

Great Barrier Reef Foundation

[Funding Recipient]

Subgrant Agreement

Draft 25/2/19 | version 1

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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 (**GBRF**).
- 2 **[Funding Recipient]** (ACN [*)] registered in [*] incorporated in [*] of [*] (the **Funding Recipient**).

Recitals

- A The Department of the Environment and Energy and GBRF entered into the Grant Agreement on 27 June 2018.
- B The Department administers the Reef Trust, which is funded from the Reef Trust Special Account (**Special Account**) under the Reef Trust Special Account Determination (**Determination**).
- C The Department has agreed to fund the Activity from the Special Account, and GBRF has agreed to perform the Activity, to further the objectives of the Reef Trust in accordance with the Determination. The Grant Agreement stipulates the terms and conditions under which GBRF will have access to the funds from the Special Account for the purposes of performing the Activity.
- D As part of the agreement with the Department, GBRF is permitted to subcontract the performance parts of the Activity. GBRF intends to provide part of the Grant Amount to the Funding Recipient in order to complete the Project which forms part of the Activity.

It is agreed as follows.

1 Definitions and Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

Activity includes the performance of all of the Components (including the provision of relevant Project Material) as described in the Grant Agreement.

Approved Financial Institution means a financial institution registered in Australia and operating as a bank, credit union or building society.

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

Builder has the meaning given in section 43(8) of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

Building Work has the meaning given in section 6 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

Business Day means a weekday other than a public holiday in the State or Territory specified in Brisbane, Queensland.

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

Completion Date means the date specified in Item 2 of Schedule 1.

Component means a component of the Activity described as such in the Grant Agreement and includes any projects (including the Project) for that component.

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

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

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

Department Confidential Information means:

- (a) any confidential information disclosed to the Funding Recipient by GBRF which is communicated as being confidential information of the Department;
- (b) any confidential information disclosed to GBRF under the Grant Agreement which is agreed with the Department as being confidential; and / or
- (c) any confidential information of the Department the Funding Recipient ought reasonably to know is confidential in nature.

Due Dates means those due dates specified in Item 4 of Schedule 1.

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

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 neglect 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.

Funding Recipient 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.

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:

- (a) provided by GBRF to the Funding Recipient for the purposes of this Agreement; or
- (b) derived at any time from the Material referred to in paragraph (a),

excluding Project Material.

Grant means:

- (a) the money payable by the Department to GBRF under the Grant Agreement for the Components that exist as at the commencement date of the Grant Agreement; and

- (b) any additional amounts payable by the Department to GBRF under the Grant Agreement for an additional Component as specified in a further agreement between the Department and GBRF.

Grant Agreement means the agreement between the Department and GBRF executed on 27 June 2018 governing the use of the Grant.

Great Barrier Reef Marine Park Authority means the non-corporate Commonwealth entity established by section 6 of the *Great Barrier Reef Marine Park Act 1975* (Cth).

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

GST has the meaning in the GST Act.

GST Act refers to the *A New Tax System (Goods and Services Tax) Act 1999*.

Information Officer means any of the information officers appointed under the *Australian Information Commissioner Act 2010* (Cth) when performing privacy functions as defined in that Act.

Intellectual Property Rights includes:

- (a) all copyright (including rights in relation to phonograms and broadcasts);
- (b) all rights in relation to inventions, plant varieties, trade marks (including service marks), designs, circuit layouts; and
- (c) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

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

- (d) Moral Rights;
- (e) the rights of performers; or
- (f) rights in relation to confidential information.

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, or ordinance 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.

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

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.

Notifiable Incidents 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.

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:

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

but does not include false attribution of authorship.

Personal Information has the same meaning as it has in the Privacy Act and includes Sensitive Information (as defined in the Privacy Act)..

Personnel means:

- (a) in relation to the Funding Recipient – any natural person who is a director or other officer, employee, contractor, agent or professional advisor of the Funding Recipient; 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 Subcontractor.

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

Project means the project and / or activity described in Item 3 of Schedule 1.

Project Funds means the amount specified in Schedule 1, which forms part of the Grant, which GBRF provides to the Funding Recipient to conduct the Project pursuant to this Agreement, and includes any interest and other income the Funding Recipient earns on that amount.

Project Material means any Material and project-specific data:

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

Project Period means the period between the Commencement Date and the earlier of:

- (a) the completion of the Project; and
- (b) 30 June 2024.

Records includes documents, information and data stored by any means and all copies and extracts of the same.

Reef Trust means the Australian Government programme of that name administered by the Department and under which the Grant is provided.

Subcontractor means:

- (a) in relation to the Funding Recipient - any person (including a volunteer) engaged by the Funding Recipient to perform part of the Project; or
- (b) in relation to GBRF – any person engaged by GBRF to undertake part of the Activity.

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

1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation. 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. 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 property 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, commencing on the Commencement Date.

2 Duration of the Agreement

2.1 Completion Date

This Agreement commences on the Commencement Date and, unless terminated earlier, expires on the last day of the Project Period.

3 Funding Recipient's obligations

3.1 Performance of the Project

The Funding Recipient 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 and Legislation relevant to the Project;
 - (iii) obtain all permits relevant to the Project;
 - (iv) GBRF's reasonable requests, directions and requirements from time to time in relation to the Project, to GBRF's satisfaction; and
 - (v) high standards of professional care and diligence of the industry to which the Funding Recipient belongs; and
- (c) not do anything or become involved in any situation which, in the reasonable opinion of GBRF, reflects unfavourably upon GBRF, the Department and / or the Project; and
- (d) maintain and comply with all relevant permits, regulatory requirements and obtain appropriate ethical clearances (including as prescribed by the Funding Recipient's organisational research rules for the Project). Responsibility for ensuring that such clearances have been obtained remains with the Funding Recipient.

3.2 Expenditure of the Project Funds

- (a) The Project Funds specified in Schedule 1 for the Project may only be spent on that Project in accordance with Schedule 1.
- (b) The Funding Recipient must:
 - (i) not use more than ten per cent (10%) of the Project Funds for the administration of the Project; and
 - (ii) hold the Project Funds in an account in the Funding Recipient's name and in the Funding Recipient's sole control, with an Approved Financial Institution.
- (c) If the Funding Recipient uses the Project Funds:
 - (i) for any purposes other than for the purposes of the Project in accordance with this Agreement; or
 - (ii) in breach of clause 3.2(b)(i),

without prejudice to GBRF's other rights and remedies under this Agreement otherwise at law GBRF may, by written notice, require the Funding Recipient to refund the misapplied Project Funds including any Interest on it from the date of the notice until it is paid in full (**Amount**).

- (d) GBRF is not liable to the Funding Recipient or any other person for any costs overruns, or debts that the Funding Recipient incurs, in relation to the Project.
- (e) GBRF may terminate this Agreement in accordance with clause 16.2 for any breach of this clause 3.2.
- (f) The Funding Recipient agrees to acknowledge the provision of the Project Funds by the Department from the Reef Trust Special Account in accordance with the document entitled 'Australian Government Reef Trust and Reef Programme Acknowledgement Guide' issued by the Department from time to time, which details the acknowledgement and communications requirements for activities funded by the Commonwealth through the Reef Trust.

3.3 Financial accounts

The Funding Recipient must:

- (a) keep financial accounts and records relating to the Project that identifies all receipts and payments related to the Project and retain those records for a period of no less than seven (7) years after the termination of this Agreement;
- (b) provide a financial statement to GBRF within 60 days of the end of each Financial Year / upon completion of the Project:
 - (i) showing the Funding Recipient's receipt and expenditure of the Project Funds for the relevant Project; and
 - (ii) that is certified by the Funding Recipient's Director, Chairperson, CEO or CFO that the Project Funds have been spent on that Project in accordance with the requirements of this Agreement.

3.4 Reports

- (a) The Funding Recipient must submit the reports by the dates and containing the information described in Item 5 of Schedule 1.
- (b) The Funding Recipient must provide to GBRF any other information or material about the Funding Recipient, its Personnel, the Project, the Project Funds or any other matter in connection with this Agreement or in connection with GBRF's obligations under the Grant Agreement when requested in writing by GBRF within a reasonable time specified by GBRF in its request.

3.5 Due Dates

- (a) The Funding Recipient must meet all Due Dates relevant to the Project set out in this Agreement.
- (b) The Funding Recipient must notify GBRF if at any time it reasonably anticipates that a Due Date may not be met.

3.6 Management of the Project and Project Funds

- (a) The Funding Recipient agrees that a person specified in this clause 3.6 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;
 - (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; or
 - (v) a person who is or was a Director, or occupied an influential position in the management or financial administration, of an organisation that has failed to comply with the grant requirements or obligations owed to the Commonwealth.
- (b) Where a person falls or is discovered as falling within any of clauses 3.6(a)(i) to (a)(v), the Funding Recipient will be in breach of clause 3.6(a) if the Funding Recipient does not immediately remove the person from his or her role in the management of the Project or the Project Funds.
 - (c) The Funding Recipient agrees to notify GBRF if and / or when the removal of the person has occurred.

4 Payment of the Project Funds

- (a) Subject to the Funding Recipient's ongoing compliance with this Agreement, GBRF will pay the Project Funds into the account described in clause 3.2(b)(ii) on the dates and subject to the Milestones specified in Item 5 of Schedule 1.
- (b) GBRF may in its absolute discretion, withhold payment of part or all of the Project Funds to the Funding Recipient until GBRF is satisfied that the Funding Recipient has complied with its obligations under this Agreement (including receiving a valid Tax Invoice).
- (c) If GBRF notifies the Funding Recipient that the funds to be paid under clause 4(a) are not available, then the parties agree that this Agreement will terminate with immediate effect. Clause 16.1 will apply in the event of termination under this clause 4(c).

5 Acknowledgement and publicity

- (a) The Funding Recipient acknowledges that GBRF and / or the Department may publicise and report on the award of the Project to the Funding Recipient by stating the Funding Recipient's name, the amount of the Project Funds and the title and a brief description of the Project in media releases, general announcements about the Project, annual reports or through any other means as determined by GBRF or the Department.
- (b) The Funding Recipient must not release a public statement or publish promotional material in any media about the Project unless:
 - (i) at least 10 Business Days before the proposed statement or publication, the Funding Recipient provides to GBRF a copy of the proposed statement or publication; and

- (ii) the Funding Recipient complies with all directions, requests, amendments or conditions that GBRF may require by written notice to the Funding Recipient (including the direction to not publish the proposed public statement or promotional material).

6 Intellectual Property Rights

6.1 Rights in Project Material

- (a) Subject to this clause 6, GBRF does not assert any ownership interest in any Intellectual Property Rights in any Project Material or Existing Material (excluding in relation to any GBRF Material which may be incorporated in to the Project Material, in the unlikely event any such GBRF Material is so incorporated).
- (b) The Funding Recipient acknowledges and agrees that:
 - (i) Project Material will constitute 'Activity Material' under the Grant Agreement to the extent it is provided to or required to be provided by GBRF to the Department under the Grant Agreement and/or includes or forms part of Plans and Reports as those two terms are defined in the Grant Agreement; and
 - (ii) GBRF has an obligation to provide (or procure) a licence to the Department of such Project Material on terms required by clause 12.2.3 of the Grant Agreement, and accordingly the Funding Recipient grants to (or procures for) GBRF a full licence needed to enable GBRF to comply with clause 12.2.3 of the Grant Agreement (including the requisite rights of sub-licence to enable GBRF to provide that sub-licence to the Department), being a perpetual, irrevocable, royalty-free, worldwide, non-exclusive licence (including the right conferred on the Department to further sub-licence) to use, reproduce, adapt, modify, perform, communicate and exploit the Project Material (and any Existing Material in it) for any Commonwealth purpose.
- (c) Without limitation to the above:
 - (i) to the extent Project Material constitutes or is incorporated into any 'Investment Strategy', 'Annual Work Plan' or 'Report' (as those terms are defined in the Grant Agreement), the Funding Recipient consents to the Department and / or GBRF publishing that Project Material on their websites under an 'Open Access Licence' as described in clauses 12.2.4 and 12.2.5 of the Grant Agreement; and
 - (ii) the Funding Recipient otherwise consents to the Department and / or GBRF publishing any reports, publication or data set (including any location data) as part of the Project on the GBRF's website (excluding any Personal Information) or other websites or publicly available sources as notified to the Funding Recipient from time to time.
- (d) The parties agree, on request by the other party, to create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 6.

6.2 Moral Rights

The Funding Recipient 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 (including the Department) (whether occurring before or after the consent is given) and, upon request, will provide the executed original and any such consent to GBRF.

6.3 Warranties

The Funding Recipient warrants the following:

- (a) the Funding Recipient has sufficient rights to grant the licence described in clause 6.1(b);
- (b) the Funding Recipient is either:
 - (i) the only owner of any Existing Material licensed under clause 6.1(b); or
 - (ii) where the Existing Material is owned by a third party, the Consultant has the full unencumbered right to provide the licence under clause 6.1(b) without further action by the Funding Recipient;
- (c) the exercise of the rights to any Existing Material, Intellectual Property Rights and Materials by GBRF will not infringe any intellectual property or any other rights of any third party nor give rise to any obligation on the Foundation to pay compensation or royalty to any other person;
- (d) the Consultant has procured the consent of any authors of Existing Material, Intellectual Property and Materials for GBRF, 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 Existing Material, Intellectual Property and Materials; and
- (e) the Funding Recipient in procuring the required consent under paragraph (d) has complied in all respects with the *Copyright Act 1968 (Cth)*.

7 Confidential Information

7.1 Confidential Information not to be disclosed

The Funding Recipient agrees, without the prior written consent of GBRF, not to disclose any Department Confidential Information or GBRF Confidential Information to a third party.

7.2 Written undertakings with respect to Department Confidential Information

The Funding Recipient agrees, on request by GBRF, to arrange for:

- (a) the Funding Recipient's Personnel; or
- (b) any person with legal or equitable right, interest, power or remedy in favour of any person other than GBRF or the Funding Recipient 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 and / or Department Confidential Information.

7.3 Exceptions to obligations relating to Department and GBRF Confidential Information

- (a) The obligations on the parties under this clause 7.3 will not be taken to have been breached to the extent that the Department Confidential Information or GBRF Confidential Information:
 - (i) is disclosed by the Funding Recipient to its Personnel solely in order to comply with obligations, or to exercise rights, under this Agreement;
 - (ii) is disclosed to the Funding Recipient'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 7.
- (b) Where the Funding Recipient discloses Department Confidential Information or GBRF Confidential Information to another person pursuant to paragraphs (i) and (ii) above, the Funding Recipient:
 - (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 Funding Recipient agrees to secure all of the Department Confidential Information and GBRF Confidential Information against loss and unauthorised access, use, modification and disclosure.

7.4 Exceptions to obligations relating to Funding Recipient Confidential Information

The Funding Recipient acknowledges that neither GBRF nor the Department breaches any obligation of confidence at general law or otherwise when either party discloses Funding Recipient Confidential Information in the manner contemplated in clause 14.4.1 of the Grant Agreement.

7.5 Period of confidentiality

The obligations under this clause 7.3 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.

8 Privacy

- (a) The Funding Recipient undertakes that it will and will ensure that its Personnel 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 or the Department, 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 subclause (a).
- (b) The Funding Recipient agrees to notify GBRF immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 8.
- (c) If the Funding Recipient 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 Funding Recipient as a result of this Agreement or its performance of the Project, the Funding Recipient 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 Funding Recipient is aware that there are reasonable grounds to believe that there has been, or where GBRF notifies the Funding Recipient that there has been, an Eligible Data Breach in relation to any Personal Information held by the Funding Recipient as a result of this Agreement or its performance of the Project, the Funding Recipient 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 Funding Recipient makes available any Personal Information to GBRF in connection with carrying out the Project, 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 the Department, and any other third parties to whom such information may be disclosed in connection with the Project and the administration of the Grant under the Grant Agreement.

9 Conflict of Interest

- (a) The Funding Recipient 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 Funding Recipient's obligations under the Agreement.
- (b) If during the Term a Conflict arises, the Funding Recipient 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.

10 Work Health and Safety

10.1 WHS requirements

- (a) The Funding Recipient agrees not to use any Project Funds for a Project unless and until the Funding Recipient has:
- (i) developed and implemented appropriate and comprehensive WHS policies and procedures for the Funding Recipient's operations, including the Project;
 - (ii) conducted a WHIS risk assessment for that Project;
 - (iii) identified the WHS risks arising from that Project and how those risks will be managed;
 - (iv) taken all reasonable steps to manage those identified WHS risks before the Project commences;
 - (v) identified any specific training or qualifications that GBRF, its Personnel or Subcontractors require to perform the Project and GBRF has verified that they have the required training or qualifications before they commence performing the Project; and
 - (vi) documented the Funding Recipient's conduct of each of the steps in this clause 10.1(a).

10.2 Notifiable Incidents

- (a) The Funding Recipient agrees to report to GBRF any significant WHS risks that it identifies, including as a result of conducting the process in clause 10.1, as well as any Notifiable Incidents. If requested by GBRF, the Funding Recipient agrees to provide

GBRF with information (including evidence of the Funding Recipient's completion of the steps in clause 10.1.

- (b) The Funding Recipient agrees to provide evidence of its compliance with clause 10.1 prior to any Project Funds being paid by GBRF to the Funding Recipient.

11 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; and
 - (iii) the execution, delivery and performance of this Agreement has been duly and validly authorised by its board.

12 Audit and access

GBRF may, on reasonable prior notice to the Funding Recipient, perform an audit on the Funding Recipient's compliance with this Agreement and the Funding Recipient agrees to give GBRF, and any persons authorised by GBRF, access to premises where obligations under this Agreement are being carried out and permit those people to inspect and take copies of any Material relevant to the Project under this Agreement.

13 Liability

13.1 Indemnity

- (a) The Funding Recipient 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 Funding Recipient (which may be due to an act or omission of its Personnel or a Subcontractor);
 - (v) any act or omission involving Fault by the Funding Recipient or its Personnel or a Subcontractor in connection with this Agreement;
 - (vi) the use by GBRF or the Department of the Project Material or Existing Material and their right to undertake Permitted Acts as described in clauses 6.2, 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 Funding Recipient's liability to indemnify GBRF and its Personnel under clause 13.1(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 13.1 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.

13.2 The Funding Recipient's assumption of risk and release of GBRF

The Funding Recipient agrees to deliver the Project at its own risk and neither GBRF nor any of its Personnel are liable to the Funding Recipient (or the Funding Recipient'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 \$100,000.

14 Insurance

- (a) The Funding Recipient agrees to:
 - (i) maintain the insurance specified in Item 7 of Schedule 1; and
 - (ii) on request, provide proof of insurance acceptable to GBRF.
- (b) This clause 14 continues in operation for so long as any obligations remain in connection with this Agreement.

15 Dispute Resolution

15.1 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.

15.2 Mediation

- (a) If the Dispute is not settled within 10 Business Days of notification under clause 15.1, the parties will, if mutually agreed, submit the Dispute to mediation administered by the Australian Commercial 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.

15.3 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.

15.4 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 shall survive termination of this Agreement.

16 Termination or reduction in scope of the Agreement

16.1 Termination for convenience

- (a) If there is a material change in Australian Government policy that is inconsistent with the continued operation of this Agreement, or GBRF receives a notice of termination from the Department under clause 25.1.1 of the Grant Agreement, GBRF may by notice terminate this Agreement or reduce the scope of the Agreement immediately.
- (b) The Funding Recipient agrees, on receipt of a notice of termination or reduction under clause 16.1(a), to:
 - (i) stop or reduce the performance of the Funding Recipient'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 paragraphs clauses 16.1(c) and (d), return to GBRF some or all of the Project Funds in accordance with clause 17 or otherwise deal with the Project Funds as directed by GBRF.
- (c) In the event of termination under clause 16.1(a), the Funding Recipient is only entitled to retain the amount of the Projects Funds necessary to cover any reasonable costs that the Funding Recipient unavoidably incurs that relate directly to the termination of the Agreement. The Funding Recipient 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 16.1(a), the Funding Recipient'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 Funding Recipient may retain any Project Funds attributable to the removed part of the Project that is required to cover reasonable costs that the Funding Recipient unavoidably incurs and that relate directly to the reduction in scope of the Agreement.
- (e) The Funding Recipient's entitlement to compensation for its reasonable termination costs under or in relation to this clause 16.1 is subject to:
 - (i) the Funding Recipient's compliance with this clause 16.1; and
 - (ii) the Funding Recipient's substantiation of any amount claimed under paragraph (c) and (d).
- (f) In no circumstances will the Funding Recipient be entitled to compensation for loss of prospective profits, loss of donations or loss of any benefits that would have been conferred on the Funding Recipient.

16.2 Termination for fault

GBRF may by notice terminate this Agreement immediately if:

- (a) the Funding Recipient breaches this Agreement and GBRF considers that the breach cannot be rectified;
- (b) the Funding Recipient breaches this Agreement and does not rectify the breach within 10 Business Days after receiving notice to do so from GBRF;

- (c) the Funding Recipient comes under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth);
- (d) the Funding Recipient is unable pay all its debts as and when they become payable or it fails to comply with a statutory demand within the meaning of sections 459E or 459F of the *Corporations Act 2001* (Cth);
- (e) proceedings are initiated with a view to obtaining an order for winding up the Funding Recipient, or a resolution of the members is passed to wind up the Funding Recipient;
- (f) there is a change in the Funding Recipient's control (as defined in section 50AA of the *Corporations Act*), constitution, structure, management or operations that the Funding Recipient reasonably believes is likely to materially adversely affect the Funding Recipient's ability to perform the Project in accordance with this Agreement;
- (g) the Funding Recipient breaches a Law relating to the performance of a Project;
- (h) the Funding Recipient advises that it wishes to withdraw from this Agreement; or
- (i) another clause of this Agreement allows for a termination under this clause 16.2, (each, a **Termination Event**).

16.3 Preservation of other rights

Clause 16.2 does not limit or exclude any of GBRF's other rights under this Agreement or otherwise at Law.

17 Repayment of the Project Funds

17.1 Suspension and repayment of the Project Funds

- (a) If this Agreement is terminated, suspended, or the scope of the Agreement is reduced, the Funding Recipient must:
 - (i) immediately cease expenditure of the Project Funds on receipt of written notice from GBRF (**GBRF's Notice**); and
 - (ii) within 10 Business Days of the date of GBRF's Notice, reimburse to GBRF any part of the Project Funds which:
 - (A) has not (in GBRF's reasonable opinion) been spent by the Funding Recipient in accordance with this Agreement; and
 - (B) is not legally committed for expenditure by the Funding Recipient in accordance with this Agreement and due and payable by the Funding Recipient by the date of GBRF's Notice.

GBRF may recover such amounts as a liquidated debt immediately due and payable.

17.2 Debt and Interest

- (a) The Funding Recipient 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 Funding Recipient must pay any amount owed or payable to GBRF or which the Funding Recipient is entitled to recover from the Funding Recipient under this Agreement, including any interest, as a debt due to GBRF by the Funding Recipient without further proof of the debt by GBRF being necessary.
- (c) The Funding Recipient agrees that the Interest represents a reasonable pre-estimate of the loss incurred by GBRF.

17.3 Recovery of the overpayment

GBRF may recover any part of the Project Funds that are overpaid to, incorrectly claimed or spent by, or not required by, the Funding Recipient.

18 Subcontracting

- (a) The Funding Recipient must seek the prior written consent of GBRF if it wishes to subcontract the whole, or any part, of the Funding Recipient'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 Funding Recipient to impose on its subcontractor terms and conditions which are (at a minimum) consistent with the terms and conditions of this Agreement.
- (b) The Funding Recipient is and remains liable under this Agreement at all times for all acts and omissions of any Subcontractor (including each of their Personnel) engaged at any time during the Term in relation to the Project, as if they were the acts or omissions of the Funding Recipient.

19 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 a person duly authorised by the sender (or in the case of email, set out the full name and position or title of the sender or person duly authorised by the sender);
- (b) must be addressed and delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or email to the address last notified by the intended recipient to the sender;
- (c) will be conclusively taken to be duly given or made when delivered, received or left at the above email address, fax number or address. If delivery or receipt occurs on a day that is not a business day in the place to which the Notice is sent or is later than 4pm (local time) at that place, it will be conclusively taken to have been duly given or made at the commencement of business on the next business day in that place.

20 Force Majeure

The Funding Recipient is excused for performing its obligations under this Agreement due to any circumstances beyond its reasonable control (other than any strike, lockout and labour dispute that only applies to the Funding Recipient) including but not limited to acts of Gods, natural disasters, acts of war, riots and strikes outside the Funding Recipient's organisation provided that the Funding Recipient, as imminently as possible, notifies GBRF of the commencement and likely cessation of the occurrence of such event or situation and takes all reasonable steps to minimise any disruption to, and resume the performance of, its affected obligations. If such an event or situation continues for a period of at least thirty (30) days, then, GBRF may terminate this Agreement immediately.

21 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.

22 Assignment

The Funding Recipient 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.

23 Change of Control

- (a) For the purposes of clauses (b) and (c) below, a Change of Control occurs if the Funding Recipient comes under the control of a third party who did not Control the Funding Recipient at the commencement of this Agreement and Control has the meaning given to it in section 50AA of the Corporations Act.
- (b) The Funding Recipient must notify GBRF immediately in writing if a Change of Control of the Funding Recipient occurs.
- (c) If a Change of Control of the Funding Recipient 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 Funding Recipient to fulfil its obligations under the Agreement; or
 - (ii) a direct competitor of the Funding Recipient gains Control of the Funding Recipient.

24 Counterparts

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

25 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.

26 Further Assurances

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

27 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.

28 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.

29 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.

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Schedule 1

1 Item 1 – Party Details

GBRF:

Party Name:	Great Barrier Reef Foundation
ABN:	82 090 616 443
Street Address:	Level 11, 300 Ann Street, Brisbane, QLD 4000
Contact Name:	TBA
Contact Postal Address:	GPO Box 1362, Brisbane QLD 4001
Contact Telephone:	07 3252 7555
Contact Facsimile:	Nil
Contact Email (not to be used for giving notices under clause 19)	TBA
Notice Email (for giving notices under clause 19)	contracts@barrierreef.org

Funding Recipient

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

2 Item 2 – Term

Commencement Date:	The date this Agreement is executed by GBRF.
Completion Date	[Insert Completion Date]

3 Item 3 – Project

4 Item 4 - Project Deliverables and Due Dates

DELIVERABLE	DELIVERABLE DESCRIPTION	DUE DATE
[Insert Deliverable Title]	[Insert description of Deliverable]	[Insert Deliverable Due Date]

5 Item 5 – Project Funds

PAYMENT DATE	INSTALMENT / MILESTONE DESCRIPTION	DELIVERABLE / DUE DATE	AMOUNT (excl GST)
	[Initial payment]		
	[Progress payment]		
	[Final payment]		
	TOTAL		

6 Item 6 – Reporting

SUBMISSION DATE	REPORT TYPE	REPORT REQUIREMENTS
	[Progress report]	
	[Progress report]	
	[Financial Report Financial Acquittal]	

7 Item 7 - Insurance

TYPE	MINIMUM VALUE INSURED	PERIOD TO BE HELD
Workers' Compensation	As required by law	During the Term
Public Liability	[\$10,000,000]	During the Term
Professional Indemnity	[\$1,000,000]	During the Term and for 7 years after the Completion Date
[Other insurance]	[Other insurance]	[Other insurance]

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

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