



Great Barrier  
Reef Foundation

Great Barrier Reef Foundation

[Funding Recipient]

Subgrant Agreement

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

## Recitals

- A The Department of 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.

**Acceptable Financial Institution** means a reputable financial institution registered in Australia and operating as a bank, credit union or building society, which:

- (a) is an Australian authorised deposit taking institution authorised under the Banking Act 1959 (Cth) to carry on banking business in Australia; and
- (b) has a minimum long-term credit rating of at least BBB+ from Standard and Poor's Rating Services or higher by Moody's Investors Service Limited.

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

**Advisory Bodies** means:

- (a) the Ministerial Forum;
- (b) the Reef 2050 Independent Expert Panel;
- (c) the Reef 2050 Advisory Committee;
- (d) Queensland's Office of the Great Barrier Reef;
- (e) the Great Barrier Reef Marine Park Authority; and
- (f) the Department.

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

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

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

**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 Brisbane, Queensland.

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

**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.

**Depreciated** means the amount representing the reduction in value of an Asset calculated in accordance with Australian Accounting Standards.

**Dispose** means to sell, licence, lease or sublease, or otherwise transfer or give up ownership or the right to occupy or use, or to enter into an agreement to do any of the preceding acts and 'Disposal' means the method of so disposing.

**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.

**Funds Account** means the bank account established and maintained by the Funding Recipient in accordance with clause 6, including any replacement bank account.

**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.

**Indigenous Knowledge** means any traditional knowledge and cultural expressions of Indigenous peoples as provided or contributed to by Indigenous peoples, and includes:

- (a) traditional ecological knowledge, biodiversity-related knowledge, scientific knowledge, technical knowledge, agricultural knowledge, medicinal knowledge and related medicines and remedies, cosmology, knowledge about genetic resources, languages, words, music, performance, literature, song lines, stories, dance, games, mythology, other oral

traditions, rituals, customs, narratives, names, symbols, designs, visual arts and crafts, and architecture; and

- (b) any Intellectual Property Rights that arise in that knowledge or expression

**Intellectual Property Rights** includes:

- (a) all copyright (including rights in relation to phonograms and broadcasts);
- (b) all rights in relation to inventions, plant varieties, trademarks (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.

**Ministerial Forum** means the Ministerial forum, comprising 2 Australian Government Ministers (including the Minister responsible for administering the *Great Barrier Reef Marine Park Act 1975* (Cth)) and 2 Queensland Government Ministers, which was established by, and for the purpose of overseeing the implementation of, the Great Barrier Reef Intergovernmental Agreement 2015.

**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** means personal information and sensitive information as those terms are 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 the *Privacy Act 1988* (Cth).

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

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

**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:

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

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

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

**Reef Trust Special Account** means the *Reef Trust Special Account 2014* established for the Reef Trust pursuant to subsection 78(1)(a) of the *Public Governance, Performance and Accountability Act 2013* (Cth).

**Reef Trust Special Account Determination** means the *PGPA Act (Reef Trust Special Account 2014) Determination 01*, which establishes the Reef Trust Special Account as amended from time to time.

**Scheme** means the scheme described in section 43 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

**Subcontractor** means:

- (a) in relation to the Funding Recipient - any person 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.

**Undepreciated** means the value of an Asset that has not been Depreciated.

## 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.
- (b) 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.
- (c) The following rules apply unless the context requires otherwise. The singular includes the plural, and the converse also applies.
  - (i) A gender includes all genders.
  - (ii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
  - (iii) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
  - (iv) A reference to a clause or Schedule is a reference to a clause of, or Schedule to, this Agreement.
  - (v) 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.
  - (vi) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
  - (vii) 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).
  - (viii) 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.
  - (ix) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
  - (x) 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.
  - (xi) A reference to *dollars* or \$ is to Australian currency.
  - (xii) 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).

- (xiii) A reference to an *asset* includes any real or personal, present or future, tangible or intangible property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived from the property or asset.
- (xiv) A reference to time is to Brisbane, Queensland time.
- (xv) 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.
- (xvi) A *month* means a calendar month.
- (xvii) A reference to year is a reference to each successive period of 12 months, commencing on the Commencement Date.

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

### **2.1 Completion Date**

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

### **2.2 Cooperation**

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

## **3 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;
  - (iii) GBRF's reasonable requests, directions and requirements from time to time in relation to the Project, to GBRF's satisfaction; and
  - (iv) 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:
  - (i) reflects unfavourably upon GBRF, the Department and / or the Project;
  - (ii) might negatively impact the image or reputation of GBRF and /or the Project; or
  - (iii) is in conflict with the Reef Trust Partnership;

- (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; and
- (e) provide the Project Co-Contributions as specified in Schedule 1 Item 6.

### 3.2 Expenditure of the Project Funds

- (a) The Funding Recipient agrees to manage and spend the Project Funds efficiently, effectively, economically and ethically in accordance with this Agreement so as to achieve the objectives consistent with the Grant Agreement.
- (b) The Project Funds specified in Schedule 1 for the Project may only be spent on that Project in accordance with Schedule 1.
- (c) GBRF shall have no responsibility in respect of the application of Project Funds under this Agreement other than those expressly stated on its part in this Agreement.
- (d) The 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 as per the requirements for the Funds Account described in clause 6.
- (e) The Funding Recipient may not use any part of the Project Funds for any of the following:
  - (i) costs incurred by the Funding Recipient before the Commencement Date except as authorised by GBRF in writing;
  - (ii) an activity that specifically enables an agricultural or other business to comply with their obligations under Reef Protection Regulations made by the Queensland Government under the *Environmental Protection Act 1994* (Qld);
  - (iii) construction work or an acquisition of land or other real property unless that work or acquisition directly furthers the outcome of the Project and is agreed in writing by GBRF prior to the construction work or acquisition of land or other real property occurring;
  - (iv) on-ground activities outside the Reef Catchment;
  - (v) legal assistance or advice relating to any actual or potential claim against, or the avoidance of any actual or purported obligation owed to, GBRF, the Department or the Commonwealth (including under the Grant Agreement and this Agreement);
  - (vi) to conduct fundraising activities which involve the acquisition of items that are used as prizes for those fundraising activities;
  - (vii) any activity that is likely to have an adverse environmental impact; or
  - (viii) the duplication of an activity that is already being undertaken for the benefit of the Great Barrier Reef World Heritage Area,(collectively, the **Prohibited Purposes**).
- (f) If the Funding Recipient uses the Project Funds:
  - (i) for any of the Prohibited Purposes,

- (ii) for any purposes other than for the purposes of the Project in accordance with this Agreement; or
  - (iii) in breach of clause 3.2(c)(i),
- without prejudice to GBRF's other rights and remedies under this Agreement otherwise at law:
- (iv) 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**);
  - (v) in any event the Funding Recipient must refund the Amount within 10 Business Days of receiving the notice given under clause 3.2(f)(iv); and
  - (vi) if the Funding Recipient fails to refund the Amount in accordance with 3.2(f)(v), GBRF may:
    - (A) recover the Amount as a liquidated debt immediately due and payable to GBRF; and / or
    - (B) set the Amount off against any other amount payable by GBRF to the Funding Recipient whether under this Agreement or otherwise.
  - (g) 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.
  - (h) GBRF may terminate this Agreement in accordance with clause 21.2 for any breach of this clause 3.2.
  - (i) 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 "Communications Protocol for Reef Trust Partnership Projects" 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

- (a) The Funding Recipient must:
  - (i) prepare a financial statement including all financial accounts and records relating to the Project that identifies all receipts and payments related to the Project with receipts and payments for the Project Funds and Cash Contributions, and each Project (to the extent the Funding Recipient is performing separate Projects), shown separately;
  - (ii) generally, keep proper and adequate records about the performance of the Project and whether time frames and performance requirements for the Project are met;
  - (iii) prepare financial statements for each Financial Year in accordance with Australian Accounting Standards, including:
    - (A) an income and expenditure statement for the Project for the Financial Year to date; and
    - (B) to the extent applicable, a register of Assets created, acquired, written-off or Disposed of during the Financial Year to date; and

- (iv) arrange for the audit of those accounts and records by an Approved Independent Auditor in accordance with applicable Australian Auditing Standards made under the *Corporations Act 2001* (Cth); and
  - (v) provide any of the documents described above in this clause 3.3(a) to GBRF upon reasonable request.
- (b) The financial statement described above in clause 3.3(a)(i) must be certified by the Funding Recipient's [Chairperson / CEO / CFO] that the Project Funds have been spent on the Project in accordance with this Agreement and must be provided to GBRF immediately upon completion of the Project (or at other intervals as reasonably requested by GBRF).
- (c) All financial accounts and records described above must be kept in secure storage for at least 7 years (or such longer period required by law) after the Project Period.

### **3.4 Reports**

- (a) The Funding Recipient must submit the reports by the dates and containing the information described in Item 7 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 Reviews**

- (a) The parties must conduct regular service and performance reviews of the Funding Recipient's performance of this Agreement at intervals communicated by GBRF in writing.
- (b) All reviews must be undertaken by representatives of both parties who have the authority, responsibility and relevant expertise in financial and operational matters appropriate to the nature of the review.

### **3.6 Due Dates**

- (a) The 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.
- (c) Upon receipt of such notification, or if a Due Date is not met:
  - (i) the parties must promptly meet to determine the cause of such anticipated or actual delay;
  - (ii) the Funding Recipient must take all reasonable steps to minimise or avoid the delay and its effects, including by way of alternate sources, additional resources, workaround or other means; and
  - (iii) the Funding Recipient must develop a rectification plan which addresses the delay to ensure that it does not impact other Due Dates and the Project generally, and the parties must comply with such plan once agreed.
- (d) The dates for compliance with a relevant Due Date will be extended by the length of delay caused by any failure of GBRF to perform its obligations under this Agreement

within the timeframe required by this Agreement or by any force majeure event described in clause 20, provided that the Funding Recipient:

- (i) complies with its obligations under clause 3.6(c); and
  - (ii) advises GBRF as soon as practicable after the Funding Recipient becomes aware that a failure by GBRF to perform its obligations under this Agreement or a force majeure event may result in a delay to any Due Date.
- (e) The Funding Recipient acknowledges that:
- (i) it is responsible for the Project and ensuring that each Due Date is completed by the time required for the relevant Due Date;
  - (ii) except as set out in clause 3.6(d), the Funding Recipient will bear the risk of all delays in the performance of the Projects and all costs, losses, expenses and payments arising from such delays, and will not be entitled to any extension to any Due Date; and
  - (iii) subject to clause 3.6(d), GBRF will be entitled to recover from the Funding Recipient on demand as a debt due and payable any costs incurred by GBRF arising out of or relating to any delay in the achievement of a Due Date.

### **3.7 Management of the Project and Project Funds**

- (a) The Funding Recipient agrees that a person specified in this clause 3.7 may not have a role in the management of the Project or the Project Funds:
- (i) a person who is an undischarged bankrupt;
  - (ii) a person who has in operation a composition, deed or arrangement or deed of assignment with his or her creditors under the law relating to bankruptcy;
  - (iii) a person who has suffered final judgment for a debt and the judgment has not been satisfied;
  - (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 3.7(a)(i) to (a)(v), the Funding Recipient will be in breach of clause 3.7(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:
- (i) the Funding Recipient's ongoing compliance with this Agreement; and
  - (ii) the Funding Recipient establishing and maintaining the Funds Account and complying with its obligations under clause **Error! Reference source not found.**
- GBRF will pay the Project Funds into the Funds Account 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:
- (i) the Funding Recipient has used all previously paid Project Funds to conduct the Project in accordance with this Agreement;
  - (ii) the Funding Recipient has issued a valid tax invoice, if applicable, to GBRF for the payment;
  - (iii) the Funding Recipient has submitted to GBRF (in form and substance satisfactory to GBRF) all reports, Deliverables and other information due on or before the payment date in Item 5 of Schedule 1; and
  - (iv) GBRF is reasonably satisfied that the Funding Recipient is not otherwise in breach or has not otherwise failed to remedy any breach of, this Agreement or any Law.
- (c) Any payment into the Funds Account by GBRF is not an admission or acceptance by GBRF that the Funding Recipient has complied with this Agreement or performed any particular obligation under it.
- (d) 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 21.1 will apply in the event of termination under this clause 4(d).

## **5 Assets**

### **5.1 Acquisition of Assets**

This clause applies to each Asset that is created or acquired with the Project Funds.

### **5.2 Funding Recipient's responsibilities for Assets**

Throughout the Term, the Funding Recipient agrees to:

- (a) use any Asset in accordance with this Agreement for the purposes of the Project;
- (b) hold all Assets securely and take all reasonable steps to safeguard them against theft, loss, damage, or unauthorised use;
- (c) maintain all Assets in good working order;
- (d) maintain all appropriate insurances for all Assets to their full replacement cost noting GBRF or the Department's interest, if any, in the Asset under this Agreement;
- (e) if required by Law, maintain registration and licensing of all Assets;
- (f) be fully responsible for, and bear all risks relating to, the use or Disposal of all Assets; and
- (g) maintain an Assets register in the form notified by GBRF, and, as and when requested by GBRF, provide a copy of the Assets register to GBRF.

### 5.3 Sale and Disposal of Asset during Term

- (a) The Funding Recipient must not Dispose of any Assets during the Term without the express written consent of GBRF.
- (b) The Funding Recipient must within 20 Business Days pay all of the sale proceeds from the Asset to GBRF.
- (c) GBRF may, within its sole discretion, determine the repurposing of any sale proceeds from the Assets under clause 5.3(b) including making those sale proceeds available as Project Funds for the purposes of performing the Project.

### 5.4 Loss, damage, etc of Assets

If any of the Assets are lost, damaged or destroyed, the Funding Recipient agrees to ensure that the Asset is promptly reinstated, including from the proceeds of the insurance, and this clause 5.4 continues to apply to the reinstated Assets. The proportion of any surplus from the proceeds of the insurance that the Funding Recipient receives, which reflects the proportion of cost of the Asset that was funded from the Project Funds, must be notified in writing to GBRF, and forms part of the Project Funds and must be used for the Project.

### 5.5 Dealing with Asset

- (a) If, as at the date which is the end of the Term (**Relevant Date**), an Asset has not been fully Depreciated, GBRF may, by written notice, require the Funding Recipient to:
  - (i) pay GBRF within 10 Business Days after the Relevant Date, an amount equal to the proportion of the Undepreciated value of the Asset that is equivalent to the proportion of the cost of the Asset that was funded from the Project Funds;
  - (ii) sell the Asset for the best market price reasonably obtainable and pay to the GBRF, within 20 Business Days after the sale, the proportion of the proceeds of the sale that is equivalent to the proportion of the cost of the Asset (less an amount equal to the reasonable Disposal costs incurred by the Funding Recipient) that was funded from the Project Funds; or
  - (iii) continue to use the Asset for the purposes, and in accordance with any conditions, notified by GBRF.
- (b) Amounts payable to GBRF under clause 5.5(a) form part of the Project Funds and are recoverable as such.

## 6 Funds Account

### 6.1 Establishment of the Funds Account

- (a) The Funding Recipient must maintain the Project Funds in a bank account in the Funding Recipient's name and in the Fund Recipient's sole control with an Acceptable Financial Institution.
- (b) The Funding Recipient agrees to keep financial accounts for the Funding Recipient that:
  - (i) are separate within the Funding Recipient's financial accounts so that at all times the Project Funds are identifiable;
  - (ii) identify the receipt and expenditure of the Project Funds;
  - (iii) identify any interest earned on the Project Funds where the funds have been deposited in an interest-bearing account;
  - (iv) detail and document the conduct and management of the Project;

- (v) enable all receipts and payments related to the Project to be identified and reported.
- (c) The bank account referred to in clause 6.1(a) (and any replacement account referred to in clause 6.2) must be:
  - (vi) an Australian Dollar bank account maintained in Australia with an Acceptable Financial Institution; and
  - (vii) an account that earns interest not exceeding an ordinary commercial rate.

## **6.2 Replacement Funds Account**

- (a) If the financial institution with whom the Funds Account is held ceases to be an Acceptable Financial Institution, the Funding Recipient must, as soon as practicable:
  - (i) establish a new bank account (the replacement Funds Account) in the name of the Funding Recipient with an Acceptable Financial Institution that meets the requirements of clause 6.1
  - (ii) transfer all Project Funds remaining in the existing Funds Account to the replacement Funds Account; and
  - (iii) give notice to GBRF of the details of the replacement Funds Account.
- (b) For the avoidance of doubt, if the Funding Recipient is required to establish a replacement Funds Account, GBRF is not obligated to pay any Project Funds to the Funding Recipient until the replacement Funds Account is established.

## **7 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 parties agree to:
  - (i) collaborate with each other on the planning of strategic communication opportunities regarding the Project;
  - (ii) seek the other party's comment on any publication, promotional or advertising materials that it proposes to publish or use at events relating to the Project;
  - (iii) use the Department's 'Reef Trust' branding in accordance with any Reef Trust Branding Guidelines notified by GBRF (on instruction from the Department); and
  - (iv) use its reasonable endeavours to jointly release a public statement or publish promotional material in any media about the Project.
- (c) Neither party will release a public statement or publish promotional material in any media about the Project unless:
  - (i) the public statement or promotional material acknowledges the financial and other support that GBRF has received from the Australian Government, in accordance with the Department's 'Australian Government Reef Trust and Reef Programme Acknowledgement Guide' issued by the Department from time to time, or as otherwise notified by GBRF (on instruction from the Department); and

- (ii) at least 10 Business Days before the proposed statement or publication, the party preparing the statement or promotional material provides the other party with a copy of the proposed statement or publication.

## **8 Intellectual Property Rights**

### **8.1 Rights in Project Material**

- (a) Subject to this clause 8, 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 (including 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 8.

### **8.2 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.

### **8.3 Warranties**

The Funding Recipient warrants the following:

- (a) the Funding Recipient has sufficient rights to grant the licence described in clause 8.1;
- (b) the Funding Recipient is either:
  - (i) the only owner of any Existing Material licensed under clause 8.1(b); or
  - (ii) where the Existing Material is owned by a third party, the Funding Recipient has the full unencumbered right to provide the licence under clause 8.1(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 Funding Recipient 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).

## **9 Indigenous Knowledge and Engagement**

- 9.1 GBRF and the Funding Recipient acknowledge that the owners and custodians of any Indigenous Knowledge provided to a party under this Agreement are the Indigenous peoples who have provided or contributed that Indigenous Knowledge; and
- 9.2 GBRF and the Funding Recipient agree to use any Indigenous Knowledge provided to them under this Agreement only with the free, prior, informed and written consent of the Indigenous person or peoples who have provided or contributed that Indigenous Knowledge and only for the purpose for which such consent is given in writing.

## **10 Confidential Information**

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

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

### **10.2 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.

### **10.3 Exceptions to obligations relating to Department and GBRF Confidential Information**

- (a) The obligations on the parties under this clause 10 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 10.9.
- (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.

### **10.4 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:

- (a) disclosing the Funding Recipient Confidential Information to the Department or any related government body;
- (b) disclosing the Funding Recipient Confidential Information to the responsible Minister of the Department;
- (c) the Department shares the Funding Recipient Confidential Information with the Commonwealth or with one or more of the Advisory Bodies, the Ministerial Forum or the Australian Institute of Marine Science where that serves a legitimate interest;
- (d) disclosing the Funding Recipient Confidential Information to a House or a Committee of the Parliament of the Commonwealth of Australia;
- (e) it is authorised or required by law to be disclosed;
- (f) it is in the public domain otherwise than due to a breach of this clause 10; or
- (g) otherwise required to disclose the Funding Recipient Confidential Information pursuant to the Grant Agreement.

### **10.5 Period of confidentiality**

The obligations under this clause 10 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.

## 10.6 No reduction in privacy obligations

This clause 10 does not detract from any of the Funding Recipient's obligations under the Privacy Act or under clause 11.

## 11 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 11.
- (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.

## 12 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.

### **13 Compliance with Legislation**

- (a) The Funding Recipient agrees to comply with all Legislation applicable to its performance of this Agreement including, without limitation:
  - (i) the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth); and
  - (ii) the *Great Barrier Reef Marine Park Act 1975* (Cth).
- (b) Without limiting clause 13(a), the Funding Recipient agrees to ensure all relevant permits are obtained before any part of the Project is undertaken in the Great Barrier Reef World Heritage Area or Reef Catchments.

### **14 Work Health and Safety**

#### **14.1 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 WHS 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 the Funding Recipient, its Personnel or Subcontractors require to perform the Project and the Funding Recipient 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 14.1(a).

#### **14.2 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 14.1, 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 14.1).
- (b) The Funding Recipient agrees to provide evidence of its compliance with clause 14.1 prior to any Project Funds being paid by GBRF to the Funding Recipient.

#### **14.3 Australian Government Building and Construction WHS Accreditation Scheme**

- (a) This clause 14.3 only applies when the Project Funds are in excess of \$4 million (GST inclusive) and there will be Building Work relating to the Project undertaken by the Funding Recipient.

- (b) GBRF is required in the Grant Agreement to ensure that it applies the Scheme to certain Commonwealth-funded Building Work.
- (c) As necessary, the Funding Recipient agrees to be bound by the application of the Scheme where Building Work is part of the Project.
- (d) The Funding Recipient must ensure that the Builder performing the Building Work:
  - (i) is accredited under the Scheme;
  - (ii) maintains Scheme accreditation for the life of the Agreement;
  - (iii) complies with all conditions of Scheme accreditation; and
  - (iv) complies with the National Construction Code performance requirements in relation to building materials.

## 15 Warranties

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

- (viii) it has not made any false declaration in respect of any current or past dealings with any Commonwealth or other government agency, including in any proposal, tender or application process or in any agreement; and
  - (ix) it has no significant deficiency in the performance of any substantive requirement or obligation under any prior agreement with any Commonwealth or other government agency which would adversely affect its ability to perform this Agreement.
- (b) The Funding Recipient acknowledges that, in entering into this Agreement, GBRF is relying on the accuracy and truth of the Funding Recipient's warranties and representations contained in this Agreement.

## **16 Audit and access**

- (a) The Funding Recipient agrees:
- (i) to give GBRF, and any persons authorised by GBRF, access to premises where obligations under this Agreement are being carried out; and
  - (ii) to permit those persons to inspect and take copies of any Material relevant to the Project under this Agreement.
- (b) The rights referred to in clause 16(a) are subject to:
- (i) GBRF providing reasonable prior notice; and
  - (ii) the reasonable security procedures in place at the premises.
- (c) The Auditor-General and Information Officer (including their delegates) are persons authorised for the purposes of clause 16(a).
- (d) This clause 16 does not detract from the statutory powers of the Auditor-General or Information Office (including their delegates).

## **17 Liability**

### **17.1 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) use of the Assets; or
  - (vii) the use by GBRF or the Department of the Project Material or Existing Material and their right to undertake Permitted Acts as described in clause 8.2, 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 17.1(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 17.1 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.

## 17.2 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 **[Insert Figure]**.

## 18 Insurance

- (a) The Funding Recipient agrees to:
  - (i) maintain the insurance specified in Item 8 of Schedule 1; and
  - (ii) on request, provide proof of insurance acceptable to GBRF.
- (b) This clause 18 continues in operation for so long as any obligations remain in connection with this Agreement.

## 19 Dispute Resolution

### 19.1 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.

### 19.2 Mediation

- (a) If the Dispute is not settled within 10 Business Days of notification under clause 19.1, the parties will, if mutually agreed, submit the Dispute to mediation administered by the Australian Disputes Centre.
- (b) The mediator will be an independent person agreed between the parties.
- (c) Any mediation meetings and proceedings under this clause must be held in Brisbane, Queensland.

### 19.3 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.

### 19.4 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.

## **20 Force majeure events**

### **20.1 Occurrence of force majeure event**

The Funding Recipient is excused from performing its obligations under this Agreement to the extent it is prevented by circumstances beyond its reasonable control (other than a lack of Cash Contributions for any reason or any strike, lockout or labour disputes that only applies to the Funding Recipient), including but not limited to acts of God, natural disasters, acts of war, epidemic, riots and strikes outside that party's organisation.

### **20.2 Notice of a force majeure event**

When the circumstances described in clause 20.1 arise or are reasonably perceived by the Funding Recipient as an imminent possibility, the Funding Recipient agrees to give notice of those circumstances to GBRF as soon as possible, identifying the effect they will have on its performance. The Funding Recipient agrees to make all reasonable efforts to minimise the effects of such circumstances on its performance of this Agreement.

### **20.3 Cessation of use of Project Funds**

Except for the payments that the Funding Recipient is legally obliged to make, the Funding Recipient agrees to cease making payments from the Project Funds whilst the circumstances under clause 20.1 exist.

### **20.4 Termination**

If non-performance or diminished performance by the Funding Recipient due to the circumstances under clause 20.1 continues for a period of more than 30 consecutive days, GBRF may terminate this Agreement immediately by giving the Funding Recipient written notice under clause 21.2.

## **21 Termination or reduction in scope of the Agreement**

### **21.1 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 21.1(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 21.1(c) and (d), return to GBRF some or all of the Project Funds in accordance with clause 23 or otherwise deal with the Project Funds as directed by GBRF.

- (c) In the event of termination under clause 21.1(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 21.1(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 21.1 is subject to:
  - (i) the Funding Recipient's compliance with this clause 21.1; 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.

## 21.2 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 does anything which, in the reasonable opinion of GBRF, might negatively impact the image or reputation of GBRF or the Project or is in conflict with the Reef Trust Partnership; or
  - (c) the Funding Recipient breaches this Agreement and does not rectify the breach within 10 Business Days after receiving notice to do so from GBRF;
  - (d) the Funding Recipient comes under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth);
  - (e) 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);
  - (f) 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;
  - (g) 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;
  - (h) the Funding Recipient breaches a Law relating to the performance of a Project;
  - (i) the Funding Recipient advises that it wishes to withdraw from this Agreement;
  - (j) another clause of this Agreement allows for a termination under this clause 21.2:
- (each, a **Termination Event**).

### 21.3 Preservation of other rights

Clause 21.2 does not limit or exclude any of GBRF's other rights under this Agreement or otherwise at Law.

## 22 Step in rights

- (a) If:
- (i) a Termination Event occurs; or
  - (ii) the Funding Recipient otherwise requests that GBRF exercises its rights under this clause,
- GBRF may, at its discretion, give a notice to the Funding Recipient that GBRF intends to exercise its rights under this clause 22 in respect of some or all of the Project and the date from which this notice will take effect (**Step-In Notice**).
- (b) GBRF's rights under this clause 22 may be exercised by GBRF or its nominee (including the Department).
- (c) GBRF's rights under this clause 22 are not required to be exercised for the benefit of the Funding Recipient.
- (d) From the date, and to the extent, specified in the Step-In Notice:
- (i) the Funding Recipient will cease being responsible for the performance of the part of the Project specified in the Step-In Notice; and
  - (ii) the Funding Recipient's right to use the Project Funds for the part of the Project specified in the Step-In Notice is suspended.
- (e) From the date specified in the Step-In Notice:
- (i) GBRF may take any step to manage the part of the Project specified in the Step-In Notice that GBRF considers is reasonably necessary having regard to the trigger event(s) giving rise to the relevant Step-In Notice; and
  - (ii) the Funding Recipient agrees to provide all reasonable assistance and comply with any direction of GBRF to enable GBRF to exercise its rights under this clause and manage that part of the Project.
- (f) GBRF may withdraw the Step-In Notice if, in GBRF's reasonable opinion:
- (i) the circumstances giving rise to the trigger event have ceased or are able to be appropriately managed by the Funding Recipient; and
  - (ii) the Funding Recipient will otherwise be able to comply with its obligations under this Agreement.
- (g) The Funding Recipient agrees to execute all documents and do all things that GBRF considers necessary to give full force and effect to this clause 22 including any of the following:
- (i) agreeing to novate or assign any contracts with third parties to GBRF (or a third-party nominee of GBRF);
  - (ii) assign to GBRF (or GBRF's nominee) (or, where the Funding Recipient is unable to assign, assist GBRF obtain) all licences, consents and approvals that GBRF requires to fully exercise GBRF's rights under this clause 22;
  - (iii) assign to GBRF any leases or licences relating to the Project that GBRF considers are required to complete the Project; and

- (iv) give GBRF (or a nominee) unfettered access to any site where the Project is taking, or is to take, place.
- (h) Without limiting GBRF's rights under this Agreement or otherwise at Law, GBRF may recover from the Funding Recipient the reasonable costs incurred by GBRF in exercising its rights under this clause 22.
- (i) GBRF will by written notice advise the Funding Recipient of:
  - (i) the date, if any, when the Step-In Notice will be withdrawn, and the Funding Recipient will resume responsibility for the Project; and
  - (ii) the amount of the Project Funds that must be repaid to GBRF to reflect the costs incurred by GBRF in exercising its rights under this clause 22.
- (j) The Funding Recipient agrees that GBRF will not incur any liability to the Funding Recipient as a result of GBRF exercising any of its rights under this clause 22, unless in exercising its rights under this clause, GBRF engages in any negligent or unlawful act or omission, or wilful misconduct.
- (k) Any action taken by GBRF under this clause 22 does not affect GBRF's other rights under this Agreement or at law.

## **23 Repayment of the Project Funds**

### **23.1 Suspension and repayment of the Project Funds**

- (a) If:
  - (i) a Termination Event in clause 21.2 occurs;
  - (ii) GBRF terminates or reduces the scope of this Agreement under clause 21.1;
  - (iii) the Funding Recipient advises that it does not require some or all of the Project Funds; or
  - (iv) the Project Period ends,
 GBRF may, in its absolute discretion, do one or more of the following:
  - (v) direct the Funding Recipient to immediately cease expenditure of some or all of the Project Funds (which may, depending on the circumstances, be for a specified period, permanently or until GBRF advises otherwise);
  - (vi) obtain information about the Project Funds amount in the possession or control of the Funding Recipient;
  - (vii) where GBRF terminates the Agreement under clauses 21.1 or 21.2 (and subject to 21.1(c), if applicable), recover from the Funding Recipient any part of the Project Funds attributable to the removed part of the Project which:
    - (A) 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 that the termination notice is issued; or
    - (B) has not, in GBRF's reasonable opinion, been spent by the Funding Recipient in accordance with this Agreement; and
  - (viii) where GBRF reduces the scope of the Agreement under clause 21.1 or 21.2 (and subject to clause 21.1(d), if applicable), recover from the Funding Recipient any part of the Project Funds attributable to the removed part of the Project which:

- (A) 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 that the termination notice is issued; or
  - (B) has not, in GBRF's reasonable opinion, been spent by the Funding Recipient in accordance with this Agreement; and
- (ix) where the Project Period has ended, recover from the Funding Recipient any part of the Project Funds which:
- (A) was not committed for expenditure by the Funding Recipient in accordance with the Agreement to the end of the Project Period; or
  - (B) has not, in GBRF's reasonable opinion, been spent by the Funding Recipient in accordance with this Agreement.
- (x) Any amount that GBRF notifies the Funding Recipient is required to be repaid:
- (A) under this clause 23.1; or
  - (B) under clause 22(i),
- must be repaid to GBRF by the Funding Recipient within 20 Business Days after the date on which GBRF issued that notice.

## **23.2 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.

## **23.3 Recovery of the overpayment**

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

## **24 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.

## 25 Notices

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

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

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

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

in the place specified by the intended recipient as its postal address under clause 25(b), it will be conclusively taken to have been duly given or made and received at the start of business on the next business day in that place.

## 26 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.

## **27 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.

## **28 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.

## **29 Costs and Duty**

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

## **30 Counterparts**

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

## **31 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.

## **32 Further Assurances**

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

## **33 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.

### **34 No Merger**

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

### **35 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.

### **36 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.

### **37 Electronic Signing**

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

## Schedule 1

### Item 1 - Party Details

#### GBRF

<b>Party Name:</b>	Great Barrier Reef Foundation
<b>ABN:</b>	82 090 616 443
<b>Street Address:</b>	Level 11, 300 Ann Street, Brisbane, QLD 4000
<b>Contact Name:</b>	Theresa Fyffe
<b>Contact Postal Address:</b>	GPO Box 1362, Brisbane QLD 4000
<b>Contact Telephone:</b>	07 3252 7555
<b>Contact Email (not to be used for giving notices under clause 25(b))</b>	<a href="mailto:tfyffe@barrierreef.org">tfyffe@barrierreef.org</a>
<b>Notice Email (for giving notices under clause 25(b))</b>	<a href="mailto:contracts@barrierreef.org">contracts@barrierreef.org</a>

#### Funding Recipient

<b>Party Name:</b>	[*]
<b>ABN:</b>	[*]
<b>Street Address:</b>	[*]
<b>Contact Name:</b>	[*]
<b>Contact Postal Address:</b>	[*]
<b>Contact Telephone:</b>	[*]
<b>Contact Email (not to be used for giving notices under clause 25(b))</b>	[*]
<b>Notice Email (for giving notices under clause 25(b))</b>	[*]

### Item 2 - Term

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

**Item 3 - Project****Item 4 - Project Deliverables and Due Dates**

**[Drafting Note:** If there are multiple Deliverables associated with a particular Grant, and it is easier to refer to the relevant project schedule as might be set out in the broader Project Schedule (description in an annexure , please replace the table above with '(SEE ANNEXURE)']

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

**Item 5 - Project Funds**

**[Drafting Note:** Variation to original contract requires reporting to include a monitoring and evaluation plan for each of the Subcontract Projects.]

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

**[Drafting Note:** Please delete the 'Deliverable / Due Date' column if delivery of a Deliverable or the meeting of a Due Date is not applicable to a payment Milestone. Often Milestones are linked to the successful delivery of certain documents / processes or the completion of certain obligations which would be described in the table above in Item 4. Please also include any terms and conditions specifically with respect to the expenditure of the Project Funds.]

**Item 6 - RTP Funding and Project Co-Contributions**

As described in Request for Proposal Application Form in Annexure 1.

EXPENSE ITEM	TOTAL RTP FUNDING (AUD\$)	TOTAL PROJECT CO-CONTRIBUTIONS (\$AUD)
Salaries	\$0	\$0
Operating costs	\$0	\$0
Administration costs*	\$0	\$0
Assets (>10,000)	\$0	\$0
Contractors	\$0	\$0
Cash Contributions	\$0	\$0
Other	\$0	\$0

<b>TOTAL (excl GST)</b>	<b>\$0</b>	<b>\$0</b>
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\*Administration costs through RTP funding cannot exceed maximum of 10% of total funding

**Item 7 - Reporting**

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

**Item 8 - Insurance**

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

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

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

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

\_\_\_\_\_  
 Position

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

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

\_\_\_\_\_  
 Position

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

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Director Signature

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Director/Secretary Signature

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Print Name

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Print Name

SAMPLE