable Incidents. If requested by the Foundation, the Contractor agrees to provide the Foundation with information (including evidence of the Contractor's completion of the steps in paragraphs i to v) relating to those WHS risks and Notifiable Incidents.

### 3 Compliance and reporting

The Contractor must:

- (a) (**Government Approvals**) obtain all licences, permits, consents, approvals, assurances, authorisations and any other necessary or advisable requirements for the provision of the Services and the performance of its obligations under this Agreement (collectively, **Government Approvals**). The Contractor must keep all Government Approvals in full force and effect during the Term and provide the Foundation with copies on request;
- (b) (**directions**) comply with all lawful and reasonable directions issued by the Foundation that are reasonably necessary to assist the Foundation in complying with any obligations in relation to the Reef Trust Grant; and
- (c) (**requests for information etc**) comply, and assist the Foundation to comply, with all requests for information, directions, orders, subpoenas, and/or warrants issued to the Foundation or the Contractor by any Government Agency, or any other request for information that is otherwise authorised or required by Law.

## 4 Privacy

- (a) In this paragraph 3, **Eligible Data Breach** has the same meaning as it has in the Privacy Act.
- (b) If the Contractor 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 Contractor as a result of this Agreement or its performance of the Agreement, the Contractor agrees to:
- notify the Foundation in writing as soon as possible, which must be no later than within 3 days; and
- carry out an assessment in accordance with the requirements of the Privacy Act.
- (c) Where the Contractor is aware that there are reasonable grounds to believe there has been, or where the Foundation notifies the Contractor that there has been, an Eligible Data Breach in relation to any Personal Information held by the Contractor as a result of this Agreement or its performance of the services, the Contractor agrees to:
- 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
- take all other action necessary to comply with the requirements of the Privacy Act.

**[Note to the Foundation: Please insert the following Special Conditions if the Contractor is being engaged to assist with projects relevant to the BHP Grant.]**

## 5 Definitions

### 5.1 Agreement definitions

Words which are defined in the Agreement and which are used in this Schedule have the same meaning in this Schedule, unless the context requires otherwise. These defined words include 'Contractor', 'Foundation', 'Contractor's Fees', 'Grantor' and 'Project'.

### 5.2 Definitions for Schedule

In this Schedule, the following definitions apply, unless the context requires otherwise.

**Agreement** means the agreement between the Foundation and the Contractor for the provision of the Services.

**BHP Related Entity** includes:

- (a) BHP Billiton Plc;
- (b) BHP Billiton Limited;
- (c) any legal entity Controlled by BHP Billiton Plc or BHP Billiton Limited;
- (d) any legal entity Controlled by BHP Billiton Plc and BHP Billiton Limited taking into account the aggregate percentage interests of their respective direct or indirect shareholdings in that legal entity; or
- (e) any legal entity Controlling or Controlled by the legal entities referred to in paragraphs (a) – (d) above.

**Sub-Contractor** means a goods or services contractor, including a consultant or advisor, who is engaged by the Contractor to participate or be involved in the Project.

**Control** means the following:

- (a) a body corporate is controlled by one or more legal entities if:

- (i) securities of the body corporate to which are attached more than 50% of the votes that may be cast to elect directors of the body corporate are beneficially owned by the legal entity or legal entities; and
- (ii) the votes attached to those securities are sufficient to elect a majority of the directors of the body corporate;
- (b) an association, partnership or other organization is controlled by one or more legal entities if:
  - (i) more than 50% of the partnership or other ownership interests, however designated, into which the association, partnership or other organization is divided are beneficially owned by the legal entity or legal entities; or
  - (ii) the legal entity or legal entities are able to direct the business and affairs of the association, partnership or other organization or the appointment of its managers or management, whether through or as a result of ownership of voting interests, by contract, or otherwise;
- (c) a body corporate, association, partnership or other organization is controlled by one or more legal entities if the legal entity or legal entities have, directly or indirectly, control in fact of the body corporate, association, partnership or other organization; and
- (d) a body corporate, association, partnership or other organization that controls another body corporate, association, partnership or other organization is deemed to control any body corporate, association, partnership or other organization that is controlled or deemed to be controlled by the other body corporate, association, partnership or other organization.

**Project** means the project being conducted by the Foundation using funds granted by the Grantor, to which the Project relates.

**Government Official** means:

- (a) an individual who is employed by or acting on behalf of an Authority, government-controlled entity or public international organization;
- (b) a political party, party official or candidate;
- (c) an individual who holds or performs the duties of an appointment, office or position created by custom or convention to represent others; or
- (d) an individual who holds himself out to be the authorized intermediary of any person specified in paragraphs (a) – (c) above.

**Grantor** means the BHP Billiton Foundation.

**Personnel** means an entity's directors, employees, agents, Sub-Contractors.

**Related Entity** of any legal entity means any other legal entity who, directly or indirectly, Controls, or is Controlled by, or is under common Control with, such legal entity.

## 6 Acknowledgement

- (a) The Contractor acknowledges that the arrangements under this Agreement are funded at least in part by grant monies received by the Grantor under the grant agreement between the Grantor and the Great Barrier Reef Foundation (the **BHP Grant**).
- (b) The BHP Grant contains a number of obligations that must be flowed through to any Contractor providing goods and services to the Foundation, where monies obtained from the BHP Grant will be expended.

## 7 Representations and Warranties

The Contractor represents, warrants and covenants to the Foundation that, during the term of this Agreement:

- (a) the receipt and/or use of the Contractor's Fees by the Contractor does not and will not violate any applicable laws, including:
  - (i) the United States Foreign Corrupt Practices Act;
  - (ii) the Australia Criminal Code 1995 (Cth);
  - (iii) the United Kingdom Bribery Act (2010);
  - (iv) trade, economic or financial sanctions laws, regulations, executive orders or restrictive measures administered, enacted, imposed or enforced by OFAC, the U.S. Department of State, or any other U.S. Authority (including 31 C.F.R. Subtitle B, Chapter V; the Iran Sanctions Act of 1996; the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010; Executive Order 13590; Section 1245 of the National Defense Authorization Act for Fiscal Year 2012; Executive Order 13599; Executive Order 13608; Executive Order 13622; the Iran Threat Reduction and Syria Human Rights Act of 2012; the Iran Freedom and Counter Proliferation Act; and Executive Order 13645);
  - (v) trade, economic or financial sanctions, laws, regulations, or restrictive measures administered, enacted, imposed or enforced by the United Nations Security Council, the United States, Australia, European Union or any of its member states (including the United Kingdom and Her Majesty's Treasury); and
  - (vi) applicable financial record-keeping and reporting requirements, and any applicable related or similar statutes, rules, regulations or guidelines, issued, administered or enforced by any Authority having competent jurisdiction over it,

(all such laws in paragraphs (i) through (vi) above, **Anti-Corruption & Trade Laws**).

- (b) neither the Contractor nor any of its Personnel will authorize, offer, promise or give anything of value (including a facilitation payment) to:
  - (i) any Government Official, in order to influence official action relating to either:
    - (A) a BHP Related Entity;
    - (B) the Grantor or a Related Entity;
    - (C) the Foundation or a Related Entity; or
    - (D) the Project;
  - (ii) any person (whether or not a Government Official) to influence that person to act in breach of a duty of good faith, impartiality or trust (**Acting Improperly**) in relation to the Grantor, any BHP Related Entity, the Foundation, the Project, to reward the person for Acting Improperly or in circumstances where the recipient would be Acting Improperly by receiving the thing of value; or
  - (iii) any other person while knowing, or while he or she ought reasonably to have known, that all or any portion of the money or other thing of value that was authorized, offered, promised or given or will be offered, promised or given to:
    - (A) a Government Official in order to influence or reward official action relating to any BHP Related Entity, the Grantor or a Related Entity, the Foundation or a Related Entity or the Project; or
    - (B) any person in order to influence or reward such person for Acting Improperly;

- (c) the Contractor will ensure that neither the Contractor, nor any of its Related Entities nor their Personnel will receive or agree to accept any payment, gift or other advantage which violates any Anti-Corruption & Trade Laws;
- (d) the Contractor, any Related Entity of the Contractor, the Contractor's Sub-Contractors and any Related Entity of Contractor's Sub-Contractors are not directly or indirectly owned or Controlled, in whole or in part, by any Government Official in a position to take or influence official action for or against any BHP Related Entity, the Grantor or a Related Entity, the Foundation or a Related Entity or the Project, and no officer, director, employee, shareholder or member of the Contractor is, or currently expects to become, such a Government Official during the term of this Agreement;
- (e) the Contractor will ensure that it and:
  - (i) any of its employees working on, participating in or involved in the Project; and
  - (ii) any of its Sub-Contractors,sign a copy of the document entitled "BHP Billiton Foundation's Anti-Corruption Expectations for Project Partner Organizations", in the form attached as Annexure 1 and abide by such document; and
- (f) the Contractor will comply with, and ensure that all its Sub-Contractors comply with, the Zero Tolerance Requirements attached hereto as Annexure 2.

## **8 Insurance**

The Contractor must procure and maintain the insurances specified in Annexure 3 in the minimum amounts specified in Annexure 3, and ensure that any insurance required to be procured and maintained under this clause 8 (other than statutory insurances under Annexure 3, paragraphs (a) and 0) is effected with reputable insurers with a financial security rating of A- or better by Standard & Poor's, or the equivalent rating with another recognised rating agency.

## Annexure 1

### BHP Billiton Foundation's Anti-Corruption Expectations for Project Partner Organizations

The Grantor is committed to compliance with anti-corruption laws worldwide. In order to fulfil that commitment, the Grantor has adopted policies that apply to Grantor employees, agency contractors, and project partner organizations. This document describes the Grantor's expectations for project partner organizations once an agreement has been signed. If you have any questions about our expectations, please ask your Grantor contact immediately.

#### 1 The Grantor's Policy

Most countries have laws prohibiting the offer, promise or making of payments or gifts of other things of value to government officials to influence their actions. Many countries also extend these prohibitions to cover bribes to private parties as well as bribes to government officials.

In keeping with these laws, the Grantor prohibits authorizing, offering, giving or promising anything of value directly or indirectly to a government official to influence official action or to anyone to induce them to perform their work duties disloyally or otherwise improperly. This prohibition also extends to so-called "facilitation payments" even though such payments may not be illegal under anti-corruption laws of a small number of countries.

#### 2 The Grantor's Expectations

The purpose of this document is to explain what the Grantor expects of you when you are working for it, on its behalf, or on behalf of a project partner organization of the Grantor:

- (a) First, it is imperative that you abide by all applicable anti-corruption laws and the Grantor's policy as stated above, and that you not authorize, offer, give or promise anything of value directly or indirectly (through an agent, contractor or other intermediary) to a government official in order to influence official action or to anyone to influence that person to act in breach of a duty of good faith, impartiality or trust ("**Acting Improperly**"), to reward the person for Acting Improperly, or in circumstances where the recipient would be Acting Improperly by receiving the thing of value. This could include gifts, travel, entertainment, meals or other things of value. Consistent with applicable laws, the Grantor defines the term "government official" very broadly to include:
  - (i) anyone employed by or acting on behalf of a government, government-controlled entity or public international organization;
  - (ii) any political party, party official or candidate;
  - (iii) any individual who holds or performs the duties of an appointment, office or position created by custom or convention to represent others; and
  - (iv) any person who holds him/herself out to be the authorized intermediary of a government official.
- (b) Second, you are expected to exercise caution in providing gifts, travel, entertainment, meals or anything else of value to government officials or other individuals in a position to take or influence action favoring the Grantor or a BHP Related Entity. If something of value is to be provided at all, a legitimate business purpose must always exist, the value and nature must be appropriate to the circumstances, and all local law restrictions on gifts, entertainment, and travel that can be provided to and accepted by government officials must be adhered to at all times. If in doubt, don't do it.
- (c) Third, as noted above, the Grantor prohibits payment of facilitation payments (small payments made to government officials to expedite routine actions). You may not pay them when working on the Grantor's behalf or on behalf of a project partner organization

of the Grantor. You are also not authorized to make any charitable donations, grants or political donations on the Grantor's behalf.

- (d) Fourth, you are expected to keep and maintain accurate and reasonably detailed books and financial records that reflect payments made under, and in connection with the Grantor's projects.
- (e) Fifth, it is imperative that you:
  - (i) not subcontract or delegate your rights, obligations or performance responsibilities to or share fees with third parties without the Grantor's consent; and
  - (ii) notify the Grantor if a government official becomes an owner, officer, director, employee or shareholder or member after the contract is signed.
- (f) Finally, the Grantor expects that you will communicate these expectations to all third parties who will be performing services for or on behalf of the Grantor under the contract.

Acknowledged and Agreed for and on behalf of the Contractor by its duly authorised officer:

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

Acknowledged and Agreed by Sub-Contractor of the Contractor:

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

## Annexure 2

### Zero Tolerance Requirements

ZERO TOLERANCE REQUIREMENTS	
Category	Requirements
Child Labor	Children must not be hired to work before completing their compulsory education (as determined by applicable local laws). Notwithstanding local requirements, the minimum age for entry into employment must not be younger than 15 years of age.
Forced or Compulsory Labor	The Contractor must ensure there is no forced, bonded or involuntary labor.
Inhumane Treatment of Employees	The Contractor must create and maintain an environment that treats all employees with dignity and respect and must not use any threats of violence, sexual exploitation or abuse, verbal or psychological harassment or abuse.
Living Wage	<ul style="list-style-type: none"> <li>Wages and benefits paid for a standard working week must satisfy, at a minimum, national legal standards or local industry benchmarks, whichever is higher.</li> <li>In nation states where no minimum wage legislation exists, Contractor must seek to establish a living wage that ensures an adequate standard of living for all its employees and their dependents.</li> </ul>
Workplace Health and Safety	<p>The Contractor must ensure:</p> <ul style="list-style-type: none"> <li>the provision of safe and healthy working facilities and appropriate precautionary measures to protect employees from work-related hazards and anticipated dangers in the workplace.</li> <li>workers receive regular and recorded health and safety training.</li> <li>accommodation, where provided, is clean, safe, and meets the basic needs of the workers.</li> </ul> <p>The Contractor must:</p> <ul style="list-style-type: none"> <li>follow all relevant legislation, regulations and directives in the countries in which the Agreement activities are undertaken to ensure a safe and healthy workplace;</li> <li>ensure, at a minimum, systems are implemented for the prevention of occupational injury and illness including, at a minimum, standards for fire safety; emergency preparedness and response; industrial hygiene; lighting and ventilation; machinery safeguarding; reporting and investigation of occupational injuries and illness; and reasonable access to potable water; and</li> <li>assign responsibility for <b>health</b> and <b>safety</b> to a management representative.</li> </ul>
Freedom of Association	The Contractor must adopt an open attitude towards the legitimate activities of trade unions. Workers representatives must be allowed to carry out their legitimate representative functions in the workplace and must not be discriminated against.
World Heritage sites and IUCN Protected Areas	Materials must not be sourced from <a href="#">World Heritage listed sites</a> or <a href="#">IUCN Protected Areas</a> .

## ZERO TOLERANCE REQUIREMENTS

Biofuels	Biofuels must only be sourced from global companies that have policies or standards for the sustainable sourcing of biofuel components.
Corruption, Bribery and Extortion	<p>The Grantor prohibits bribery and corruption. This prohibition applies equally as well to the Contractor and other <b>third parties</b> who deal with the Contractor in relation to the Project. Specifically, our policy prohibits the offer, promise, gift or authorization of the giving of a payment or anything else of value, directly or through an intermediary, to:</p> <ul style="list-style-type: none"> <li>• a government official in an effort to influence official action; or</li> <li>• anyone else in order to induce that person to perform his or her job function improperly to the business advantage of the Grantor or a BHP Related Entity.</li> </ul> <p>Under no circumstances are kick-backs, secret commissions or similar payments permitted. Payments that are prohibited generally include cash payments and can include other things such as gifts, hospitality, travel, favors, business opportunities and charitable donations, depending on the circumstances.</p> <p>A government official is a broad term which includes any officer or <b>employee</b> of a government at any level, government-owned or controlled entity or enterprise, or public international organization.</p> <p>All contract related transactions and payments, including those in connection with gifts and hospitality and other expenditures, must be accurately recorded in reasonable detail in the books and records of any supplier who works on behalf of the Grantor.</p>
Compliance with Laws	The Contractor must comply with the letter of the law and, where it is clear, the intent of all laws and regulations relating to their business conduct. This includes understanding laws and regulations relevant to their work and complying with legal requirements of the country they are working in.
Non-Discrimination	<p>The Contractor must:</p> <ul style="list-style-type: none"> <li>• provide a work environment in which everyone is treated fairly and with respect;</li> <li>• ensure employment is offered on the basis of merit; and</li> <li>• ensure decisions regarding employment are not based on attributes unrelated to job performance (including race, color, gender, religion, personal associations, national origin, age, disability, political beliefs, marital status, sexual orientation and family responsibilities).</li> </ul> <p>Decisions relating to suppliers, customers, contractors and other stakeholders must also be based on merit.</p>

### Annexure 3

#### Required Insurance

<b>Workers' Compensation</b>	As required to comply with legislation in the country(ies) in which the Project is undertaken
<b>Employer's Indemnity or Liability Insurance</b>	Minimum amount: AU\$1.3M per occurrence
<b>Public and Product Liability/ General Liability Insurance</b>	Minimum amount: AU\$1.3M per occurrence
<b>Motor Vehicle Insurance</b>	Minimum amount: AU\$1.3M per occurrence
<b>Umbrella Liability Insurance</b>	Minimum amount: AU\$10M per occurrence and in the annual aggregate in excess of employer's indemnity, public and product liability, general liability and motor vehicle insurance
<b>Professional Indemnity Insurance</b>	Minimum amount: AU\$1.3M
<b>Other Insurances</b>	As required to comply with legislation in the country(ies) in which the Project is undertaken

- (a) workers' compensation (where required by applicable law, including occupational disease if required by applicable law) and employer's indemnity insurance (called employer's liability insurance in some jurisdictions) which complies with the applicable law, covering all claims and liabilities under any law and, where claims (such as common law claims) are allowed outside of the statutory scheme, for employer's liability for such claims, for not less than the amount for each occurrence set out in this Annexure 3, for the death of or injury to:
- (i) any person employed by the Contractor in connection with this Agreement; and
  - (ii) any person who is a worker of the Contractor or any of its Sub-Contractors in connection with this Agreement and who may be deemed under any law to be a worker of the Foundation or the Grantor;
- (b) public and product liability insurance written on an occurrence basis with a limit of indemnity of not less than the greater of the amount set out in this Annexure 3 or the minimum amount prescribed by law for each and every occurrence and, in the case of product liability, no less than the amount set out in this Annexure 3 in the aggregate during any one twelve (12) month period of insurance which covers the liability of the Contractor and any of the Contractor's Personnel (including to the Foundation) in respect of:
- (i) loss of, damage to, or loss of use of, any real or personal property; and
  - (ii) the bodily injury of, disease or illness (including mental illness) to, or death of, any person,
- arising out of the performance of or in connection with this Agreement by the Contractor.
- (c) motor vehicle insurance, covering all mechanically propelled vehicles that are registered, or capable of being registered, for road use and are at any time used in connection with this Agreement including:

- (i) insurance that is compulsory under applicable laws governing the use of motor vehicles and liability for personal injury or death, and
- (ii) liability insurance for third party property damage with a sum insured of not less than the amount set out in this Annexure 3 per occurrence,

such insurance must provide that all insurance agreements and endorsements name the Contractor and the Foundation for their respective rights and interests;

- (d) professional indemnity insurance of not less than the amount set out in this Annexure 3 for each claim and in the aggregate for all claims arising in any one twelve (12) month period of insurance, covering the liability of the Foundation for any professional services provided by the Contractor and the Contractor's Personnel under this Agreement;
- (e) property insurance covering the Contractor's property and equipment against the risks of loss, damage or destruction by all insurable risks to the reasonable satisfaction of the Foundation for not less than its market value; and
- (f) such other insurances as are stated in this Agreement or in the above table in this Annexure 3.

SAMPLE